

The Texas Commission on Environmental Quality (commission) adopts the repeal of §122.131 and §§122.511 - 122.516 *without changes* as published in the March 21, 2003 issue of the *Texas Register* (28 TexReg 2466).

These sections provide for an application option that has not been used and is now expired, and for industry and county-specific general operating permits that have now become non-rule general operating permits. The commission also accepted public comment on the submission of previously adopted §122.217 to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP). No changes were proposed to §122.217.

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

Title V of the Federal Clean Air Act Amendments of 1990 (FCAA) as codified in 42 United States Code required all states to develop operating permit programs that met federal criteria. The EPA has promulgated a final rule identifying the criteria for state operating permit programs, 40 Code of Federal Regulations Part 70, State Operating Permit Programs. The general goal of the operating permit program requirement is to facilitate compliance and improve enforcement by issuing permits that consolidate all applicable requirements into a federally-enforceable document.

The rules in Chapter 122 were originally developed to meet this federal requirement. The commission now repeals §122.131 because the phased permit process has not been used by any facilities and the scheduled application dates have since passed. The commission also repeals §§122.511 - 122.516 since the permits contained in §§122.511 - 122.516 have expired and have been converted to non-rule general operating permits.

On November 20, 2002, the commission adopted amendments to §122.217 regarding minor revision procedures. However, the commission did not fulfill the public notice requirements necessary to submit §122.217 to the EPA as a revision to the SIP for the November 20, 2002 adoption. Public comment was accepted on this section being submitted as a revision to the SIP. No public comment was received. The adopted rule for §122.217 can be viewed on the *Texas Register* web site at: [www.sos.state.tx.us](http://www.sos.state.tx.us).

#### SECTION BY SECTION DISCUSSION

The commission adopts the repeal of §122.131, Phased Permit Detail. The phased permit process has not been used by any facilities and the scheduled application dates have since passed. The commission also adopts the repeal of §§122.511 - 122.516, Oil and Gas General Operating Permit - Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties; Oil and Gas General Operating Permit - Gregg, Nueces, and Victoria Counties; Oil and Gas General Operating Permit - Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties; Oil and Gas General Operating Permit - All Texas Counties Except for Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, San Patricio, Tarrant, Travis, Victoria, and Waller Counties; Bulk Fuel Storage Terminal General Operating Permit; and Site-wide General Operating Permit. The contents of these sections were industry and county-specific general operating permits that have now become non-rule general operating permits.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in accordance with the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule. A “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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Although the rules adopted by the commission to implement the requirements of 42 United States Code, §§7661 - 7661e, are intended to protect the environment or reduce risks to human health from environmental exposure through increased compliance with requirements already applicable to facilities, the adopted rules are not anticipated to have adverse effects on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking merely repeals sections that are unnecessary.

The requirements of the adopted repeals are expected to result in little or no impact on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. All facilities affected by the repeals no longer have the opportunity to select the phased permit detail process since the deadlines have passed, and facilities may use the non-rule general operating permits in place of the rule-based general operating permits repealed in this rulemaking.

Additionally, the analysis required by Texas Government Code, §2001.0225(c), does not apply because the adopted repeals do not meet any of the four applicability requirements of a major environmental

rule. The adopted repeals do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The adopted repeals do not exceed the requirements of either 42 United States Code, §§7661 - 7661e (the requirements for the federal operating permit program), or related provisions of the Texas Clean Air Act. Additionally, the adopted repeals do not exceed a requirement of a delegation agreement, since there is no agreement that is applicable to this rulemaking, and are not adopted solely under the general powers of the agency.

The commission invited public comment on the draft regulatory analysis determination and no comments were received.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted repeals and performed an analysis of whether the repeals are subject to Texas Government Code, Chapter 2007. The purpose of the adopted repeals is to remove unnecessary provisions of the state operating permit program, required by 42 United States Code, §§7661 - 7661e and 40 Code of Federal Regulations Part 70. All facilities affected by the adopted repeals no longer have the opportunity to select the phased permit detail process since the deadlines have passed, and facilities may use non-rule general operating permits in place of the rule-based general operating permits repealed in this rulemaking.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the adopted repeals because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The adopted repeals

will implement requirements of 42 United States Code, §§7661 - 7661e. While the adopted repeals are not specifically mandated by federal law, the state is required to maintain a state operating permit program to avoid the imposition of sanctions under 42 United States Code, §7509, and the deletion of these unnecessary sections provides for a better, more clear program. Additionally, promulgation and enforcement of the repeals do not burden private real property. The adopted repeals do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the adopted repeals do not meet the definition of a taking under Texas Government Code, §2007.002(5).

The commission invited public comment on the draft regulatory analysis determination and no comments were received.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and, therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission reviewed this action for consistency and determined that the repeal of §§122.131 and 122.511 -122.516 does not impact any CMP goals or policies because it is administrative. Additionally, the repeals do not adversely impact any CMP goals or policies since the deadline for submitting an application under the phased permit detail process has passed, and there are non-rule general operating permits available to those facilities which would previously have used the general operating permits repealed in this

rulemaking. The commission invited public comment on the consistency of the proposed repeals with applicable CMP goals and policies. No comments were received.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This adoption has no impact on owners and operators of sites subject to the operating permit program since the repeal of the sections merely deletes unnecessary sections. The application dates of the phased permit detail have passed and the only general operating permits that are now available are non-rule general operating permits which are now being used by those subject to the Federal Operating Permits Program.

#### PUBLIC COMMENT

A public hearing on this proposal was held April 14, 2003, and the comment period closed on April 21, 2003. The commission received one comment. EPA supported the proposed changes.

**SUBCHAPTER B: PERMIT REQUIREMENTS**

**DIVISION 3: PERMIT APPLICATION**

**§122.131**

**STATUTORY AUTHORITY**

The repeal is adopted under Texas Health and Safety Code, Texas Clean Air Act, §382.011, which authorizes the commission to administer the requirements of the Texas Clean Air Act; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.054, which requires sources to obtain a federal operating permit; §382.0541, which authorizes the administration and enforcement of federal operating permits; and Texas Water Code, §5.103, which authorizes the commission to propose rules.

**§122.131. Phased Permit Detail.**

**SUBCHAPTER F: GENERAL OPERATING PERMITS**

**DIVISION 2: AVAILABLE GENERAL PERMITS**

**§§122.511 - 122.516**

**STATUTORY AUTHORITY**

The repeals are adopted under Texas Health and Safety Code, Texas Clean Air Act, §382.011, which authorizes the commission to administer the requirements of the Texas Clean Air Act; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.054, which requires sources to obtain a federal operating permit; §382.0541, which authorizes the administration and enforcement of federal operating permits; and Texas Water Code, §5.103, which authorizes the commission to propose rules.

**§122.511. Oil and Gas General Operating Permit - Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties.**

**§122.512. Oil and Gas General Operating Permit - Gregg, Nueces, and Victoria Counties.**

**§122.513. Oil and Gas General Operating Permit - Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.**

**§122.514. Oil and Gas General Operating Permit - All Texas Counties Except for Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, San Patricio, Tarrant, Travis, Victoria, and Waller Counties.**

**§122.515. Bulk Fuel Storage Terminal General Operating Permit.**

**§122.516. Site-wide General Operating Permit.**

