

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §305.42, Application Required and §305.53, Application Fee.

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

The purpose of the proposed 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

Proposed new §305.42(e), Application Required, would implement 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 proposed amendment to §305.53(a)(1), Application Fee, would implement the changes to TWC, §27.014, by increasing the permit application fee for disposal wells which inject nonhazardous waste from \$25 to \$100.

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 rules are in effect, there could be fiscal implications, which are not anticipated to be significant, to units of state or local government that apply for permits to inject nonhazardous waste into waste disposal wells. The proposed rules will increase the permit application fee from \$25 to \$100 and will result in additional revenues of approximately \$1,050 annually for the first five years the rules are in effect.

The proposed 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.

The proposed rules affect all existing and future nonhazardous waste disposal wells. Existing wells that seek amendments to current permits will be required to pay the increased application fees. Currently, no waste disposal wells are permitted to units of state and local government.

The commission anticipates that revenue gained from the application fee increase for permits to dispose of nonhazardous waste into waste disposal wells will not be significant. The commission currently processes approximately 14 permit applications annually. Under the increased fees, an additional \$1,050 in revenues to the commission would be generated each year.

#### PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules would be additional resources to administer and enforce permits allowing underground injection of nonhazardous waste.

The proposed rules are intended to implement certain provisions of SB 324. Specifically, the application fee for permits to dispose of nonhazardous waste into injection wells will increase, as required by SB 324, from \$25 to \$100.

The proposed rules affect all existing and future nonhazardous waste injection wells. Existing wells that seek amendments to current permits will be required to pay the increased application fees. There are approximately 51 permitted injection wells that would be affected by the proposed rules. If any of these permittees seek amendments to existing permits, they will have to pay the increased permit fee. Additionally, any new applicant that seeks a permit will also have to pay the increased fee. The commission currently processes approximately 14 permit applications for nonhazardous underground injection control (UIC) permits annually. The total annual fiscal impact to nonhazardous waste injection wells would be approximately \$1,050 a year for the first five years that the rules are in effect.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal implications, which are not anticipated to be significant, for small and micro-businesses which apply for a UIC permit as a result of implementation and enforcement of the

proposed rules. The proposed rules are intended to adopt certain provisions of SB 324, which required the commission to raise the application fee for a permit to dispose of nonhazardous waste into injection wells from \$25 to \$100.

The proposed rules affect all existing and future nonhazardous injection wells. Existing wells that seek amendments to current permits will be required to pay the increased application fees. There are approximately five permitted injection wells that are owned and operated by a small or micro-businesses that would be affected by the proposed rules. If any of these permittees seek amendments to existing permits, they will have to pay the increased permit fee. Additionally, any new applicant that seeks a permit will have to pay the increased fee.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed rules. Small and micro-business are defined as having fewer than 100 or 20 employees respectively. A small business that seeks a new permit to dispose of nonhazardous waste into an injection well incur additional costs of approximately \$75 or \$0.75 per employee. A micro-business seeking the same permit would incur additional costs of approximately \$75 or \$3.75 per employee. The overall cost per employee will vary depending on the number of new permits or permit amendments sought by a businesses annually, and the number of persons employed by an affected business.

The commission has reviewed the proposed 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 rule is to protect the environment or reduce risks 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. The rule 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 it merely increases 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 proposed 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 proposed rules do not exceed a standard set by federal law, because there is no comparable federal law. The proposed rules do not exceed an express requirement of state law, because they are consistent with the express requirements of SB 324. The proposed rules do not exceed a requirement of a delegation agreement, because there is no applicable delegation agreement. The proposed rules are not to be adopted solely under the general powers of the agency, but will be adopted

under the express requirements of SB 324. 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 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 proposed rules since they are reasonably taken to fulfill an obligation mandated by state law. The specific purpose of these proposed 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 proposed rules would not affect private real property which is the subject of the rules because the proposed rule language merely incorporates the new application fee for a nonhazardous waste injection well, which is contained in TWC, §27.014. The proposed rules do not affect a landowner's rights in private real property.

#### 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 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.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on September 13, 2001, at 2:00 p.m. at the TNRCC Complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

#### 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., September 24, 2001, and should reference Rule Log Number 2001-049-305-WT. For further information, please contact Michael Bame, Policy and Regulations Division at (512) 239-5658.

#### STATUTORY AUTHORITY

The amended sections are proposed 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; §5.105 which authorizes the commission to establish and approve all general policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

The proposed amended sections implement SB 324 changes to the TWC, §27.012 and §27.014.

**SUBCHAPTER C: APPLICATION FOR PERMIT**

**§305.42, §305.53**

**§305.42. Application Required.**

(a) - (d) (No change.)

(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 [\$25]. The fee for each disposal well which will be authorized to receive hazardous waste is \$2,000.

(2) - (7) (No change.)

(b) - (c) (No change.)