

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §305.42, Application Required and §305.53, Application Fee. Sections 305.42 and 305.53 are adopted *without changes* to the proposed text as published in the August 24, 2001 issue of the *Texas Register* (26 TexReg 6262) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted rules is to implement certain requirements of Senate Bill (SB) 324, 77th Legislature, 2001. Senate Bill 324 amends Texas Water Code (TWC), §27.012, by providing that applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources. Senate Bill 324 also amends TWC, §27.014, by increasing the permit application fee for disposal wells which inject nonhazardous waste from \$25 to \$100. Senate Bill 324 became effective on May 26, 2001.

SECTION BY SECTION DISCUSSION

Adopted §305.42(e), Application Required, implements the changes to TWC, §27.012, by providing that applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources.

The adopted amendment to §305.53(a)(1), Application Fee, implements the changes to TWC, §27.014, by increasing the permit application fee for disposal wells which inject nonhazardous waste from \$25 to \$100.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted 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.

Although the intent of the rules is to protect the environment or reduce risks to human health from environmental exposure, they are not a major environmental rule because they do 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. The rules will 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 because they merely increase the application fee for permits to dispose of nonhazardous waste into waste disposal wells from \$25 to \$100. Certain provisions of TWC, Chapter 27, were amended by SB 324 during the 77th Legislature, 2001. These amendments became effective on May 26, 2001. The adopted rules are intended to implement certain provisions of SB 324. Specifically, the application fee for permits to dispose of nonhazardous waste into waste disposal wells will increase, as required by SB 324, from \$25 to \$100. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). The adopted rules do not exceed a standard set by federal law, because there is no comparable federal law. The adopted rules do not exceed an express requirement of state law, because they are consistent with the express requirements of SB 324. The adopted rules do not exceed a requirement of a delegation agreement, because there is no applicable delegation agreement. The rules

have not been adopted solely under the general powers of the agency, but have been adopted under the express requirements of SB 324.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these adopted rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to these adopted rules because they are reasonably taken to fulfill an obligation mandated by state law. The specific purpose of these adopted rules is to incorporate the new application fee for a nonhazardous waste injection well, which is contained in TWC, §27.014. Promulgation and enforcement of these adopted rules would not affect private real property which is the subject of the rules because the adopted rule language merely incorporates the new application fee for a nonhazardous waste injection well, which is contained in TWC, §27.014. The adopted rules do not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this adopted rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking will not have 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.

HEARING AND COMMENTERS

A public hearing on the proposed rules was held in Austin on September 13, 2001, at 2:00 p.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle. No individuals presented oral statements during the public hearing. The comment period closed on September 24, 2001.

A total of seven commenters provided both general and specific comments on the proposed rulemaking that included Chapter 281, Application Processing; Chapter 305, Consolidated Permits; and Chapter 331, Underground Injection Control. The amendments to Chapters 281 and 331 are being concurrently adopted in this issue of the *Texas Register*. The following commented on the proposal: Baker Botts, L.L.P (Baker Botts); Dupont; United States Environmental Protection Agency (EPA); Fritz, Byrne & Head, L.L.P (FB&H); Hance, Scarborough, Wright, Ginsberg & Brusilow (HSWG&B); Jenkins & Gilchrist (J&G) on behalf of Huntsman Petrochemical Corporation; and Texas Chemical Council (TCC). Only the EPA commented on the proposed amendments to Chapter 305.

RESPONSE TO COMMENTS

EPA commented that §305.42(e) is a new paragraph that requires applications for Class I wells be processed with focus on the benefit to the State. EPA stated that this provision could possibly provide additional argument on behalf of the State for contentious applications at a hearing.

The commission agrees with this comment. Senate Bill 324 amended TWC, §27.012(b), to require that “applications for hazardous and nonhazardous disposal well permits shall be processed in

accordance with this chapter for the benefit of the state and the preservation of its natural resources.” While the commission agrees that it may be an issue in hearing whether a permit application is processed in accordance with TWC, Chapter 27, “for the benefit of the state and the preservation of its natural resources,” the commission believes that these changes do not reflect a change in requirements as much as a formal incorporation into TWC, §27.102(b) of other statutory provisions already existing in TWC, Chapters 5 and 27. Under TWC, §5.011, the commission’s purpose is to provide efficient and effective administration of the conservation of natural resources and the protection of the environment in this state. Under TWC, §27.051(a)(1), the commission is given the discretion to grant an application for a underground injection control (UIC) permit if, among other things, the use or installation of the injection well is in the public interest. New §305.42(e), which tracks the SB 324 changes verbatim, formally incorporates these already existing statutory considerations applicable to commission determinations on UIC applications. The commission has made no change in response to this comment.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

SUBCHAPTER C: APPLICATION FOR PERMIT

§305.42, §305.53

§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, 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, §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 §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under 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 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) An application for a new, amended, or renewed radioactive material license under Chapter 336 of this title (relating to Radioactive Substance Rules) shall consist of one signed original and five copies. The executive director may request additional copies. Copies of an application for a low-level radioactive waste disposal license under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be retained by the applicant for distribution in accordance with written instructions from the executive director.

(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 Code of Federal Regulations §270.10(g), as amended and adopted in the Code of Federal Regulations through June 29, 1995, (see 60 FedReg 33911).

(e) Applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources.

§305.53. Application Fee.

(a) Except for radioactive material licenses or as specifically provided hereunder, an applicant shall include with each application a fee of \$100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is \$100. The fee for each disposal well which will be authorized to receive hazardous waste is \$2,000.

(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than \$2,000 and not more than \$50,000 as calculated in accordance with the following:

(A) site evaluation - \$100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;

(B) process analysis - \$1,000;

(C) facility unit(s) analysis - \$500 per unit;

(D) management/facility analysis - \$500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the \$500 per unit fee; except that multiple storage tanks or container storage area identical in type and use will be subject to a single \$500 unit fee.

(4) The permit application fee for water use permits shall be submitted in accordance with §§295.131 - 295.140 of this title (related to Water Use Permit Fees).

(5) The permit application fee for mine shaft permits shall be submitted in accordance with §329.9 of this title (related to Procedures for Applications).

(6) The permit application fees for wastewater disposal permits shall not be less than \$100 and not more than \$2,000 as follows.

(A) Agricultural permit applications fees are as follows:

(i) minor amendments - \$100; and

(ii) new, amendment, and renewal applications - \$300.

(B) Domestic wastewater permit application fees are based upon the following flow categories:

(i) minor amendments - \$100;

(ii) new, amendment, and renewal applications less than 50,000
gallons per day - \$300;

(iii) new, amendment, and renewal applications 50,000 to less than
100,000 gallons per day - \$500;

(iv) new, amendment, and renewal applications 100,000 to less than
250,000 gallons per day - \$800;

(v) new, amendment, and renewal applications 250,000 to less than
500,000 gallons per day - \$1,200;

(vi) new, amendment, and renewal applications 500,000 to less than 1
million gallons per day - \$1,600; and

(vii) new, amendment, and renewal applications 1 million and greater
gallons per day - \$2,000.

(C) Municipal storm water permit application fees as follows:

(i) minor amendments - \$100; and

(ii) new, major amendments, and renewal applications - \$2,000.

(D) Industrial wastewater permit application fees are based upon the EPA major/minor designation and the commission assigned toxicity rating as follows:

(i) minor amendments for minor facilities - \$100;

(ii) minor amendments for major facilities - \$400;

(iii) new, amendment, and renewal applications for minor facilities that are not subject to categorical standards promulgated by EPA (40 Code of Federal Regulations, Part 400) - \$300;

(iv) new, amendment, and renewal applications for minor facilities that must comply with a categorical standard promulgated by the EPA (40 Code of Federal Regulations, Part 400) - \$1,200; and

(v) new, amendment, and renewal applications for major facilities - \$2,000.

(7) The fees established by this section are due at the time that the application is filed in accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas Natural Resource Conservation Commission for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees pursuant to paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application for a new, amended, or modified permit a fee of \$50 to be applied toward the cost of providing required notice. A fee of \$15 is required with each application for renewal. This subsection does not apply to radioactive material licenses.

(c) Each application for a radioactive material license shall be accompanied by the applicable fee. The fee for a license shall be calculated in accordance with Chapter 336, Subchapter B of this title (relating to Radioactive Substance Fees).