

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §35.901, Emergency Order Concerning On-site Sewage Disposal System. This proposal is published concurrently with a notice of intention to review and readopt Chapter 35 as published in the Review of Agency Rules section of this issue of the *Texas Register*.

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

The commission conducted a preliminary review of Chapter 35 in accordance with Texas Government Code, §2001.039, and Senate Bill 178, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. That review 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 review of Chapter 35 is published concurrently in the Review of Agency Rules.

#### 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 proposed for amendment to refer to on-site sewage facilities (OSSFs), rather than on-site sewage disposal systems. The proposed amendment to §35.901 clarifies 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.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for units of state and local government due to administration and enforcement of the proposed amendment. The proposed amendment revises existing commission emergency order rules to clarify that in the case of an emergency, the commission could suspend the license of an OSSF installer, or require the cessation of operation of an OSSF.

On-site sewage facilities are one or more systems, typically used at residential homes, schools, office buildings, restaurants, motels, and hospitals, that treat and dispose of 5,000 gallons of wastewater or less each day and that are only used for disposal of sewage where the system is located.

The proposed amendment is procedural in nature and does not introduce additional regulatory requirements for units of state and local government that own or operate OSSF systems; therefore, the commission anticipates no significant fiscal impacts to units of state and local government due to implementation of the proposed amendment.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will

be clarification that in an emergency situation, the commission has the authority to suspend the license of an OSSF installer, or require the cessation of operation of an OSSF.

The proposed amendment revises existing commission emergency order rules to clarify that in the case of an emergency, the commission could suspend the license of an OSSF installer, or require the cessation of operation of an OSSF.

The proposed amendment is procedural in nature and does not introduce additional regulatory requirements for individuals or businesses that own or operate OSSF systems; therefore, the commission anticipates no significant fiscal impacts to individuals or businesses due to implementation of the proposed amendment.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Although many small and micro-businesses own or operate OSSF systems, there will be no adverse fiscal implications to small or micro-businesses due to implementation of the proposed amendment. This amendment is intended to revise existing commission emergency order rules to clarify that in the case of an emergency, the commission could suspend the license of an OSSF installer, or require the cessation of operation of an OSSF.

The proposed amendment is procedural in nature and does not introduce additional regulatory requirements for small or micro-businesses that own or operate OSSF systems; therefore, the

commission anticipates no significant fiscal impacts to small or micro-businesses due to implementation of the proposed amendment.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has 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 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 proposal 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 proposed 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 proposed rulemaking would clarify that the commission may issue an emergency order to suspend the license of an OSSF installer.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules 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 proposed rulemaking would clarify that the commission may issue an emergency order to suspend the license of an OSSF installer. The proposed amendment will not burden private real property which is the subject of the rule because the amendment clarifies existing rules.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that the rulemaking is subject to the Texas Coastal Management Program (CMP) and reviewed the rules for consistency in accordance with the Coastal Coordination Act Implementation Rules 31 TAC Chapter 505, relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies, and in particular, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, and identified the rules as potentially affecting an action or authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6).

The commission has conducted a preliminary consistency review of the rulemaking. Applicable goals contained in 31 TAC §501.12 (Goals), include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; 3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs; 4) to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; 5) to balance the benefits from economic development and multiple human uses of the coastal zone; the benefits from protecting, preserving, restoring, and enhancing CNRAs; the benefits from minimizing loss of human life and property; and the benefits from public access to and enjoyment of the coastal zone; 6) to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs; and 9) to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP.

The policy that is specifically applicable to on-site sewage disposal systems is 31 TAC §501.14(g)(3), relating to nonpoint source water pollution, which requires that on-site disposal systems and underground storage tanks be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters. Location, design, operation, and inspection or maintenance are not addressed in this rulemaking.

The proposed amendment to §35.901 is an editorial change to clarify the intent of the rule and is solely administrative; therefore, it will have no significant effect on the activities governed by the rulemaking, nor will it result in any significant adverse impacts to coastal resources.

Based on this review, the commission has determined that the rulemaking will not have direct or significant adverse effect on any CNRAs; nor will the rulemaking have a substantive effect on commission actions subject to the CMP. The commission seeks public comment on this preliminary consistency determination.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, 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 2002-007-035-AD. Comments must be received by 5:00 p.m., April 1, 2002. For further information or questions concerning this proposal, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

#### STATUTORY AUTHORITY

The amendment is proposed under TWC, §§5.103, 5.105, and 5.513. Section 5.103 provides the commission 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 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.

The proposed amendment implements TWC, §5.513, Emergency Order Concerning On-Site Sewage Disposal System, which authorizes the commission to issue an emergency order suspending the registration of the installer of an on-site sewage disposal system, regulating an on-site sewage disposal system, or both, if the commission finds that an emergency exists and that the public health and safety is endangered because of the operation of an on-site sewage disposal system that does not comply with Texas Health and Safety Code, Chapter 366, or a rule adopted under that chapter.

**SUBCHAPTER L: ON-SITE SEWAGE FACILITIES [DISPOSAL SYSTEM]**

**§35.901**

**§35.901. Emergency Order Concerning On-Site [On-site] Sewage Facilities [Disposal System].**

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.

[The commission may issue an emergency order suspending the registration of the installer of an on-site sewage disposal system, regulating an on-site sewage disposal system, or both, if the commission finds that an emergency exists and that the public health and safety is endangered because of the operation of an on-site sewage disposal system that does not comply with Texas Health and Safety Code, Chapter 366, or a rule adopted under that chapter.]