

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §305.154, Standards and §305.157, Record Retention.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes amendments to include a minor clerical change for *Texas Register* formatting requirements and to increase compatibility with federal regulations by reducing the record retention period.

SECTION BY SECTION DISCUSSION

Section 305.154(a)(7)(B), Standards, is proposed to be amended to delete the acronym “USDWs” because the phrase “underground sources of drinking water” is only used once in the section.

Section 305.157, Record Retention, is proposed to be amended to reduce the record retention period from five to three years for consistency with 40 Code of Federal Regulations (CFR) §144.51(j)(2)(ii).

FISCAL NOTE

Jeff Horvath, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments to Chapter 305, Subchapter H. The proposed amendments eliminate an unnecessary acronym and increase compatibility with the federal rule by reducing the record retention period from five years to three years.

PUBLIC BENEFIT AND COSTS

Mr. Horvath has also determined that for each year of the first five years the proposed amendments to Chapter 305 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be that the regulatory requirements will be reduced and will be easier to read.

There are no economic costs anticipated to any person required to comply with the proposed amendments to Chapter 305 because the primary proposed amendment reduces a regulatory requirement and therefore the cost associated with complying with that requirement is also reduced. It is anticipated that the proposed reduction in the record retention requirement will have a minor positive fiscal impact on current and future owners and operators of underground injection wells.

SMALL AND MICRO BUSINESS ANALYSES

No adverse economic effects are anticipated to any small businesses or micro-businesses as a result of implementing the proposed amendments because the proposed amendments reduce the record retention requirement and make the rule easier to read. In addition, the proposed amendments do not add any costs for small businesses or micro-businesses in order to comply with the regulatory requirements. It is anticipated that there will be minor cost savings as a result of reducing the record retention requirement.

DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute.

“Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 305 will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed amendments reduce a current record retention requirement and make the rule easier to read. These changes are anticipated to have a minor positive economic benefit to affected facilities. In addition, the proposed amendments are not a “major environmental rule” because they do not meet the applicability requirements listed in Texas Government Code, §2001.0225(a)(1)-(4). The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to correct and decrease the record retention period from five years to three years in Chapter 305, Subchapter H to be consistent with 40 CFR §144.51(j)(2)(ii). Promulgation and

enforcement of these rules will not burden private real property which is the subject of the rules because the amendments eliminate an unnecessary acronym and increase compatibility with the federal rule by reducing the record retention period. Thus, the amendments will not make the rule more stringent. As well, the Texas Government Code exception at §2007.003(b) regarding an action reasonably taken to fulfill an obligation mandated by federal law applies to this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that Chapter 305 is identified in 30 TAC §281.48, Appendix E, as a rule which relates to actions subject to the Texas Coastal Management Program (CMP) and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process. However, the proposed amendments to Chapter 305 will not have direct or significant adverse effect on any Coastal Natural Resource Areas (CNRAs), nor will the rulemaking have a substantive effect on commission actions subject to the CMP because the proposed rule amendments merely update, correct, and clarify Chapter 305, and increase compatibility with the federal rules.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the proposed rule include to protect, preserve, restore, and enhance the diversity, quality, functions, and values of CNRAs because §305.154, Standards, sets forth the additional conditions for injection well permits and §305.157 pertains to record retention. However, in §305.154, the proposed amendment merely deletes

the use of an acronym. The proposed amendment in §305.157 merely makes commission rules consistent with federal regulations by modifying the record retention requirement from five to three years. Chapter 305 is subject to the CMP; however, the proposed amendments to Chapter 305 will not have direct or significant adverse effect on any CNRAs, nor will the rulemaking have a substantive effect on commission actions subject to the CMP because the proposed rule amendments merely update, correct, and clarify Chapter 305, and increases compatibility with the federal rules.

The commission seeks public comment on the consistency of the proposed rule amendments.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by 5:00 p.m. on August 14, 2000, and should reference Rule Log No. 1999-025-331-WS. For further information, please contact David Williams at (512) 239-0339 or Devane Clarke at (512) 239-5604.

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105 which authorizes the commission to establish and approve all general

policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

The proposed amended sections implement TWC, Chapter 27, Injection Wells.

SUBCHAPTER H: ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS

§§305.154, 305.157

§305.154. Standards.

(a) In addition to other standard permit conditions listed elsewhere in this chapter, the following conditions and other applicable standards listed in Chapter 331 of this title (relating to Underground Injection Control) shall be incorporated into each permit expressly or by reference to this chapter. The commission may impose stricter standards where appropriate.

(1)-(6) (No change.)

(7) Closure. The permittee shall notify the executive director and obtain approval before plugging an injection well. After failing to operate for a period of two years, the owner or operator shall close the well in accordance with an approved plan unless:

(A) (No change.)

(B) actions and procedures are described, satisfactory to the executive director, that the owner or operator will take to ensure that the well will not endanger underground sources of drinking water [(USDWs)] during the period of temporary abandonment. These actions and procedures

shall include compliance with the technical requirements applicable, unless waived by the executive director.

(8)-(11) (No change.)

(b) (No change.)

§305.157. Record Retention.

The permittee shall retain all records concerning the nature and composition of injected fluids until three [five] years after completion of plugging and abandonment procedures for the well. The executive director may require a permittee to submit copies of the records at any time prior to conclusion of the retention period.