

The Texas Natural Resource Conservation Commission (commission) adopts the amendment to §50.131, Purpose and Applicability, *without change* to the proposed text as published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 2925) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission has the statutory duty and responsibility to create and supervise certain water and water-related districts in accordance with the Texas Water Code (TWC). There are approximately 1,000 active water districts in Texas that are overseen by the commission. TWC, §49.351 allows any district that provides potable water or sewer service to household users to establish, operate, and maintain a fire department. A district may also operate a fire department jointly with another district or contract with any person to perform fire-fighting services within the district. In addition to complying with other statutory requirements, a district that proposes to provide fire-fighting services must have a fire department plan approved by the commission. Senate Bill (SB) 1444, 77th Legislature, 2001, amended TWC, §49.351 to delete the requirement that the commission hold a hearing before acting on an application for approval of a fire department plan. Because a hearing is no longer required for these applications, it is now possible for the commission to delegate the authority to act on applications for approval of fire department plans to the commission's executive director (ED) under TWC, §5.122.

In a related rulemaking amending 30 TAC Chapter 293, concerning Water Districts, which is in this issue of the *Texas Register*, the commission is establishing new or revised requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 36, 49, 51, 54, 55, 58, 59, and 65, as amended by SB 1444, Legislature, 2001, and certain

other statutory revisions enacted in 2001. In the rulemaking to amend Chapter 293, the commission repealed §293.121, *Approval of Fire Department Projects*. That section provided that the ED is responsible only for reviewing fire department plans. With the repeal of §293.121 and the amendment to §50.131 that is adopted in this rulemaking, the ED will still be responsible for reviewing applications for approval of fire department plans, but will also be authorized to approve those plans on behalf of the commission. In the Chapter 293 rulemaking, the commission also amended §293.11, *Information Required to Accompany Applications for Creation of Districts*, to allow fire department plans to be submitted to the commission for approval along with an application to create a district; this change also implements portions of SB 1444. In addition, the commission amended §293.123, *Application Requirements for Fire Department Plan Approval*, to implement other revisions to TWC, §49.351, concerning the actions a district must take in order to provide fire-fighting services.

#### SECTION DISCUSSION

Existing §50.131(c) lists certain applications for which the commission has not delegated approval authority to the ED, including in §50.131(c)(4)(E), applications under TWC, §49.351 for approval of a fire department or fire-fighting services plan. The commission is deleting §50.131(c)(4)(E). This revision authorizes the ED to approve fire department and fire-fighting services plans under existing §50.131(b)(5), which generally allows the ED to act on district matters under TWC, Chapters 49 - 66.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted 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.

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 adopted amendment to §50.131 does not meet the definition of a major environmental rule because the amendment is procedural in nature.

The only purpose of the amendment is to delegate to the ED the authority to act on district applications for approval of fire department and fire-fighting services plans.

Further, this rulemaking does not meet the applicability criteria of a “major environmental rule” because the adopted amendment does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Specifically, the adopted amendment does not exceed a standard set by federal law, nor exceed a requirement of a federal delegation agreement or contract, because no federal law or federal delegation agreement or contract applies to the adopted rulemaking. The amendment is not adopted solely under the general rulemaking authority of the commission, but also under TWC, §5.122, which provides that the commission may adopt rules to delegate to the ED the authority to act on uncontested matters, and §49.351, as amended by SB 1444, which requires the commission to adopt rules under which fire plans will be considered for approval; the adopted amendment does not exceed the express requirements of those state statutes.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted amendment and performed an assessment of whether the amendment constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of the adopted amendment is to delegate to the ED the authority to act on district applications for approval of fire department and fire-fighting services plans. Promulgation and enforcement of the amendment will constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rulemaking as the adopted rule is procedural in nature and neither relates to nor has any impact on the use or enjoyment of private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rulemaking is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program nor does it affect any action or authorization identified in §505.11. The only effect of the rulemaking is to authorize the ED to approve district fire department plans. Therefore, the rulemaking is not subject to the Texas Coastal Management Program.

#### PUBLIC COMMENT

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

### **SUBCHAPTER G: ACTION BY THE EXECUTIVE DIRECTOR**

**§50.131**

**STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state, and also TWC, §5.122, which provides that the commission may adopt rules to delegate to the ED the authority to act on uncontested matters, and §49.351, as amended by SB 1444, which requires the commission to adopt rules under which fire plans will be considered for approval.

**§50.131. Purpose and Applicability.**

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission. This subchapter does not affect the executive director's authority to act on an application where that authority is delegated elsewhere.

(b) This subchapter applies to applications that are administratively complete on or after September 1, 1999 to certifications of Water Quality Management Plan (WQMP) updates. Applications that are administratively complete before September 1, 1999 are subject to Subchapter B of this chapter. Except as provided by subsection (c) of this section, this subchapter applies to:

- (1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);
- (2) appointments to the board of directors of districts created by special law;
- (3) certificates of adjudication;
- (4) certificates of convenience and necessity;
- (5) district matters under Chapters 49 - 66 of the Texas Water Code;
- (6) districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;
- (7) extensions of time to commence or complete construction;
- (8) industrial and hazardous waste permits;
- (9) municipal solid waste permits;
- (10) on-site wastewater disposal system permits;

- (11) radioactive waste or radioactive material permits or licenses;
- (12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;
- (13) underground injection control permits;
- (14) water rights permits;
- (15) wastewater permits;
- (16) weather modification measures permits;
- (17) driller licenses under Texas Water Code, Chapter 32;
- (18) pump installer licenses under Texas Water Code, Chapter 33;
- (19) irrigator or installer registrations under Texas Water Code, Chapter 34; and
- (20) municipal management district matters under Texas Local Government Code, Chapter 375.

(c) In addition to those things excluded from coverage under this chapter in §50.102 of this title (relating to Applicability), this subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Exemptions from Permitting) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(3) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(4) district matters under Texas Water Code, Chapters 49 - 66, as follows:

(A) an appeal under Texas Water Code, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under Texas Water Code, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under Texas Water Code, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under Texas Water Code, §54.239, of a board decision involving the cost, purchase, or use of facilities; or

(E) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(5) actions of the executive director under Chapters 101, 111, 112, 113, 114, 115, 117, 118, and 119 of this title (relating to General Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; Control of Air Pollution Episodes; and Control of Air Pollution From Carbon Monoxide);

(6) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting);

(7) concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations); and

(8) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Notwithstanding subsections (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b) - (f) of this title (relating to Motion to Overturn Executive Director's Decision) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.