

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §50.31, Purpose and Applicability. Section §50.31 is adopted *with a change* to the proposed text as published in the June 16, 2000 issue of the *Texas Register* (25 TexReg 5804).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking applies to both the radiation control and water programs.

The radiation control amendment is a part of a larger radiation control rule adoption package that has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

Texas Water Code (TWC), §5.122, provides authority for the commission to delegate to the executive director, by rule or order, its authority to act on certain uncontested matters. The commission has therefore delegated authority to the executive director to act on various matters in §50.31. Senate Bill (SB) 1421 amended TWC, §17.927, Application for Financial Assistance, to require an applicant for financial assistance to include, at the request of the Texas Water Development Board, a written determination by the commission on the financial, managerial, and technical capacity of the applicant to operate the system for which assistance is being requested. Senate Bill 1421 also amended Texas Civil Statutes, Article 6243-101, the Texas Plumbing Licensing Law, to require the commission to certify organizations that provide “self-help” project assistance, without a plumbing license, in a county any part of which is within 50 miles of an international border.

SECTION BY SECTION DISCUSSION

Section 50.31(b) was amended by capitalizing the word “subchapter.” Section 50.31(b)(11) was amended to delete “radioactive waste or” because the term “radioactive material” in the same paragraph includes “low-level radioactive waste” by definition. New §50.31(b)(21) delegates to the executive director the determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency. However, a minor change has been made from proposal to adoption. In new §50.31(b)(21), the word “qualifications” has been changed to “capacity” to more closely match the new TWC §17.927(b)(15) language that states “. . .include, on request of the board, a written determination by the commission on the managerial, financial, and technical capacity of the applicant to operate the system for which assistance is being requested.” New §50.31(b)(22) delegates to the executive director the certification of an organization

that is installing plumbing in a “self-help” project in a county within 50 miles of an international border.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 adopted rule is not anticipated to 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 adopted rule does not place any requirements on the regulated community not already required by law. In addition, the adopted rule is not a “major environmental rule” because it does not meet the applicability requirements of a “major environmental rule.” The adopted rule does not exceed a standard set by federal law, does not exceed an express requirement of state law, nor does it exceed a requirement of a delegation agreement, and is not promulgated solely under the general authority of the agency. This rulemaking specifically implements provisions of SB 1421 and HB 1172. The rulemaking simply deletes a redundant reference to radioactive waste; requires the TNRCC to provide a written determination on the managerial, financial, and technical capacity of a political subdivision to operate a system for which financial assistance is being requested upon a request from the Texas Water

Development Board and delegates to the executive director the certification of an organization that is installing plumbing in a “self-help” project in a county within 50 miles of an international border.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the adopted rule amendment under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendment is to improve the language of the radiation control program requirement and to implement two of the provisions in SB 1421. The adopted rule amendment substantially advance the specific purpose by amending §50.31 to improve the language of the radiation control program requirement and to incorporate two of the new provisions in SB 1421. Promulgation and enforcement of the amendment will not burden private real property because the actions that are required by the rule amendment relate to internal actions of the commission and not to private real property owners. Therefore, this adoption will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

HEARING AND COMMENTERS

A public hearing on the proposed amendment was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the public comment period which closed on July 17, 2000.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103. The amendment is also adopted under TWC, §5.122, which provides authority for the commission to delegate to the executive director, by rule or order, its authority to act on certain uncontested matters; and §17.927, which authorizes the commission to make determinations of financial, managerial, and technical capacity of applicants for financial assistance for operation of a water system; and Texas Civil Statutes, Article 6243-101, §3, which authorizes the commission to certify an organization, that does not have a plumbing license, to provide assistance on “self-help” water and sewer projects in certain counties.

SUBCHAPTER C: ACTION BY THE EXECUTIVE DIRECTOR

§50.31

§50.31. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to any application that is declared administratively complete before September 1, 1999. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

(4) certificates of convenience and necessity;

(5) district matters under Chapters 49 - 66 of the Texas Water Code;

(6) districts' proposed impact fees, charges, assessments, or contributions approvable under Local Government Code, Chapter 395;

(7) extensions of time to commence or complete construction;

(8) industrial and hazardous waste permits;

(9) municipal solid waste permits;

(10) on-site waste water disposal system permits;

(11) radioactive material permits or licenses;

(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;

(13) underground injection control permits;

(14) water rights permits;

(15) wastewater permits;

(16) weather modification measures permits;

(17) driller licenses under Texas Water Code, Chapter 32;

(18) pump installer licenses under Texas Water Code, Chapter 33;

(19) irrigator or installer registrations under Texas Water Code, Chapter 34;

(20) municipal management district matters under Local Government Code, Chapter 375;

(21) determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency; and

(22) certification of an organization that is installing plumbing in a “self-help” project, in a county any part of which is within 50 miles of an international border.

(c) This subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality permits under Chapter 122 of this title (relating to Federal Operating Permits);

(3) air quality standard exemptions;

(4) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(5) district matters under Texas Water Code, Chapters 49-66, as follows:

(A) an appeal under Texas Water Code, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under Texas Water Code, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under Texas Water Code, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under Texas Water Code, §54.239, of a board decision involving the cost, purchase, or use of facilities;

(E) an application under Texas Water Code, §49.351 for approval of a fire department or fire-fighting services plan; or

(F) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(6) emergency or temporary orders or temporary authorizations;

(7) actions of the executive director under Chapters 101, 111, 112, 113, 114, 115, 117, 118, and 119 of this title (relating to General Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; Control of Air Pollution Episodes; and Control of Air Pollution From Carbon Monoxide);

(8) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting);

(9) concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);

(10) an application for creation of a municipal management district under Local Government Code, Chapter 375; and

(d) Notwithstanding subsections (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.39(b) - (f) of this title (relating to Motion for Reconsideration) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

