

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §281.5, Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits; §281.21, Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary; and §281.23, Application Amendment. Section 281.23 is adopted *with changes* to the proposed text as published in the June 16, 2000 issue of the *Texas Register* (25 TexReg 5807). Sections 281.5 and 281.21 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The changes adopted in Chapter 281 are part of a larger rulemaking to revise the agency's radiation control rules. This rulemaking package 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 (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs within the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), by putting its requirements into plain English and by eliminating its redundancies and conflicts.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management has mandated the consistency effort to make agency processes more efficient and "user friendly." Most of the license application process requirements in Chapter 336 can be modified to be more consistent with the permit application requirements of the rest of the agency. The

TNRCC expects a consistent application process to be especially helpful for persons who have multiple permits/licenses from the TNRCC or are seeking consolidated permits. Major adopted changes are: (1) that the radiation control program will begin using the agency's definitions for major and minor amendments; and (2) the radiation control program application process will be moved completely from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) with technical requirements remaining in Chapter 336 and amended to be consistent with agency administrative procedures.

The following amendments are adopted to make the application requirements of Chapter 281 applicable to the radiation program and to correct a cross-reference.

SECTION BY SECTION DISCUSSION

The §281.5 title was amended to read "Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits" to be inclusive of radioactive material. The section was also amended to add "radioactive material" in another location to make the requirement also applicable to radioactive material. As recommended by the agency's BPR-PIT, programs have been encouraged to seek consistency in processes wherever possible, to simplify the regulatory process for both the regulated public and the agency. These adopted amendments make the radioactive material license application process the same as with other waste permit application processes. Since all administrative reviews have been consolidated within the agency, having a similar application format and content should make the administrative review of radioactive material license applications more efficient.

Section 281.21(f)(1) was amended by inserting “When the executive director is considering an application for a new license or license renewal to dispose of low-level radioactive waste from other persons and determines that the licensed activity may have a significant effect on the human environment, the executive director shall prepare or have prepared a written analysis of the effect on the environment” in place of deleted “The executive director shall prepare a written environmental analysis of a proposed license activity as required by Chapter 336 of this title (relating to Radioactive Substance Rules); and.” This amendment is necessary to incorporate the language that needed to be carried over from concurrently repealed §336.203(a) of this title (relating to Environmental Analysis). Section 281.21(f)(2) was also amended to add “The environmental analysis, shall be included as part of the record of the commission’s proceedings.” This amendment is necessary to incorporate the language that needed to be carried over from concurrently repealed §336.203(b).

Section 281.23(a) was amended to delete “or Chapter 336 of this title (relating to Radioactive Substance Rules).” This amendment is necessary due to concurrently adopted changes to 30 TAC §305.62 and §336.2(58) and (61) by which the radiation control program adopts the definitions of major and minor amendment used by other agency programs, as discussed in the preamble on §305.62(c)(2). Another change to §281.23(b)(1) was made from proposal to adoption in the reference to the definition of major amendment, §336.2 was changed to §305.62 because the definition of major amendment has been moved from §336.2 to §305.62 in concurrent rulemaking. These adopted changes are one of the agency’s BPR-PIT’s recommendations to provide for greater consistency between programs within the agency. The changes are especially helpful for persons having more than one permit/license from this agency and for simplifying the processing of any consolidated permit/license application.

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 amendments to §§281.5, 281.21, and 281.23 are 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 because there are no new requirements added. In summary, the rules simply amend the definition of low-level radioactive waste to be compatible with the NRC definition and make the radiation application requirements more consistent with those of the rest of the agency.

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 these rule amendments is to implement the recommendations of the TNRCC’s BPR-PIT to provide for consistency between the procedures of the radiation control program and the other permitting programs within the agency. The rules substantially advance this specific purpose by facilitating the use of the agency’s definitions for major amendments rather than a radiation control program specific

definition and by moving part of the application process from Chapter 336 to Chapter 281 (relating to Applications Processing). Promulgation and enforcement of these adopted rules will not burden private real property which is the subject of the rules because there are no new rule requirements added.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules are 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 they 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 amendments 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 amendments are 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.

SUBCHAPTER A: APPLICATIONS PROCESSING

§§281.5, 281.21, 281.23

§281.5. Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits.

Except as provided by §305.48 of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits), applications for wastewater discharge, underground injection, municipal solid waste, radioactive material, hazardous waste and industrial solid waste management permits must include:

- (1) complete application form(s), signed and notarized, and appropriate copies provided;
- (2) the payment of fees, if applicable;
- (3) the verified legal status of the applicant;
- (4) the signature of the applicant, checked against agency requirements;
- (5) the attachment of technical reports and supporting data required by the application;

(6) a list of adjacent and potentially affected landowners and their addresses along with a map locating the property owned by these persons; and

(7) any other information as the executive director or the commission may reasonably require.

§281.21. Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary.

(a) The provisions of this section are applicable to applications for waste disposal activities conducted under the authority of the Texas Water Code, Chapters 26 and 27, and the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, and the Texas Radiation Control Act, Texas Health and Safety Code, Chapter 401.

(b) The executive director shall prepare a draft permit consistent with all applicable commission rules, unless a recommendation is made not to grant an application. The draft permit will be filed with the commission to be included in the consideration of the application for permit and is subject to change during the course of the proceedings on the application. The draft permit shall be available for public review.

(c) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The executive director shall send this summary together with the draft permit to the

applicant and on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft permit;

(2) the type and quantity of radioactive materials, wastes, fluids, or pollutants which are proposed to be or are being used, processed, stored, disposed, injected, emitted, or discharged;

(3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(4) reasons why any requested variances or alternatives to required standards do or do not appear justified;

(5) a description of the procedures for reaching a final decision on the draft permit, including procedures whereby the public may participate in the final decision; and

(6) the name and telephone number of any persons to contact for additional information.

(d) The executive director shall prepare a summary which describes the compliance status of persons applying for permits issued under the Texas Solid Waste Disposal Act, Texas Health and Safety

Code, Chapter 361; the Texas Radiation Control Act, Texas Health and Safety Code, Chapter 401; the Injection Well Act, Texas Water Code, Chapter 27; and the Water Quality Control Act, Texas Water Code, Chapter 26. For applications filed under the Texas Solid Waste Disposal Act or the Injection Well Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the commission under the authority of both statutes. For applications filed under the Water Quality Control Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the commission under the authority of the Texas Water Code. For applications for minor amendments filed under the Texas Radiation Control Act, the executive director may determine that a compliance summary is not necessary. Upon completion of technical review and prior to issuance of public notice, the executive director shall send the compliance summary, together with the draft permit, technical summary if applicable, and environmental analysis if applicable, to the applicant and on request, to any other person. The compliance summary shall include information relative to the site which is the subject of the current application as well as other facilities owned or operated by the applicant which are under the commission's jurisdiction whether permitted or not. The summary shall cover at least the two-year period preceding the date on which technical review is completed and shall include:

- (1) the date(s) and description of any citizen complaints received;
- (2) the date(s) of all agency inspections;

(3) for each inspection, whether a condition of noncompliance was alleged by the inspector and a brief description of the resulting environmental impact and, for radioactive material licenses, any impact on radiation safety;

(4) the date(s) of any agency enforcement action and the applicant's response to such action;

(5) for applicable facilities, the date(s) and description of any incident the applicant reported to the agency which required implementation of the facility's contingency plan; and

(6) the name and telephone number of a person to contact for additional information regarding compliance history.

(e) Additional conditions for TPDES draft permits and fact sheets are as follows:

(1) TPDES draft permits shall include the information required by 40 Code of Federal Regulations (CFR) §124.6(c) - (e), as in effect on the date of TPDES program authorization, as amended, which is adopted by reference; and

(2) A fact sheet shall be prepared for a TPDES permit and shall include the information required by 40 CFR §124.56, as in effect on the date of TPDES Program authorization, as amended, which is adopted by reference.

(f) Additional conditions for radioactive material licenses are as follows.

(1) When the executive director is considering an application for a new license or license renewal to dispose of low-level radioactive waste from other persons and determines that the licensed activity may have a significant effect on the human environment, the executive director shall prepare or have prepared a written analysis of the effect on the environment.

(2) The executive director shall make the environmental analysis available to the applicant and the public. The environmental analysis shall be included as part of the record of the commission's proceedings.

§281.23. Application Amendment.

(a) No amendments to an application which would constitute a major amendment under the terms of §305.62 of this title (relating to Amendment) can be made by the applicant after the chief clerk has issued notice of the application and draft permit, unless new notice is issued which includes a description of the proposed amendments to the application. For purposes of this section, an attempted transfer of an application shall constitute an amendment requiring additional notice.

(b) For applications under Chapter 336 of this title (relating to Radioactive Substance Rules), an application amendment received after commencement of technical review, shall be processed as follows:

(1) The executive director shall determine whether the application amendment constitutes a major amendment as defined in §305.62 of this title or constitutes a substantial technical change to the application. Substantial technical changes may include changes in proposed waste disposal methods, enlargement or relocation of proposed areas to be licensed, transfer of an application to another applicant, significant changes in proposed facilities or operations, or other changes which will require extensive technical review.

(2) An application amendment that constitutes a major amendment or a substantial technical change shall be processed as a new and separate application.