

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §281.5, Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Hazardous Waste, and Industrial Solid Waste Management Permits; §281.21, Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary; and §281.23, Application Amendment.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The changes proposed to Chapter 281 are part of a larger proposal to revise the agency's radiation control rules. This rule 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 proposed 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.

As a point of clarification regarding the use of the terms “radioactive substance” and “radioactive material,” the agency chooses to use the term “radioactive material” over that of “radioactive substance” wherever possible. The term “radioactive substance” was created to refer collectively to radioactive materials that were under the TNRCC’s disposal jurisdiction, excluding materials not within the TNRCC’s jurisdiction. The definition under THSC, §401.003(19), which excludes oil and gas NORM, was not changed by the legislature to exclude byproduct material when jurisdiction over disposal of byproduct material was transferred to the TDH. In defining the TNRCC’s jurisdiction under THSC, §401.412(a), byproduct material as defined by THSC, §401.003(3)(B) is specifically excluded. Therefore, use of the terms “radioactive material” and “radioactive substance” in this proposal does not include disposal of byproduct material under TDH’s disposal jurisdiction, or oil and gas NORM waste under Railroad Commission of Texas jurisdiction. In TNRCC practice, the term “radioactive substance” has been used interchangeably with “radioactive material.” Within the bounds of the TNRCC’s jurisdiction, the agency interprets “radioactive substance” and “radioactive material” to have the same meaning.

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

SECTION BY SECTION DISCUSSION

Section 281.5 is proposed to be amended. The title is proposed to be amended to “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 is also proposed to be amended to add “radioactive material” 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 proposed amendments will make the radioactive material license application format and general content the same as 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 is proposed to be amended. Section 281.21(f)(1) is proposed to be 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 appropriate language from concurrently repealed §336.203(a) of this title (relating to Environmental Analysis). Section 281.21(f)(2) is 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 appropriate language from concurrently repealed §336.203(b).

Section 281.23(a) is proposed to be amended to delete "or Chapter 336 of this title (relating to Radioactive Substance Rules)." This amendment is necessary due to concurrently proposed 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 to §305.62(c)(2). This proposed change is one of the agency's BPR-PIT's recommendations to provide for greater consistency between programs within the agency. The change should be especially helpful for persons having more than one permit/license from this agency and for simplifying the processing of any consolidated permit/license application.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the commission or other units of state government as a result of administration or enforcement of the proposed amendments.

The proposed rules would make radioactive material license application requirements consistent with those of the other permitting programs of the agency by requiring the radiation control program to use the agency's definitions for major and minor amendments and by moving and amending the radioactive

material license application process from Chapter 336 to Chapter 281 and Chapter 305 to be consistent with agency administrative procedures.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five-years the proposed rules are in effect, the anticipated public benefit from enforcement and compliance with the proposed rules will be enhanced compliance by making the radioactive material license application requirements more consistent with the other agency permit application requirements.

The proposed rules implement HB 1172 76th Legislature, 1999 (an Act relating to the definition of low-level radioactive waste) by amending the definition of low-level radioactive waste to be compatible with the NRC. The proposed rules would also make radiation application requirements more consistent with those of the rest of the agency.

There are no significant additional economic costs anticipated to any person, business, or facility required to comply with the proposed rules. The proposed rules would make radioactive material license application requirements consistent with those of the other permitting programs of the agency by requiring the radiation control program to use the agency's definitions for major and minor amendments and by moving and amending the radioactive material license application process from Chapter 336 to Chapter 281 and Chapter 305 to be consistent with agency administrative procedures. These changes do not impose any new requirements that do not already exist in state law and agency rules.

SMALL AND MICRO-BUSINESS IMPACT ANALYSES

No adverse economic effects are anticipated to any small businesses or micro-businesses as a result of implementing the proposed rules. The proposed rules would make radioactive material license application requirements consistent with those of the other permitting programs of the agency by requiring the radiation control program to use the agency's definitions for major and minor amendments and by moving and amending the radioactive material license application process from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) to be consistent with agency administrative procedures. These changes do not impose any new requirements that do not already exist in state law and agency rules.

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 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 §§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 rule simply amends the definition of low-level radioactive waste to be compatible with

the NRC and makes 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 will 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 proposed rules will not burden private real property which is the subject of the rules because there are no new rule requirements added.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed 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 it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposal is not subject to the CMP.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on July 6, 2000, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3078 or faxed to (512) 239-4808.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-057-336-WS. Comments must be received by 5:00 p.m., July 17, 2000. For further information or questions concerning this proposal, please contact Hygie Reynolds, Waste Permits Division, at (512) 239-6825.

STATUTORY AUTHORITY

The amendments are proposed 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.

These amendments implement THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation.

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 [Title] (relating [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)-(7) (No change.)

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

(a)-(e) (No change.)

(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. [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]

(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) [or Chapter 336 of this title (relating to Radioactive Substance Rules)] 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) (No change.)