

The Texas Commission on Environmental Quality (commission) proposes the repeal of §122.131 and §§122.511 - 122.516.

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 will also be accepting 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 are being proposed to §122.217.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

Title V of the Federal Clean Air Act Amendments of 1990 (FCAA) as codified in 42 United States Code (USC) 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 (CFR) 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 is now proposing to repeal §122.131 because the phased permit process has not been used by any facilities and the scheduled dates have since passed. The commission is also proposing the repeal of §§122.511 - 122.516 since the types of permits referenced have been converted to non-rule general operating permits and no longer exist.

On November 20, 2002, the commission adopted amendments to §122.217 regarding minor revision procedures. However, the commission did not submit §122.217 to the EPA as a revision to the SIP. Public comment will be accepted on this section being submitted as a revision to the SIP. The adopted rule for §122.217 can be viewed on the *Texas Register* web site at: www.sos.state.tx.us.

SECTION BY SECTION DISCUSSION

The commission proposes the repeal of §122.131, Phased Permit Detail. The phased permit process has not been used by any facilities and the scheduled dates have since passed. The commission also proposes 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed repeals are in effect, there will be no fiscal implications to

units of state or local government as a result of the implementation and administration of the proposed repeals.

The proposed repeals are intended to simplify current rules relating to the Federal Operating Permits Program under Title V of the FCAA. Title V of the FCAA required all states to develop operating permit programs that met federal criteria and the original rules were developed to meet these requirements. The proposed rulemaking repeals provisions relating to a phased permit process and provisions referencing certain types of permits in certain areas.

The phased permit provision allows sites with 75 or more emission units in a nonattainment area, and sites with 150 or more emission units in an attainment area to submit permit applications in phases to allow for flexibility in the permit application process. However, regulated entities have never used the phased permit process and the deadline for submitting a phased permit application has passed (July 2000).

The proposed repeals also remove provisions relating to certain types of general operating permits, including oil and gas general operating permits in specific counties, bulk fuel storage terminal general operating permits, and site-wide general operating permits. The contents of these sections for industry and county-specific general operating permits have already been incorporated into non-rule general operating permits now used by the agency and regulated facilities, resulting in no change to current practices.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed repeals would be the clarification and simplification of rule language relating to the Title V Operating Permits Program by removing outdated and unused rule language.

No fiscal implications are anticipated to individuals or businesses as a result of implementing and administering the proposed repeals, as the proposed repeals have no effect on current practices of the agency, businesses, or individuals regarding the Federal Operating Permits Program. The proposed repeals are intended to simplify current rules relating to the Federal Operating Permits Program under Title V of the FCAA. The proposed rulemaking repeals provisions relating to a phased permit process and provisions referencing certain types of permits in certain areas.

The phased permit provision allows sites with 75 or more emission units in a nonattainment area, and sites with 150 or more emission units in an attainment area to submit permit applications in phases to allow for flexibility in the permit application process. However, regulated entities have never used the phased permit process and the deadline for submitting a phased permit application has passed (July 2000).

The proposed repeals also remove provisions relating to types of general operating permits, including oil and gas general operating permits in specific counties, bulk fuel storage terminal general operating permits, and site-wide general operating permits. The contents of these sections for industry and county-specific general operating permits have already been incorporated into non-rule general operating permits now used by the agency and regulated facilities.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses resulting from the implementation of the proposed repeals, as they are intended to simplify rule language relating to the Title V Operating Permits Program by removing outdated and unused rule language. In addition, the proposed repeals have no effect on current practices of the agency, businesses, or individuals regarding the Federal Operating Permits Program.

The proposed rulemaking is intended to simplify current rules by repealing provisions relating to a phased permit process and provisions referencing certain types of general operating permits in certain areas.

The phased permit provision allows sites with 75 or more emission units in a nonattainment area, and sites with 150 or more emission units in an attainment area to submit permit applications in phases to allow for flexibility in the permit application process. However, regulated entities have never used the phased permit process and the deadline for submitting a phased permit application has passed (July 2000).

The proposed repeals also remove provisions relating to certain types of general operating permits, including oil and gas general operating permits in specific counties, bulk fuel storage terminal general operating permits, and site-wide general operating permits. The contents of these sections for industry and county-specific general operating permits have already been incorporated into non-rule general operating permits now used by the agency and regulated facilities, resulting in no change to current practices.

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 rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking will be in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed 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 USC, §§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 proposed 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 proposed rulemaking merely repeals sections that are unnecessary.

The requirements of the proposed repeals are expected to result in little or no impacts 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 proposed repeals no longer have the opportunity to select the

phased permit detail process since the deadlines have passed and have the option of using non-rule general operating permits in place of the rule-based general operating permits proposed for repeal in this rulemaking.

Additionally, the analysis required by Texas Government Code, §2001.0225(c), does not apply because the proposed repeals do not meet any of the four applicability requirements of a major environmental rule. The proposed 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 proposed repeals do not exceed the requirements of either 42 USC, §§7661 - 7661e (the requirements for the federal operating permit program), or related provisions of the Texas Clean Air Act (TCAA). Additionally, the proposed repeals do not exceed a requirement of a delegation agreement, since there is no agreement that is applicable to this rulemaking, and are not proposed solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

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

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the proposed 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 proposed repeals will implement requirements of 42 USC, §§7661 - 7661e. While the proposed 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 USC, §7509, and the deletion of these unnecessary sections will provide for a better, more clear program. Additionally, promulgation and enforcement of the repeals will not burden private real property. The proposed 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 proposed repeals do not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal 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 will, therefore, require 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 has 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 will 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

proposed for repeal in this rulemaking. The commission seeks public comment on the consistency of the proposed repeals with applicable CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This proposal 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 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.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 14, 2003 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing, and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

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.

Comments must be received by 5:00 p.m., April 21, 2003, and should reference Rule Log Number 2002-056-122-AI. For further information, please contact Debra Barber, Policy and Regulations Division at (512) 239-0412.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 3: PERMIT APPLICATION

§122.131

STATUTORY AUTHORITY

The repeal is proposed under Texas Health and Safety Code (THSC), TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §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 (TWC), §5.103, which authorizes the commission to propose rules.

The repeal implements THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.054, concerning Federal Operating Permits; §382.0541, concerning the Administration and Enforcement of Federal Operating Permits; and TWC, §5.103, concerning 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 proposed under Texas Health and Safety Code (THSC), TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §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 (TWC), §5.103, which authorizes the commission to propose rules.

The repeals implement THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.054, concerning Federal Operating Permits; §382.0541, concerning the Administration and Enforcement of Federal Operating Permits; and TWC, §5.103, concerning 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.

