

The Texas Commission on Environmental Quality (commission) adopts amendments to §§55.101, 55.150, and 55.200 *without changes* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 973) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems.

The commission amends Chapter 55 to regulate subsurface area drip dispersal systems that beneficially reuse treated wastewater effluent generated by treatment facilities processing more than 5,000 gallons per day of domestic wastewater and any amount of industrial wastewater. The adopted amendments clarify that these systems are included in the current processes for the requests for reconsideration, contested case hearings, and public comment.

The commission also adopts additional rulemaking in 30 TAC Chapter 30, Occupational Licenses and Registrations; Chapter 222, Subsurface Area Drip Dispersal System; Chapter 281, Applications Processing; Chapter 305, Consolidated Permits; Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting; and Chapter 331, Underground Injection Control, to implement HB 2651 in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 55.101, Applicability

Adopted §55.101(c) and (d) is amended by adding TWC, Chapter 32 to the list of statutes that require public participation under this section.

Section 55.150, Applicability

Adopted §55.150 is amended by adding TWC, Chapter 32 to the list of statutes to clarify that subsurface area drip dispersal systems are included in the requirements of Subchapter E.

Section 55.200, Applicability

Adopted §55.200 is amended by adding TWC, Chapter 32 to the list of statutes to clarify that subsurface area drip dispersal systems are included in the requirements of Subchapter F.

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 adopted rules do not meet the definition

of a “major environmental rule.” Under Texas Government Code, §2001.0225, “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 adopted rules implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The specific intent of this rulemaking is to amend Chapter 55 to include the procedures for requests for reconsideration, contested case hearings, and public comment relating to new, amended, or renewed subsurface area drip dispersal system permits to be subject to the requirements of this chapter. The adopted rules do 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, because the adopted rules simply require applications for new, amended, or renewed subsurface area drip dispersal system permits to be subject to the requirements of this chapter. The adopted rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in §2001.0225(a). Texas Government Code, §2001.0225(a), applies to a rule adopted by an agency, 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 rules do not meet any of these criteria. First, the adopted rules do not exceed a standard set by federal law, because there is no comparable federal law. Second, the adopted rules do not exceed a requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are adopted to implement HB 2651. Third, the adopted rules do not exceed an express 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. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of HB 2651, which directs the commission to implement rules under TWC, Chapter 32. These adopted rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225. Written comments on the draft regulatory impact analysis determination were solicited; no comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to amend Chapter 55 to require that the requests for reconsideration, contested case hearings, and public comment relating to new, amended, or renewed subsurface area drip dispersal system permits be subject to the

requirements of this chapter. The promulgation and enforcement of the adopted rules will not affect private real property in a manner that requires compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this rulemaking does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007. Written comments on the draft takings impact analysis determination were solicited; no comments were received on the draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) and is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the CMP, and will therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this action for consistency with the CMP goals and determined that Chapter 55 does not impact any CMP goals or policies because it regulates the permitting process. Chapter 55 is administrative and does not regulate the environment.

PUBLIC COMMENT

The public comment period ended March 20, 2006. A public hearing was held March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Conference Room 2210, 12100 Park Thirty-Five Circle, Austin, TX. Oral comments were received from JN Technologies (JNT). Written comments were received from Harris County Public Infrastructure Department (HCPID); United States Department of Energy, National Nuclear Security Administration, Pantex Site Office (DOE); Lower Colorado River Authority (LCRA); Drip-Tech Wastewater Systems (DTWS); Save Our Springs Alliance (SOSA); and Snowden Onsite Septic, Inc. (SOSI). Texas Council of Engineering Companies (TCEC) submitted a written comment after the close of the comment period, which was addressed. No comments were received in relation to this chapter.

SUBCHAPTER D: APPLICABILITY AND DEFINITIONS

§55.101

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, as amended by HB 2651.

The adopted amendment implements HB 2651, which added new Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application

permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§55.101. Applicability.

(a) Subchapters D - G of this chapter (relating to Applicability and Definitions; Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) apply to permit applications that are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section.

(b) Subchapters D - G of this chapter apply to public comments, public meetings, hearing requests, and requests for reconsideration.

(c) Subchapters D - F of this chapter apply only to applications filed under Texas Water Code, Chapters 26, 27, and 32 and Texas Health and Safety Code, Chapters 361 and 382.

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section and other than those filed under Texas Water Code, Chapters 26, 27, and 32 and Texas Health and Safety Code, Chapters 361 and 382.

(e) Subchapters D - F of this chapter apply to applications for amendment, modification, or renewal of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Processing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(f) Subchapters D - G of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits By Rule) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project;

(4) applications for Class I injection well permits used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells; and

(5) applications where the opportunity for a contested case hearing does not exist under other laws.

(g) Subchapters D - G of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal and Transportation);

(2) applications for authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) except for applications for individual permits under Subchapter B of that chapter;

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under Texas Water Code, Chapter 13 and Texas Water Code, §§11.036, 11.041, or 12.013. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of hearing requests under standards specified by law, and may refer the application to the chief clerk for hearing processing. The maximum expected duration of a hearing on an application referred to the State Office of Administrative Hearings under this provision shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a State Office of Administrative Hearings hearing on an application subject to this provision are all those issues that are material and relevant under the law;

(6) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(7) applications for initial issuance of voluntary emissions reduction permits under Texas Health and Safety Code, §382.0519;

(8) applications for initial issuance of permits for electric generating facility permits under Texas Utilities Code, §39.264;

(9) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(10) applications for multiple plant permits under Texas Health and Safety Code, §382.05194;

(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-Injection Units Registration); and

(12) applications where the opportunity for a contested case hearing does not exist under other laws.

SUBCHAPTER E: PUBLIC COMMENT AND PUBLIC MEETINGS

§55.150

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted in HB 2651.

The amendment implements HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and

actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§55.150. Applicability.

This subchapter applies only to applications filed under Texas Water Code, Chapter 26, 27, or 32 or Texas Health and Safety Code, Chapter 361 or 382 that are declared administratively complete on or after September 1, 1999.

**SUBCHAPTER F: REQUESTS FOR RECONSIDERATION
OR CONTESTED CASE HEARING**

§55.200

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, as enacted by HB 2651.

The adopted amendment implements HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application

permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§55.200. Applicability.

This subchapter applies only to applications filed under Texas Water Code, Chapter 26, 27, or 32 or Texas Health and Safety Code, Chapter 361 or 382 that are declared administratively complete on or after September 1, 1999.