

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §305.67, Revocation and Suspension Upon Request or Consent, and §305.541, Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed 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 Federal Register 51164 (September 24, 1998), is administered by the commission. The changes in this chapter, necessitated by EPA changes 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 proposed to be 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 proposed 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 proposed to be 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.

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

The proposed amendments are intended to conform to new EPA updates to regulations under the CWA. The commission received authority from EPA to issue TPDES permits on September 14, 1998. In order to keep this authority, the commission is required to adopt updated EPA rules that affect the TPDES program. This rulemaking helps fulfill this requirement by incorporating new EPA-developed effluent standards and by adding a provision allowing for expedited termination of a TPDES permit where the entire discharge is eliminated.

The provision allowing expedited terminations of a TPDES would apply to all current (approximately 3,100) TPDES permit holders. An unknown number of these permit holders may be units of state and local government. The new effluent standards incorporate limitation guidelines for several point source categories, including centralized waste treatment, transportation equipment cleaning, hazardous waste

combustors, and landfills. The commission estimates that approximately 31 direct dischargers in Texas would be directly affected by the new effluent standards, none of which are units of state and local government. The proposed amendments do not introduce additional regulatory requirements that are not currently enforced by the EPA. Therefore, the commission does not anticipate fiscal implications for affected units of state and local government due to implementation of the proposed amendments.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be the commission's continued authority to enforce TPDES permits and the ability to quickly terminate a TPDES permit where the entire discharge is eliminated.

The proposed amendments are intended to conform to new EPA updates to regulations under the CWA. The commission received authority from EPA to issue TPDES permits on September 14, 1998. In order to keep this authority, the commission is required to adopt updated EPA rules that affect the TPDES program. This rulemaking helps fulfill this requirement by incorporating new EPA-developed effluent standards and by adding a provision allowing for expedited termination of a TPDES permit where the entire discharge is eliminated.

The provision allowing expedited terminations of a TPDES would apply to all current (approximately 3,100) TPDES permit holders. The commission estimates that approximately 31 direct dischargers in Texas would be affected by the new effluent standards. The proposed amendments do not introduce

additional regulatory requirements that are not currently enforced by the EPA. Therefore, the commission does not anticipate fiscal implications for individuals and businesses due to implementation of the proposed amendments.

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 amendments, which are intended to revise the commission rules to conform to new EPA updates to regulations under the CWA.

The commission received authority from EPA to issue TPDES permits on September 14, 1998. In order to keep this authority, the commission is required to adopt updated EPA rules that affect the TPDES program. This rulemaking helps fulfill this requirement by incorporating new EPA-developed effluent standards and by adding a provision allowing for expedited termination of a TPDES permit where the entire discharge is eliminated.

The provision allowing expedited terminations of a TPDES would apply to all current (approximately 3,100) TPDES permit holders. The commission estimates that approximately 31 direct dischargers in Texas, some of which may be small or micro-businesses, would be directly affected by the new effluent standards. The proposed amendments do not introduce additional regulatory requirements that are not currently enforced by the EPA. Therefore, the commission does not anticipate fiscal implications for small and micro-businesses due to implementation of the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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 proposed rulemaking would 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 proposed amendments would update consolidated permits rules to incorporate certain federal regulations regarding NPDES permitting requirements. The proposed 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 amendments do not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of these proposed amendments in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rulemaking is to ensure that consolidated permits requirements are equivalent to EPA NPDES permitting regulations. The proposed amendments would substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. The preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to this proposed 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 proposed rule is subject to the CMP and must be consistent with applicable CMP goals and policies in 31 TAC §501.12 and §501.14. The proposed 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 proposed to be incorporated in the commission's rules are consistent with and will aid in achieving CMP goals and policies. The commission also determined that the proposed 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.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, 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 2001-023-305-WT. Comments must be received by 5:00 p.m., May 13, 2002. For further information or questions concerning this proposal, please contact Auburn Mitchell, Office of Environmental Policy, Analysis, and Assessment, (512) 239-1873.

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

§305.67

STATUTORY AUTHORITY

The amendment is proposed 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.

The amendment implements provisions of TWC, including §26.011, which requires the commission to establish and control water quality in the state; §26.023, which requires the commission to establish water quality standards; §26.027, which grants the commission the authority to issue permits for discharges into water in the state; §26.121, which prohibits the unauthorized discharge of waste into water in the state; and §26.127, which designates the commission as the principal authority on matters relating to the quality of water in the state.

§305.67. Revocation and Suspension upon Request or Consent.

(a) - (c) (No change.)

(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.

SUBCHAPTER P: EFFLUENT GUIDELINES AND STANDARDS

FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) [TPDES]

PERMITS

§305.541

STATUTORY AUTHORITY

The amendment is proposed 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.

The amendment implements provisions of TWC, including §26.011, which requires the commission to establish and control water quality in the state; §26.023, which requires the commission to establish water quality standards; §26.027, which grants the commission the authority to issue permits for discharges into water in the state; §26.121, which prohibits the unauthorized discharge of waste into water in the state; and §26.127, which designates the commission as the principal authority on matters relating to the quality of water in 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 [part 400 - 471], except 40 CFR [Code of Federal Regulations,] Part 403, which are in effect as of the date of the Texas Pollutant [Pollution] Discharge Elimination System [(TPDES)] 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.