

The Texas Natural Resource Conservation Commission (commission) proposes to amend §281.18, concerning Applications Returned. This proposed amendment implements the portion of Senate Bill (SB) 486, 76th Legislature, 1999 that would amend the maximum response time an applicant has to submit information the commission needs to declare a permit application administratively complete.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

SB 486, 76th Legislature, 1999, amended Texas Health and Safety Code, §361.066 by requiring the commission to establish a rule that sets a submission deadline for a permit applicant who has received notice from the commission that the commission needs additional information or materials to declare the applicant's application administratively complete. Additionally, the bill deletes from Texas Health and Safety Code, §361.066 the 270-day deadline for receipt of additional information or materials after the applicant receives notice of the deficiency. To incorporate the changes the Legislature made to Texas Health and Safety Code, §361.066 the commission proposes to amend 30 Texas Administrative Code (TAC) §281.18, Applications Returned.

#### SECTION BY SECTION DISCUSSION

Section 281.18, Applications Returned, discusses what the executive director shall do if the commission receives an application that is not administratively complete. Currently, 30 TAC §281.18(b) allows the executive director to extend the time an applicant may take to respond to a notice that the application is administratively deficient to a maximum of 270 days if the applicant can show sufficient proof that an adequate response cannot be submitted within 30 days. However, because SB 486 deletes the language from the Texas Health and Safety Code regarding a deadline of 270 days after the applicant receives

notice, this proposal will amend §281.18(b) by deleting the language that refers to the 270-day maximum response time.

SB 486 also added Subpart C to Texas Health and Safety Code, §361.066 that requires the commission to establish a submission deadline for a permit applicant who has received notice from the commission that the commission needs additional information or materials to declare the applicant's application administratively complete. A permit applicant who has received notice from the commission that it needs additional information or material to declare the applicant's application administratively complete must submit information to the commission within 30 days of receiving notice. The proposed rule will amend §281.18 to establish that if the applicant can offer sufficient proof that an adequate response cannot be submitted within 30 days, the applicant may have the time limit extended an additional 60 days to a maximum total of 90 days.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendment is 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 amendment.

The proposed amendment to Chapter 281, Application Processing, implements certain provisions of SB 486, 76th Legislature, Regular Session, 1999 that amend the maximum response time an applicant for a permit involving industrial, hazardous, or municipal waste, or for new, renewal, or major amendment

applications for radioactive material licenses, has to submit information the commission requests to make a permit application administratively complete. SB 486 deletes the current 270-day maximum extension that can be granted to respond after the applicant receives notice from the commission that additional information or material is needed to make the application administratively complete. The bill directs the commission to establish by rule a deadline for the submission of additional information or material after the applicant receives notice from the commission that the information or material is needed to make the application administratively complete.

Current rules allow the executive director to extend the time that an applicant may take to respond to a notice that the application is administratively deficient to a maximum of 270 days if the applicant can show sufficient proof that an adequate response cannot be submitted within 30 days. The proposed rule will allow the executive director to extend the response time to a maximum of 90 days upon receiving sufficient proof from the applicant that an adequate response cannot be submitted within 30 days.

#### PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendment to Chapter 281 is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be more timely processing of industrial, hazardous, or municipal waste permits and new, renewal, or major amendment applications for radioactive material licenses.

The proposed amendment to Chapter 281 would implement certain provisions contained in SB 486.

The proposed amendment applies to applicants for permits involving industrial, hazardous, or municipal

waste, or for new, renewal, or major amendment applications for radioactive material licenses. SB 486 deletes the current 270-day maximum extension to respond after an applicant receives notice from the commission that additional information or material is needed to make an application administratively complete. The proposed rule will allow the executive director to extend the response time to a maximum of 90 days upon receiving sufficient proof from the applicant that an adequate response cannot be submitted within 30 days.

There are no anticipated significant fiscal implications to persons or businesses associated with the proposed amendment because the existing basic requirements to respond within 30 days remains in place. The proposed amendment reduces the maximum number of days from 270 to 90 days that the executive director may grant an applicant to respond after receipt of notice from the commission that additional information or material is needed to make an application complete.

#### SMALL BUSINESS AND MICRO-BUSINESS ANALYSIS

There are no anticipated significant fiscal implications to small business and micro-business as a result of implementing the proposed amendment. The proposed amendment to Chapter 281 applies to applicants for permits involving industrial, hazardous, or municipal waste, or for new, renewal, or major amendment applications for radioactive material licenses.

Current rules require applicants to respond within 30 days of notification that an application has been found to be administratively deficient. This provision remains unchanged. In the proposed amendment, the current rule that allows the executive director to extend the response time to a

maximum of 270 days, upon receiving sufficient proof from the applicant that an adequate response cannot be submitted within 30 days, has been reduced to 90 days.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking 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 amendment to Chapter 281 reduces the maximum number of days the executive director may allow an applicant to provide the commission with the additional information or material needed to make an application administratively complete. The proposed amendment does not impose additional fiscal requirements to existing requirements and may have the positive effect of preventing applications from being drawn out over longer periods of time. The proposed amendment is not anticipated to have an adverse effect in a material way on 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. In addition, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to:

1. exceed a standard set by federal law, unless the rule is specifically required by state law;
2. exceed an express requirement of state law, unless the rule is specifically required by federal law;

3. exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or
4. adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.” Specifically, the proposed amendment does not exceed a federal standard, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. The proposed amendment was not developed solely under the general powers of the agency but were specifically developed to make state rules conform to the Texas Health and Safety Code as amended by SB 486. The commission invites public comment on the draft regulatory impact analysis.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposed rule amendment pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed amendment is to set a submission deadline for a permit applicant who has received notice from the commission that the commission needs additional information or materials to declare the applicant’s application administratively complete. Promulgation and enforcement of this proposed rule will not burden private real property because the issue concerns the enforcement of procedural time frames based upon an incomplete application, wherein the applicant has no property rights.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this proposed rulemaking for consistency with Texas Coastal Management Program (CMP) goals and policies in accordance with the rules of the Coastal Coordination Council. The commission has found that the proposal is a rulemaking which relates to an action or actions subject to the CMP, in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code §33.201 et seq.), and the commission's rules at 30 TAC Chapter 281, Subchapter B, relating to consistency with the CMP. Therefore, as required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, this proposal must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this proposed rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the proposed rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq. Promulgation and enforcement of this proposed rule would be consistent with the applicable CMP goals and policies because the proposed rule would facilitate the permitting process by establishing a deadline for the applicant to submit additional information or material after the applicant receives notice from the commission that the information or material is needed to make the application administratively complete. Thus, the proposed rule would serve to protect, preserve, restore, and enhance the diversity, quality, quantity,

functions, and values of CNRAs. The proposed rule also serves to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq. The commission has determined that the specific actions detailed in this section and earlier in this preamble under the sections concerning explanation of proposed rules, public benefit, small business and micro-business analysis, draft regulatory impact analysis, and takings impact analysis will comply with the goals and policies of the CMP. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies. Interested persons may submit comments during the public comment period on the consistency of the proposed rule with the CMP goals and policies.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Bettie Bell, 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 March 27, 2000 and should reference rule log number 1999-051-281-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please call Ray Henry Austin at (512) 239-6814.

#### STATUTORY AUTHORITY

This amendment is proposed under the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the

provisions of the Texas Water Code or other laws of this state; and under the Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate solid waste and municipal hazardous waste and to adopt rules consistent with the general purposes of the Act. Additionally, Health and Safety Code, Solid Waste Disposal Act, §361.066 as amended by SB 486, 76th Legislature, 1999, specifically states that the commission shall establish by rule a deadline for applicants to submit additional information or materials after the commission notifies the applicant that the additional information or materials are needed to make the application administratively complete.

The proposed amendments and new language implement Texas Health and Safety Code, Chapter 361.

## SUBCHAPTER A: APPLICATIONS PROCESSING

### §281.18

#### §281.18 Applications Returned

(a) (No change.)

(b) For applications involving industrial, hazardous, or municipal waste, or for new, renewal, or major amendment applications for radioactive material licenses, the executive director may grant an extension of an additional 60 days beyond the original 30 days allowed under the rule for a total [extend the] response time [to a maximum] of 90 [270] days upon sufficient proof from the applicant that an adequate response cannot be submitted within 30 days. Unless there are extenuating circumstances, if an applicant does not submit an administratively complete application as required by this chapter, the application shall be considered withdrawn. However, if applicable, the applicant is responsible for the cost of any notice provided under §281.17 of this title and the costs of such notice shall be deducted from any filing fees submitted by the applicant prior to return of the incomplete application.