

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to §305.67, Revocation and Suspension Upon Request or Consent, and §305.541, Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits, *without changes* to the proposed text as published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 3016) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The primary purpose of the adopted amendments is to conform to certain United States Environmental Protection Agency (EPA) regulations, either by incorporating the federal regulations by reference or by introducing language which corresponds to the federal regulations.

On September 14, 1998, the State of Texas was authorized by EPA to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters in the state under the federal Water Pollution Control Act, as amended, 33 United States Code, §§1251 *et seq.* (commonly referred to as the Clean Water Act or CWA). The approved state program, i.e., the Texas Pollutant Discharge Elimination System (TPDES) program, 63 FR 51164 (September 24, 1998), is administered by the commission. The amendments to this chapter, necessitated by EPA revisions to its regulations, are part of the commission's effort to revise several chapters of its rules to maintain equivalency with EPA regulations and to thereby maintain delegated NPDES permitting authority.

SECTION BY SECTION DISCUSSION

Subchapter D, Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

Section 305.67 is amended to make it compatible with 40 Code of Federal Regulations (CFR) §122.64 by adding provisions allowing for expedited termination of a permit where the entire discharge is eliminated. This change is based on revisions to 40 CFR §122.64, which established expedited permit termination procedures applicable where the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly-owned treatment works (POTW), but not by land application or disposal into a well.

The adopted amendment to §305.67 allows the executive director to terminate a TPDES permit by giving notice to the permittee where the permittee has permanently terminated its entire discharge by elimination of the process flow or other discharge components or by redirecting its discharge into a POTW. This termination option is not available when the permittee is subject to pending state and/or federal enforcement actions, including citizen suits brought under state and federal law.

Subchapter P, Effluent Guidelines and Standards for TPDES Permits

Section 305.541 is amended to incorporate by reference 40 CFR Parts 437, 442, 444, and 445 concerning effluent limitations guidelines, pretreatment standards, and new source performance standards for certain newly designated categories of point sources, which were promulgated by EPA subsequent to delegation of the TPDES program. Part 437 addresses the Centralized Waste Treatment Point Source; Part 442 addresses the Transportation Equipment Cleaning Point Source; Part 444

addresses the Waste Combustors Point Source; and Part 445 addresses the Landfills Point Source. The new effluent limitations guidelines are technology based.

There are at least 31 direct dischargers in Texas that fall under a Source Identification Code to which these standards apply. Currently, no indirect dischargers (e.g., dischargers discharging to a POTW) have been identified by cities with approved pretreatment programs that would be impacted by Parts 444, 445, and 437. In regard to 40 CFR Part 442, some operators will be impacted by this EPA requirement; however, due to its newness, the total number subject to it is not known at this time.

FINAL 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 that statute. The adopted rulemaking will not adversely affect, in a material way, the economy, a section 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 would update consolidated permits rules to incorporate certain federal regulations regarding NPDES permitting requirements. The amendments do not meet the definition of a "major environmental rule" as defined in the Texas Government Code, because §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.

The commission concludes that a regulatory analysis is not required because the proposed amendment does not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission assessed the adopted amendments in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to ensure that consolidated permits requirements are equivalent to EPA NPDES permitting regulations. The adopted amendments would substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. The assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the adopted rules are subject to the CMP and must be consistent with applicable CMP goals and policies in 31 TAC §501.12 and §501.14. The rulemaking will conform commission rules to EPA requirements for regulating discharges of pollutants under the CWA to maintain delegated NPDES permitting authority. The NPDES requirements incorporated in the commission's rules are consistent

with and will aid in achieving CMP goals and policies. The commission also determined that the rulemaking will not have a direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

PUBLIC COMMENT

A public hearing was not held on this rulemaking. The public comment period closed May 13, 2002, and no comments were received.

**SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS,
REVOCATION, AND SUSPENSION OF PERMITS**

§305.67

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§305.67. Revocation and Suspension upon Request or Consent.

(a) If a permittee no longer desires to continue a waste disposal activity or to dispose of waste under a permit, or is agreeable to a suspension of authorization to do so for a specified period of time, the permittee should file with the executive director a written request, or a written consent and waiver not later than 10 days following receipt of notice of the intention to file a petition under §305.66 of this title (relating to Revocation and Suspension).

(b) If a permittee requests or consents to the revocation or suspension of the permit, the executive director may revoke or suspend the permit without the necessity of a public hearing or

commission action. The executive director shall notify the commission of each such revocation or suspension.

(c) Upon request of the applicant, the executive director may terminate a radioactive material license in accordance with this section, if the licensee has complied with the applicable decommissioning requirements under Chapter 336 of this title (relating to Radioactive Substance Rules).

(d) Expedited permit termination.

(1) The executive director may terminate a permit by notice to the permittee if:

(A) the entire discharge is permanently terminated by elimination of the flow or connection to a POTW (but not by land application or disposal into a well);

(B) the permittee is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law; and

(C) the permittee does not object within 30 days after notice is sent.

(2) Termination by notice is effective 30 days after notice is sent, unless the permittee objects at that time, in which case the executive director may not proceed under this subsection and may

proceed under §305.66 of this title (relating to Permit Denial, Suspension, and Revocation) or §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension).

(3) If requesting expedited permit termination procedures, the permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

**EFFLUENT GUIDELINES AND STANDARDS FOR TEXAS POLLUTANT DISCHARGE
ELIMINATION SYSTEM (TPDES) PERMITS**

§305.541

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits.

Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations (CFR), Subchapter N, Parts 400 - 471, except 40 CFR Part 403, which are in effect as of the date of the Texas Pollutant Discharge Elimination System program authorization, as amended, and Parts 437 (Federal Register, Volume 65, December 22, 2000), 442 (Federal Register, Volume 65, August 14, 2000), 444 (Federal Register, Volume 65, January 27, 2000), and 445 (Federal Register, Volume 65, January 19, 2000), as amended, are adopted by reference.