

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §50.131, Purpose and Applicability.

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

The commission is proposing a number of changes to its procedural rules in this issue of the *Texas Register*. The changes include proposed revisions to Chapters 1, 35, 39, 50, 55, 80, 106, and 116. These chapters contain proposed changes to update and clarify agency rules, to facilitate permit processing and to more clearly set out the responsibilities of those involved in the permitting process. In addition, in part, the changes proposed in this issue of the *Texas Register* are intended to be responsive to comments received during the rulemaking proceedings implementing House Bill (HB) 801 during the summer and early fall of 1999 requesting that the adopted rules be subject to subsequent review to address any deficiencies which became apparent following adoption. (See September 24, 1999 issue of the *Texas Register* (24 TexReg 8190).)

The revisions proposed to this chapter would delegate the authority to act on certain actions to the executive director, enhance consistency with other commission rules and correct a typographical error.

#### SECTION BY SECTION DISCUSSION

Section 50.131(b) is proposed to be amended to correct a typographical error that resulted in the omission of the word “and” prior to the phrase “to certifications of Water Quality Management Plan (WQMP) updates.”

Section 50.131(b)(5) is proposed to be amended to delegate actions on district matters under Texas Water Code (TWC), Chapter 36 to the executive director as authorized by TWC, §5.122. Currently, these groundwater conservation district matters cannot be processed through the executive director approval process. Adding the reference to TWC, Chapter 36 would provide that uncontested groundwater applications are subject to executive director action and would also treat these matters in the same manner as those district matters under TWC, Chapters 49 - 66 for which the executive director does currently have authority to act.

Section 50.131(b)(11) is proposed to be amended to delete the phrase “radioactive waste or”. Under HB 1172, 76th Legislature, 1999, the terms “radioactive waste” and “low-level waste” were consolidated as “low-level radioactive waste” to maintain compatibility with United States Nuclear Regulatory Commission regulations. The term “radioactive waste” is no longer used. A conforming change throughout the chapter to implement the new term has previously been made. Further, under commission rules, the term “radioactive material” is inclusive of “radioactive waste” (now “low-level radioactive waste”). Thus, the reference to “radioactive waste” is no longer necessary and is proposed to be deleted.

The proposal of §50.31(b)(21) would delegate the authority to act to the executive director relating to determinations of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board (TWDB), if requested by that agency; and proposed §50.31(b)(22) would delegate authority to act to the executive director relating to the certification of an organization that is installing plumbing in a “self-help” project in a county within 50 miles of an international border. Both of these changes implement new provisions of Senate Bill (SB) 1421, 76th Legislature, 1999. Senate Bill

1421 amended TWC, §17.927 to require an applicant for financial assistance to include, at the request of the TWDB, a written determination by the commission on the financial, managerial, and technical capacity of the applicant to operate the system for which assistance is 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. Thus, as authorized by TWC, §5.122 which allows the commission to delegate the authority to act on certain uncontested matters to the executive director, the commission proposes to add these new matters to those currently delegated.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendment is in effect there will be no significant fiscal impacts for units of state and local government as a result of administration or enforcement of the proposed amendment.

The proposed amendment will make administrative changes to clarify rule language and to add a reference to the rule language which will provide the executive director the authority to take action on behalf of the commission on certain uncontested matters relating to groundwater conservation districts, determinations of the financial, managerial, and technical capacity of applicants for certain loans from the Texas Water Development Board (TWDB), and certifications of organizations providing plumbing assistance, without a plumbing license, to counties within 50 miles of an international border. The proposed changes are procedural in nature and are not anticipated to result in fiscal impacts for units of state and local government.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be to ensure that the executive director has authority to act on certain uncontested matters relating to groundwater conservation districts, certain determinations relating to the financial, managerial, and technical capacity of applicants for certain loans from the TWDB, and certifications of organizations providing plumbing assistance in the border area.

The proposed amendment will make administrative changes to clarify rule language and to add a reference to the rule language which will provide the executive director the authority to take action on behalf of the commission on certain uncontested matters relating to Groundwater Conservation Districts, determinations of the financial, managerial, and technical capacity of applicants for certain loans from the TWDB, and certifications of organizations providing plumbing assistance, without a plumbing license, to counties within 50 miles of an international border. The proposed changes are procedural in nature and are not anticipated to result in fiscal impacts to individuals and businesses.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-businesses as a result of the proposed amendment. The proposed amendment will make administrative changes to clarify rule language and to add a reference to the rule language which will provide the executive director the authority to take action on behalf of the commission on certain uncontested matters relating to Groundwater Conservation Districts, determinations of the financial, managerial, and technical capacity of applicants for certain loans from the

TWDB, and certifications of organizations providing plumbing assistance, without a plumbing license, to counties within 50 miles of an international border. The proposed changes are procedural in nature and are not anticipated to result in fiscal impacts to small and micro-businesses.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the 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 the 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 rulemaking is procedural in nature and is only intended to correct an inadvertent typographical error that resulted in the omission of the word “and” in §50.131(b) of this chapter and to clarify that groundwater districts under TWC, Chapter 36 are subject to this chapter. Therefore, the rulemaking does not meet the definition of “major environmental rule” because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the rulemaking pursuant to Texas Government Code, §2007.043. The specific purpose of the rulemaking is to correct an inadvertent typographical error that resulted in the omission of the word “and” in §131(b) of this chapter and to clarify that groundwater

districts under TWC, Chapter 36 are subject to this chapter. The rulemaking contains procedural rule changes only and does not affect private real property. Therefore, the rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rulemaking is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor does it affect any action or authorization identified in §505.11. The rulemaking concerns only the procedural rules of the commission. Therefore, the rulemaking is not subject to the CMP.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal on March 6, 2001 at 10 a.m., Building F, Room 2210, Texas Natural Resource Conservation Commission Complex, 12100 Park 35 Circle, Austin, Texas. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, agency staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after the hearings.

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 at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Duron, 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 2000-016-035-AD. Comments must be received in writing by 5:00 p.m., March 12, 2001. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

#### STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which establish the commission's authority to adopt rules and set policy by rule; TWC, §5.122, which allows the commission to delegate, by rule or order, authority to act on certain uncontested matters to the executive director, and Texas Government Code; Texas Health and Safety Code, §401.051, which establishes the commission's authority to adopt rules for control of radiation; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice.

In addition, the proposed amendment implements TWC, §17.927, which provides for commission determination of the financial, managerial and technical capacity of an applicant for financial assistance; TWC, §36.015 and §36.0151, which relate to the creation of certain groundwater conservation districts; and Texas Civil Statutes, article 6243-101, which provides for commission certification of certain "self-help" projects.

**SUBCHAPTER G: ACTION BY THE EXECUTIVE DIRECTOR**

**§50.131**

**§50.131. Purpose and Applicability.**

(a) (No change.)

(b) This subchapter applies to applications that are administratively complete on or after September 1, 1999 and to certifications of Water Quality Management Plan (WQMP) updates. Applications that are administratively complete before September 1, 1999 are subject to Subchapter C [B] of this chapter. Except as provided by subsection (c) of this section, this subchapter applies to:

(1) - (4) (No change.)

(5) district matters under Chapters 36 and 49 - 66 of the Texas Water Code;

(6) - (10) (No change.)

(11) [radioactive waste or] radioactive material permits or licences;

(12) - (18) (No change.)

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

(20) municipal management district matters under Texas Local Government Code, Chapter 375; [.]

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

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

(c) - (d) (No change.)