

The Texas Commission on Environmental Quality (commission) adopts the amendment to §305.48 *with change* to the proposed text as published in the December 6, 2002 issue of the *Texas Register* (27 TexReg 11479). The primary purpose of the amendment is to revise the commission rules to incorporate by reference United States Environmental Protection Agency (EPA) regulations relating to cooling water intake structures.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

On September 14, 1998, the State of Texas was authorized by EPA to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters of the state under the Federal Water Pollution Control Act, as amended, 33 United States Code, §§1251 *et seq.* (commonly referred to as the Clean Water Act). The approved state program, i.e., the Texas Pollutant Discharge Elimination System (TPDES) program, published September 24, 1998 in the *Federal Register* (63 FR 51164), is administered by the commission. The changes in this chapter, necessitated by EPA changes to its regulations, are part of an effort by the commission to revise several chapters of its rules to maintain equivalency with EPA's regulations and thereby to maintain delegated NPDES permitting authority.

Section 305.48 is amended to correct the name for Standard Industrial Classification (SIC) codes and to require that permit applicants also submit North American Industry Classification System (NAICS) codes.

SECTION DISCUSSION

Subchapter C, Application for Permit.

Section 305.48, Additional Contents of Applications for Wastewater Discharge Permits, is amended to incorporate new requirements in 40 Code of Federal Regulations (CFR) §122.21(r), which requires all owners or operators of new facilities subject to regulations addressing cooling water intake structures to submit three general categories of information when they apply for a TPDES permit. The general categories of information include: 1) physical data to characterize the source water body in the vicinity where the cooling water intake structures are located; 2) data to characterize the design and operation of the cooling water intake structures; and 3) existing data (if available) to characterize the baseline biological condition of the source waterbody. 40 CFR §122.21 is not the exclusive list of information applicants must submit if the new cooling water intake structure rules are applicable. 40 CFR Part 125, Subchapter I, Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, also contains permit application information that must be provided when submitting a TPDES permit application. These requirements are incorporated by reference in 30 TAC §308.91 as a concurrent rulemaking published in this issue of the *Texas Register*.

Section 305.48 is amended to correct the name for SIC codes and to update the rules to require submission of up to four NAICS codes. The previous rule language incorrectly stated that the acronym “SIC” stands for standard industrial codes. Also, a requirement for permit applicants to provide up to four NAICS codes has been added because this system has replaced SIC codes. NAICS is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. However, existing federal rules applicable to wastewater permitting applications and categorical effluent guidelines reference SIC codes. Therefore, the rules are amended to require

applicants for a wastewater permit to provide SIC and NAICS code information. It is anticipated that, once SIC codes are phased out and regulations and guidance documents include NAICS code references, the rule may be revised to delete the requirement for submitting SIC codes. A typographical error in a citation in §305.48(b)(2) is also corrected.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as identified in that statute. 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, a sector of the economy, productivity, competition, jobs, or the environment or public health and safety of the state or a sector of the state. The rulemaking will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment updates the commission's consolidated permits rules to incorporate certain federal regulations regarding NPDES permitting requirements. The adopted amendment additionally does not require regulatory analysis under Texas Government Code, §2001.0225 because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and

federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted amendment does not introduce additional regulatory requirements that are not currently enforced by the EPA. Therefore, the commission concludes that a regulatory analysis is not required in this instance because the rule does not meet any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the adopted rulemaking is to ensure that the commission's consolidated permits requirements are equivalent to EPA's NPDES permitting regulations. The rule will substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that does not adversely affect real property and also is within the exceptions of Chapter 2007 because it is reasonably taken to fulfill an obligation mandated by federal law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is subject to Coastal Coordination Act Implementation Rules under 31 TAC §505.11(b)(4) because it involves a rule governing a specifically listed individual commission action (issuance or approval) that may affect a coastal natural resource

area. Therefore, the rulemaking must be consistent with applicable goals and policies of the Texas Coastal Management Program (CMP).

The commission prepared a consistency determination for the rules under 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. CMP goals applicable to the amendment include 31 TAC §501.12(5), concerning balance of the benefits from economic development and multiple human uses of the coastal zone and benefits from protecting, preserving, restoring, and enhancing coastal natural resource areas; §501.14(a)(1)(B), concerning electric generating facilities using once-through cooling systems to be located and designed to have the least adverse effects practicable, including impingement or entrainment of estuarine organisms; and §501.14(r)(1)A)(vi), concerning commission administration of the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state. The rulemaking incorporates by reference federal requirements to prevent the entrainment of aquatic or marine organisms with cooling water at new facilities that uptake at least two million gallons per day of water (with at least 25% of the total water used for cooling purposes). The rulemaking applies statewide, including the coastal areas.

PUBLIC COMMENT

The public comment period ended on January 6, 2003. No comments were received during the comment period.

SUBCHAPTER C: APPLICATION FOR PERMIT

§305.48

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§305.48. Additional Contents of Applications for Wastewater Discharge Permits.

(a) The following shall be included in an application for a wastewater discharge permit.

(1) The original and one copy of the permit application shall be submitted on forms provided by or approved by the executive director, and shall be accompanied by a like number of copies of all technical supplements and attachments.

(2) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts

of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information. This subsection does not apply to:

(A) an application to renew a permit; and

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes, including, but not limited to, the following:

(A) the operator's name, address, and telephone number;

(B) whether the facility is located on Indian lands;

(C) up to four Standard Industrial Classification (SIC) codes and North American Industry Classification System (NAICS) codes which best reflect the principal products or services provided by the facility.

(b) The following regulations contained in 40 Code of Federal Regulations, Part 122, which are in effect as of the date of TPDES program authorization, as amended, are incorporated by reference.

(1) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(g), providing application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

(2) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(h), providing application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only nonprocess wastewater, except 40 Code of Federal Regulations §122.21(h)(4)(iii), the requirements of which are addressed in §305.126(e) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits).

(3) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(i), providing application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

(4) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(r), providing application requirements for new facilities with new or modified cooling water intake structures.

(c) In addition to the information required by §305.45 of this title (relating to Contents of Application for Permit), an application by an individual for a waste discharge permit shall contain:

- (1) the individual's full legal name and date of birth;
- (2) the street address of the individual's place of residence;
- (3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;
- (4) the individual's sex; and
- (5) any assumed business or professional name of the individual filed under Business and Commerce Code, Chapter 36.