

The Texas Commission on Environmental Quality (commission) proposes amendments to §§305.2, 305.41 - 305.44, 305.47, 305.49, and 305.50.

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

The purpose of the proposed rules is to implement House Bill (HB) 2912, Article 5, §5.06, and Article 9, §9.07, 77th Texas Legislature, 2001. HB 2912 amended Texas Health and Safety Code (THSC), §361.082 and Texas Water Code (TWC), §7.031. The commission now has the authority, consistent with federal law, to issue orders for “the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.” Until the change made by the 77th Legislature, owners and operators of hazardous waste management facilities could only apply for, and the commission could only issue, post-closure permits. HB 2912 became effective on September 1, 2001.

The commission proposes to amend Chapter 305 to provide streamlined applications specific to post-closure orders and post-closure permits. These proposed amendments would support the commission’s efforts to provide greater regulatory flexibility by identifying the specific information required for post-closure applications.

Corresponding amendments are also proposed for 30 TAC Chapter 37, Financial Assurance; 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 80, Contested Case Hearings; and 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste in this issue of the *Texas Register*. The

proposed amendment to Chapter 37 would simply add the definition of a post-closure order to that chapter. The proposed amendments to Chapter 39 would add public participation requirements applicable to post-closure orders, during three stages of the post-closure ordering process and when the orders are amended. Chapter 55 would detail how the agency processes public comments. An opportunity for a hearing would also be provided upon request by the executive director, the applicant, and the Public Interest Counsel, in accordance with the amendment proposed in Chapter 80. The proposed amendments to Chapter 335 would adopt certain requirements of the October 22, 1998 federal regulations and provide greater flexibility for the commission and the regulated community while at the same time ensuring that environmental risk at such facilities is adequately addressed.

Finally, the proposed rules would allow the commission to issue an order in lieu of a permit for post-closure care of interim status units and give the commission the discretion to approve corrective action requirements as an alternative to closure requirements when certain environmental conditions are met. The proposed rules would be consistent with federal regulations promulgated by the United States Environmental Protection Agency (EPA) in the October 22, 1998 issue of the *Federal Register* (63 FR 56509).

#### SECTION BY SECTION DISCUSSION

Administrative changes have been made throughout the sections for consistency with other commission rules and *Texas Register* requirements.

*Subchapter A - General Provisions*

Proposed §305.2, Definitions, includes post-closure orders in the definition of “Application” in paragraph (1). Paragraph (15) is proposed to be deleted because EPA is defined in 30 TAC Chapter 3. The definition of a “Post-closure order” is added as a new paragraph (29).

*Subchapter C - Application for Permit*

The title of this subchapter is proposed to be amended from Application for Permit to Application for Permit or Post-Closure Order to reference post-closure orders with permits.

Proposed §305.41, Applicability, applies the provisions of Subchapter C to post-closure orders issued under the authority of THSC, §361.082 and TWC, §7.031.

Proposed §305.42, Application Required, requires persons seeking a post-closure order to submit a signed and completed application.

Proposed §305.43, Who Applies, designates the owner/operator as the applicant for post-closure orders. This is the current requirement for permit applications.

Proposed §305.44, Signatories to Applications, designates the same signatories for post-closure orders as are required for permits.

Proposed §305.47, Retention of Application Data, requires that the recipient of a post-closure order keep records of the data and any supplemental information used for the application as is required by a permittee.

Proposed §305.49, Additional Contents of Application for an Injection Well Permit, corrects the cross-reference in subsection (c) from §305.50(4)(B) to §305.50(a)(4)(B). The amended reference would reflect the proposed reorganization of §305.50 into two subsections discussed in this portion of the preamble.

Proposed §305.50, Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit, is reorganized into subsections (a) and (b) and the title is renamed to add “and for a Post-Closure Order” after the word “Permit.” Subsection (a) contains the original unaltered requirements for permit applications. New subsection (b) provides the additional requirements specific to post-closure permits and orders. In order to streamline the post-closure application process, the applicant would only need to submit that information from the Resource Conservation Recovery Act (RCRA) Part B permit contained in 40 Code of Federal Regulations (CFR) Chapter 270 that is pertinent to post-closure care. Specifically, 40 CFR §270.28 requires the owner or operator to submit information specified in 40 CFR §270.14(b)(1), (4) - (6), (11), (13), (14), (18), and (19), (c), and (d). This information is required for post-closure permits and post-closure orders. The specific items required in post-closure permit applications are: a general description of the facility; a description of security procedures and equipment; a copy of the general inspection schedule; justification for any request for waiver of preparedness and prevention requirements; facility location information; a copy of

the post-closure plan; documentation that required post-closure notices have been filed; the post-closure cost estimate for the facility; proof of financial assurance; a topographic map; information regarding protection of groundwater; and information regarding solid waste management units at the facility.

Similar to the permitting process, once a RCRA facility assessment is completed, certain portions of the property could be removed from the permit or the order. The executive director would be allowed to require additional general Part B information from 40 CFR §270.14, as well as information about specific units, from 40 CFR §270.16, concerning tank systems; 40 CFR §270.17, concerning surface impoundments; 40 CFR §270.18, concerning waste piles; 40 CFR §270.20, concerning land treatment facilities; or 40 CFR §270.21, concerning landfills.

Proposed §305.50(b)(1) also requires that closure cost estimates for post-closure order and post-closure permit applications be prepared in a fashion similar to those for a regular permit application, with the exception that the requirements for estimating closure costs for interim status facilities in §335.127 would be added. Like permit applications, post-closure applications would be linked to the financial assurance requirements of 40 CFR §264.142(a)(1), (3), and (4) and Chapter 37, Subchapter P. References to those links are contained in §305.50(b)(2) and (3).

Proposed §305.50(b)(4) requires an applicant for a post-closure order to submit information in order to establish conditions under §305.127(4)(A).

Proposed §305.50(b)(5) allows the executive director to require that a post-closure application also contain the information listed in §305.45(a)(1).

Proposed §305.50(b)(6) requires that engineering plans and specifications submitted as part of an application be prepared and sealed by a registered professional engineer who is currently registered by the Texas Engineering Practices Act.

Proposed §305.50(b)(7) requires that one original and three copies of a post-closure application be submitted on forms provided by, or approved by, the executive director and that they would be accompanied by a like number of originals and copies of all required exhibits.

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

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the agency or any other unit of state or local government due to administration and enforcement of the proposed amendments. The proposed amendments would affect all units of state and local government with interim status land-based hazardous waste management units that close with waste in place.

The proposed amendments are intended to implement certain provisions of HB 2912, and federal regulations that were promulgated in the October 22, 1998 issue of the *Federal Register* (63 FR 56509). HB 2912 provided the commission with the authority, consistent with federal law, to issue orders for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility. The 1998 federal regulations allow the EPA and authorized states to: 1) issue an enforceable document in lieu of

a post-closure permit for interim status units and facilities; and 2) substitute corrective action requirements (alternative standards) for closure requirements for regulated units in cases where there is a release and both a regulated unit and a solid waste management unit or area of concern have contributed to the release. An interim status unit or facility does not have a hazardous waste permit, but has submitted a Part A permit application and is compliant with groundwater monitoring requirements. Currently, the commission's rules only allow the issuance of post-closure permits, not orders, for post-closure care at hazardous waste management facilities.

The proposed amendments would affect all existing and future applicants who voluntarily seek orders in lieu of hazardous waste permits at interim status land-based units that close with waste in place and facilities that have regulated and nonregulated units with commingled contaminant plumes. Examples of sites affected include a publicly- or privately-owned hazardous waste management facility consisting of hazardous waste processing, storage, or disposal units such as one or more landfills, surface impoundments, land treatment facilities, or a combination of units. The total number of applications for orders cannot be determined at this time.

In order to implement the provisions of HB 2912 and the 1998 federal regulations, the commission is proposing several rulemakings. These proposed amendments update Chapter 305 by reformatting §305.50, updating definitions, and outlining less exhaustive application requirements for post-closure orders and post-closure permits. The amendments do not include requirements that would result in additional fiscal implications for affected units of state and local government. The commission estimates a cost savings for affected units of government, which are not anticipated to be significant,

due to less information required in the post-closure applications compared to regular permit applications.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of implementing the proposed amendments will be implementation of provisions of HB 2912, and incorporation of rule updates to make commission rules consistent with federal regulations.

The proposed amendments are intended to implement certain provisions of HB 2912, and federal regulations that were promulgated in the October 22, 1998 issue of the *Federal Register* (63 FR 56509). In order to implement the provisions of HB 2912 and the 1998 federal regulations, the commission is proposing several concurrent rule changes or amendments. These proposed amendments update Chapter 305 by reformatting §305.50, updating definitions, and outlining less exhaustive application requirements for post-closure orders and post-closure permits. The amendments do not include requirements that would result in additional fiscal implications for affected individuals and businesses. The commission estimates a cost savings for affected individuals and businesses, which are not anticipated to be significant, due to less information required in the post-closure applications compared to regular permit applications.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses due to implementation of the proposed amendments, which are intended to implement certain provisions of HB 2912, and federal regulations that were promulgated in the October 22, 1998 issue of the *Federal Register* (63 FR 56509). These proposed amendments update Chapter 305 by reformatting §305.50, updating definitions, and outlining less exhaustive application requirements for post-closure orders and post-closure permits. The amendments do not include requirements that would result in additional fiscal implications for affected small and micro-businesses. The commission estimates a cost savings for affected small and micro-businesses, which are not anticipated to be significant, due to less information required in the post-closure applications compared to regular permit applications.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed these proposed amendments and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules do 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 Chapter 305 are intended to protect the environment or reduce risks to human health from facilities that are required to obtain a post-closure permit, but have failed to do so, by bringing them into compliance through an alternative regulatory mechanism. However, they are not expected 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 proposed amendments would protect public health and safety by bringing into compliance those facilities that have not obtained a post-closure permit by providing an equally protective alternative. These proposed amendments also allow the agency the discretion to use corrective action requirements, rather than closure requirements, to address regulated units that have released hazardous constituents.

Even if the rules were considered to be a major environmental rule, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These proposed rules do not meet any of these four applicability requirements. These proposed rules do not exceed any standard set by federal law for interim status units or facilities, or regulated units with releases of hazardous constituents, and in fact implement a federal regulation authorized by federal law. These proposed rules do not exceed

the requirements of state law under THSC, Chapter 361 or TWC, Chapter 7; those chapters specifically allow the type of orders proposed in this rulemaking. There is no delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program specifically on post-closure orders; Texas' authorization, by the EPA, of the RCRA program does relate to post-closure activities, but the activities that would be authorized in accordance with these rules are authorized by EPA RCRA regulations. These rules are not proposed solely under the general powers of the agency, but specifically under THSC, §361.082 and TWC, §7.031, as well as the other 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 these proposed amendments in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed amendments is to implement applicable requirements of HB 2912, which amended THSC, §361.082 and TWC, §7.031. The purpose of this rulemaking is to allow the commission to issue orders in lieu of permits for post-closure care at interim status facilities and to give the commission the discretion to approve corrective action requirements as an alternative to closure requirements when certain environmental conditions are met. The proposed amendments substantially advance the stated purpose by incorporating the applicable requirements of HB 2912 and by amending the applicable provisions relating to corrective action requirements.

Promulgation and enforcement of these proposed amendments would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules will not burden private real property, nor restrict or limit the owner's right to property, nor reduce its value by 25% or more beyond what would otherwise exist in the absence of these regulations. The proposed rules merely allow the commission to issue an order in place of a permit for post-closure care at interim status facilities. Under existing rules, the facilities affected by these proposed rules are already required to obtain a permit. Thus, the proposed rules provide an option for a new mechanism to provide post-closure care. The proposed rules also allow for corrective action requirements as an alternative to closure requirements. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rules and found that the rules are 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 they will affect an action/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 has prepared a consistency determination for the proposed rules in accordance with 31 TAC §505.22, and has found that the proposed rules are consistent with the applicable CMP goals and policies. The proposed rules are subject to the CMP and must be consistent with applicable goals and policies that are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the rules is the

goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values in Coastal Natural Resource Areas. The proposed rules do not govern any of the activities that are within the designated coastal zone management area or otherwise specifically identified under the Texas Coastal Management Act or related rules of the Coastal Coordination Council. The commission seeks public comment on the consistency of the proposed rules with the CMP.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808.

Comments must be received by 5:00 p.m., October 28, 2002, and should reference Rule Log Number 2000-048-335-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§305.2**

#### **STATUTORY AUTHORITY**

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §7.031, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility; Solid Waste Disposal Act, THSC, §361.024, which authorizes the commission to adopt rules consistent with Chapter 361; and THSC, §361.082, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

The proposed amendment implements TWC, §5.103 and §7.031 and THSC, §361.024 and §361.082.

#### **§305.2. Definitions.**

The definitions contained in [the] Texas Water Code, §§26.001, 27.002, and 28.001, and [the] Texas Health and Safety Code, §§361.003, 401.003, and 401.004, shall apply to this chapter. The

following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Application** - A formal written request for commission action relative to a permit or a post-closure order, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

(2) (No change.)

(3) **Class I sludge management facility** - Any publicly-owned [publicly owned] treatment works [(POTW)] identified under 40 Code of Federal Regulations [(CFR),] §403.10(a)<sub>2</sub> as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(4) - (5) (No change.)

(6) **Corrective action management unit (CAMU)** - An area within a facility that is designated by the commission under 40 Code of Federal Regulations [CFR,] Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to

Corrective Action Relating to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes while implementing such corrective action requirements at the facility.

(7) - (14) (No change.)

[(15) **Environmental Protection Agency (EPA)** - The United States Environmental Protection Agency.]

(15) [(16)] **Facility** - Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units;

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under [the] Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste);

(16) [(17)] **Facility mailing list** - The mailing list for a facility maintained by the commission in accordance with 40 Code of Federal Regulations (CFR) [CFR,] §124.10(c)(1)(ix) and

§39.7 of this title (relating to Public Notice). For Class I injection well underground injection control [(UIC)] permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(17) [(18)] **Functionally equivalent component** - A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(18) [(19)] **Indirect discharger** - A nondomestic discharger introducing pollutants to a publicly-owned treatment works [POTW].

(19) [(20)] **Injection well permit** - A permit issued in accordance with [pursuant to] Texas Water Code, Chapter 27.

(20) [(21)] **Land disposal facility** - Includes landfills, waste piles, surface impoundments, land farms, and injection wells.

(21) [(22)] **National Pollutant Discharge Elimination System (NPDES)** - The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405. The term includes an approved program.

(22) [(23)] **New discharger** -

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective National Pollutant Discharge Elimination System [NPDES] permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

(23) [(24)] **New source** - Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under CWA, §306; or

(B) after proposal of standards of performance in accordance with CWA, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

(24) [(25)] **Operator** - The person responsible for the overall operation of a facility.

(25) [(26)] **Outfall** - The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to water in this state.

(26) [(27)] **Owner** - The person who owns a facility or part of a facility.

(27) [(28)] **Permit** - A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, for radioactive material disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radioactive material disposal license, and an injection well permit.

(28) [(29)] **Person** - An individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, partnership, or any other legal entity or association.

(29) **Post-closure order** - An order issued by the commission for post-closure care of interim status units, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units, and/or corrective action management units unless authorized in a permit.

(30) **Primary industry category** - Any industry category listed in 40 Code of Federal Regulations [CFR,] Part 122, Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

(31) - (32) (No change.)

(33) **Publicly-owned [Publicly owned] treatment works (POTW)** - Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(34) - (35) (No change.)

(36) **Regional administrator** - Except when used in conjunction with the words "state director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], or to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], consistent with the organization of the agency as set forth in [the] Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state director" in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 Code of Federal Regulations [CFR,] Part 122, is available for inspection at the library of the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(37) **Remediation waste** - All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases

beyond the facility boundary under [the] Texas Water Code, §7.031; [,] §335.166(5) of this title (relating to Corrective Action Program); [,] or §335.167(c) of this title.

(38) - (44) (No change.)

(45) **Toxic pollutant** - Any pollutant listed as toxic under [the] CWA, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing CWA, §405(d).

(46) **Treatment works treating domestic sewage** - A publicly-owned treatment works [POTW] or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

(47) - (49) (No change.)

**SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER**

**§§305.41 - 305.44, 305.47, 305.49, 305.50**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §7.031, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility; THSC, §361.024, which authorizes the commission to adopt rules consistent with Chapter 361; and THSC, §361.082, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

The proposed amendments implement TWC, §5.103 and §7.031 and THSC, §361.024 and §361.082.

**§305.41. Applicability.**

The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under Texas Water Code (TWC), Chapters 26 - 28 [26, 27 and 28], and

Texas Health and Safety Code (THSC), Chapters 361 and 401. The sections of this subchapter also apply to post-closure orders issued under the authority of THSC, §361.082 and TWC, §7.031.

**§305.42. Application Required.**

(a) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, or who requests a post-closure order, or who is required to obtain a post-closure order shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and Texas Health and Safety Code (THSC), §361.082(e), shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations (CFR) §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under THSC [Texas Health and Safety Code], Chapter 361, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §§6901 *et seq.*, that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B

permit application in accordance with the dates specified in 40 CFR [Code of Federal Regulations,] §270.73 and certify that such a facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(c) (No change.)

(d) For applications involving hazardous waste management facilities for which the owner or operator has submitted Part A of the permit application and has not yet filed Part B, the owner or operator is subject to the requirements for updating the Part A application under 40 CFR [Code of Federal Regulations] §270.10(g), as amended and adopted in the CFR [Code of Federal Regulations] through June 29, 1995, as published in the *Federal Register* (60 FR 33911) [(see 60 FedReg 33911)].

(e) (No change.)

#### **§305.43. Who Applies.**

(a) It is the duty of the owner of a facility to submit an application for a permit or a post-closure order; however, if the facility is owned by one person and operated by another and the executive director determines that special circumstances exist where the operator or the operator and the owner should both apply for a permit or a post-closure order, and for all Texas Pollutant Discharge Elimination System [pollutant discharge elimination system (TPDES)] permits, it is the duty of the operator and the owner to submit an application for a permit.

(b) For solid waste and hazardous waste permit applications, it is the duty of the owner of a facility to submit an application for a permit or a post-closure order, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit or a post-closure order.

**§305.44. Signatories to Applications.**

(a) All applications shall be signed as follows.

(1) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this paragraph, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit or post-closure order applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(2) (No change.)

(3) For a municipality, state, federal, or other public agency, the application shall be signed by either a principal executive officer or a ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrator of the EPA [United States Environmental Protection Agency]).

(b) (No change.)

(c) For a hazardous solid waste permit or a post-closure order, the application must be signed by the owner and operator of the facility [applications, the owner and operator of a facility must sign the application].

(d) (No change.)

#### **§305.47. Retention of Application Data.**

A permittee or a recipient of a post-closure order shall keep records, throughout the term of the permit or order, of data used to complete the final application and any supplemental information.

#### **§305.49. Additional Contents of Application for an Injection Well Permit.**

(a) The following shall be included in an application for an injection well permit:

(1) (No change.)

(2) for Class III wells, as defined in Chapter 331 of this title [(relating to Underground Injection Control)], the information listed in §331.122 of this title (relating to Class III wells);

(3) - (9) (No change.)

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in [the] Texas Water Code, §27.051(a).

(b) (No change.)

(c) An application under this section shall comply with the requirements of §305.50(a)(4)(B) [§305.50(4)(B)] of this title (relating to Additional Requirements for an Application for a Solid Waste Permit and for a Post-Closure Order).

**§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order.**

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

(1) - (11) (No change.)

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) - (B) (No change.)

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) - (VIII) (No change.)

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Commission on Environmental Quality [Texas Natural

Resource Conservation Commission], Texas Parks and Wildlife, General Land Office, Texas  
Department of Health, and Texas Railroad Commission);

(X) - (XI) (No change.)

(ii) (No change.)

(D) - (F) (No change.)

(13) - (14) (No change.)

(b) An application specifically for a post-closure permit or for a post-closure order for post-closure care shall meet the following requirements, as applicable.

(1) An application for a post-closure permit or a post-closure order shall contain information required by 40 CFR §270.14(b)(1), (4) - (6), (11), (13), (14), (18), and (19), (c), and (d), and any additional information that the executive director determines is necessary from 40 CFR §§270.14, 270.16 - 270.18, 270.20, or 270.21, 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, 37.141, 335.127, and 335.178 of this title.

(2) An application for a post-closure order shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the post-closure order and all applicable rules. Financial information submitted to satisfy this paragraph shall meet the requirements of Chapter 37, Subchapter P of this title.

(3) An application for a post-closure order or for a post-closure permit shall also contain any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).

(4) The executive director may require an applicant for a post-closure order to submit information in order to establish conditions under §305.127(4)(A) of this title.

(5) An application for a post-closure order or for a post-closure permit shall also contain the information listed in §305.45(a)(1) of this title (relating to Contents of Application for Permit).

(6) Engineering plans and specifications submitted as part of an application for a post-closure order or for a post-closure permit shall be prepared and sealed by a registered professional engineer who is currently registered, as required by the Texas Engineering Practices Act.

(7) One original and three copies of an application for a post-closure permit or for a post-closure order shall be submitted on forms provided by, or approved by, the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.