

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §305.50, Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The primary purpose of the proposed amendments is to revise the commission's rules to conform to certain federal regulations by incorporating the federal regulations by reference. Establishing equivalency with federal regulations will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). The federal regulations being addressed in this proposal were promulgated by the EPA in the November 25, 1996 issue of the *Federal Register*.

SECTION DISCUSSION

Section 305.50(4) is proposed to be amended in subparagraphs (A) and (G) to conform to federal regulations promulgated in the November 25, 1996 issue of the *Federal Register* (61 FR 59932). These amendments would incorporate information requirements for Part B of a hazardous waste permit found in 40 Code of Federal Regulations, §270.27 for air emission controls for tanks, surface impoundments, and containers. Section 305.50 is also proposed to be amended to incorporate administrative corrections.

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 rule is in effect, there will be no fiscal impacts to units of state or local government as a result of implementation of the proposed rules.

The proposed rule is primarily intended to adopt federal Resource Conservation and Recovery Act (RCRA) air emission standards for tanks, surface impoundments, and containers. These federal standards were adopted by the EPA on November 25, 1996. This proposal is intended to revise the commission's rules to conform to federal regulations by incorporating the federal regulations by reference. The commission is required to maintain equivalency with the federal regulations in order to maintain enforcement authority over facilities in the state affected by the regulations.

The proposed rule does not introduce additional regulatory requirements that are not currently in place. Additionally, there are no known units of state and local government that own or operate facilities affected by the proposed rule; therefore, the commission anticipates that adoption of these federal standards into state rules will not result in increased costs to 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 rule is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rule would be continued protection of human health and the environment through the state's adoption of stricter federal standards for hazardous waste tanks, surface impoundments, and containers.

There are approximately 200 permitted facilities that would continue to be subject to the amended standards. However, since the proposal does not introduce any additional regulatory requirements, there are no fiscal implications anticipated to affected owners and operators beyond what is already required by the federal standards.

The proposed rule is primarily intended to adopt federal RCRA hazardous waste regulations. These federal standards were adopted by the EPA on November 25, 1996.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed rule, which is intended to adopt federal RCRA regulations for hazardous waste. There are approximately 200 permitted facilities, some of which may be small or micro-businesses, that would continue to be subject to the amended standards. However, since the proposal does not introduce any additional regulatory requirements, there are no fiscal implications anticipated to affected owners and operators beyond what is already required by the federal standards.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the 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. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is proposed to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not 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. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because 42 United States Code (USC), §6926(g), immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could have an adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state; since the portions of this proposal which are more stringent than previously existing rules are imposed by the Hazardous and Solid Waste Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such adverse effect caused by the proposal of the state rule. The reason there is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state is because the proposed rule is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. In addition, the rule would not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose a rule solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the proposed rule in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rule is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The proposed rule will substantially advance this stated purpose by proposing federal regulations by reference. Promulgation and enforcement of the rule will not affect private real property which is the subject of the rule because the rule language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations. There is no burden on private real property because 42 USC, §6926(g), immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could present a burden on private real property; since the portions of this proposal which are more stringent than previously existing rules are imposed by the Hazardous and Solid Waste Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such burden. The subject regulations do not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission prepared a consistency determination for the proposed rule in accordance with 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal 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 USC, §§6901 et seq. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the proposed rule amendments will update and enhance the commission's rules concerning hazardous and industrial solid waste facilities. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rule.

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 2000-044A-335-WS. Comments must be received by 5:00 p.m., September 24, 2001. For further information or questions concerning this proposal, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §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 TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

SUBCHAPTER C: APPLICATION FOR PERMIT

§305.50

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit.

Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

(1) (No change.)

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the State of Texas. For purposes of this section [subsection], the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit

holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) (No change.)

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13 - 270.27 [270.26], except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) - (E) (No change.)

(F) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the EPA [United States Environmental Protection Agency], that:

(i) - (ii) (No change.)

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14 - 270.27 [270.26]. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) - (12) (No change.)

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in [Title] 40 CFR §266.111 [Code of Federal Regulations (CFR) §266.11]) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) (No change.)