

The Texas Natural Resource Conservation Commission (commission) adopts the amendment to §35.901, *Emergency Order Concerning On-Site Sewage Facilities*, without change to the proposed text as published in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1445) and will not be republished.

This adoption is published concurrently with a notice to readopt Chapter 35 as published in the Adopted Rule Reviews section of this issue of the *Texas Register*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission conducted a preliminary review of Chapter 35 in accordance with Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. Upon completion of that review, the commission determined that the reasons for the rules in Chapter 35 still exist, and the rules are still needed to implement Texas Water Code (TWC), Chapter 5, Subchapter L, *Emergency and Temporary Orders*. The proposed review of Chapter 35 was published concurrently in the Review of Agency Rules section for comment in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1537).

SECTION DISCUSSION

The review of Chapter 35 revealed that the language in §35.901, relating to on-site sewage disposal systems, is unclear. The title of Subchapter L and the heading for §35.901 are amended to refer to on-site sewage facilities (OSSFs), rather than on-site sewage disposal system. The adopted amendment to

§35.901 will clarify that the commission may issue an emergency order requiring the owner of an OSSF to cease operation of the OSSF and that the commission may issue an emergency order to suspend the license of an OSSF installer.

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 the 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 adoption does not meet the definition of “major environmental rule” because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking is intended to clarify existing procedural rules. Specifically, the adopted rulemaking would clarify that the commission may issue an emergency order requiring the owner of an OSSF to cease operation of the OSSF. Additionally, the adopted rulemaking would clarify that the commission may issue an emergency order to suspend the license of an OSSF installer.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the adopted rulemaking according to Texas Government Code, §2007.043. The specific purpose of this rulemaking is to clarify that the commission may issue an emergency order requiring the owner of an OSSF to cease operation of the OSSF. Additionally, the adopted rulemaking will clarify that the commission may issue an emergency order to suspend the license of an OSSF installer. The adopted amendment will not burden private real property which is the subject of the rule because the amendment only clarifies existing rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the 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 was not held. The public comment period closed on April 1, 2002. The commission did not receive any comments regarding the amendment to §35.901.

SUBCHAPTER L: ON-SITE SEWAGE FACILITIES

§35.901

STATUTORY AUTHORITY

The amendment is adopted under TWC, §§5.103, 5.105, and 5.513. Section 5.103 provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and the Texas Health and Safety Code. Section 5.105 grants the commission the authority to establish and approve the general policy of the commission by rule. Section 5.513 provides the commission with the authority to issue emergency orders for OSSFs.

§35.901. Emergency Order Concerning On-Site Sewage Facilities.

If the commission finds that an emergency exists and that the public health and safety is endangered because the construction or operation of an on-site sewage facility (OSSF) does not comply with Texas Health and Safety Code, Chapter 366, or Chapter 285 of this title (relating to On-Site Sewage Facilities); the commission may issue an emergency order that:

- (1) suspends the license of an OSSF installer; or
- (2) requires cessation of operation of an OSSF.