

The Texas Commission on Environmental Quality (commission) proposes amendments to §§281.2, 281.5, and 281.21.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 proposes this rulemaking 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. The proposed rules will clarify that these systems are included in the current processes for preparing and submitting applications for permits.

The commission also proposes additional rulemaking to 30 TAC Chapter 30, Occupational Licenses and Registrations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 222, Subsurface Area Drip Dispersal System; Chapter 305, Consolidated Permits; Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting; and Chapter 331, Underground Injection Control, in this issue of the *Texas Register* to implement HB 2651.

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 281.2, Applicability

Proposed §281.2(2) is amended to clarify that Chapter 281 is applicable to applications for new, amended, or renewed subsurface area drip dispersal system permits. This is the general applicability statement for Chapter 281 and permit applications for subsurface area drip dispersal systems are proposed to be subject to the requirements of this section.

Section 281.5, Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits

Proposed §281.5 is amended to include the reference to subsurface area drip dispersal systems. Section 281.5 lists the requirements for permit applications and permit applications for subsurface area drip dispersal systems that are proposed to be subject to the requirements of this section.

Section 281.21, Draft Permit, Technical Summary, Fact Sheet, and Compliance History

Proposed §281.21(a) is amended to add reference to TWC, Chapter 32. Section 281.21(a) lists the authority for the requirements of this section. TWC, Chapter 32 is proposed to be added since subsurface area drip dispersal systems are proposed to be subject to the requirements of this section.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

HB 2651, 79th Legislature, 2005, amended the TWC by adding Chapter 32, Subsurface Area Drip Dispersal Systems. The commission proposes this rulemaking 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. The proposed rules will clearly state that these systems are included in the current process for preparing and submitting applications for permits. Subsurface area drip dispersal systems have previously been permitted under current rules for Texas land application permits. The proposed rules do not change any requirements for the permitting of subsurface area drip dispersal systems. There is no fiscal implication from the proposed rules for units of state governments, local governments, individuals, or businesses owning or operating wastewater systems utilizing subsurface area drip dispersal systems.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater clarity in, and thus, more efficient administration of wastewater disposal rules.

The proposed rules will clearly state that subsurface area drip dispersal systems are included in the current process for preparing and submitting applications for permits. Subsurface area drip dispersal systems have previously been permitted under current rules for Texas land application permits. The proposed rules do not change any requirements for the permitting of subsurface area drip dispersal systems and have no fiscal implications for individuals or businesses owning or operating subsurface area drip dispersal systems.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. The proposed rules do not change any requirements for the permitting of subsurface area drip dispersal systems and have no fiscal implications for small or micro-businesses owning or operating subsurface area drip dispersal systems.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the 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 proposed rules would implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The specific intent of this rulemaking is to amend Chapter 281 to require that applications for new, amended, or renewed subsurface area drip dispersal system permits be subject to the requirements of this chapter. The proposed rules would 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 proposed rules would simply require applications for new, amended, or renewed subsurface area drip dispersal system permits to be subject to the requirements of this chapter. The proposed rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the proposed rules are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in Texas Government Code, §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 proposed amendments to Chapter 281 do not meet any of these criteria. First, the proposed rules do not exceed a standard set by federal law, because there is no comparable federal law. Second, the proposed rules do not exceed a requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are proposed to implement HB 2651. Third, the proposed 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 propose 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 proposed rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to amend Chapter 281 to require that applications for new, amended, or renewed subsurface area drip dispersal system permits be subject to the requirements of this chapter. The promulgation and enforcement of the proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed 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 proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rules will not constitute a taking under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

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, 30 TAC §505.11(b)(4), relating to rules subject

to the Texas Coastal Management Program (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 and determined that Chapter 281 does not impact any CMP goals or policies because it regulates the permitting process. Chapter 281 is administrative and does not regulate the environment.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed in the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle.

The hearing will be structured for the receipt of oral or written comments by interested persons.

Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-050-222-PR. Comments must be received no later than 5:00 p.m., March 20, 2006. For further information, please contact Sherry Smith, Water Quality Division, at (512) 239-0571 or Louis C. Herrin, III, P.E., Water Quality Division, at (512) 239-4452.

SUBCHAPTER A: APPLICATION PROCESSING

§§281.2, 281.5, 281.21

STATUTORY AUTHORITY

The amendments are proposed 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, §2.

The proposed amendments implement 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.

§281.2. Applicability.

These sections are applicable to the processing of:

(1) (No change.)

(2) applications for new, amended, or renewed wastewater discharge permits,
including subsurface area drip dispersal systems;

(3) (No change.)

(4) applications for new, amended, or modified or renewed industrial solid and/or municipal hazardous waste permits filed under [pursuant to] §335.2 of this title (relating to Permit Required) and §335.43 of this title (relating to Permit Required) or for new or amended compliance plans filed under [pursuant to] §305.401 of this title (relating to Compliance Plan);

(5) - (10) (No change.)

§281.5. Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits.

Except as provided by §305.48 of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits), applications for wastewater discharge[,] including subsurface area drip dispersal systems, underground injection, municipal solid waste, radioactive material, hazardous waste and industrial solid waste management permits must include:

(1) - (7) (No change.)

§281.21. Draft Permit, Technical Summary, Fact Sheet, and Compliance History.

(a) The provisions of this section are applicable to applications for waste disposal activities conducted under the authority of [the] Texas Water Code, Chapters 26, [and] 27, and 32, the Texas Solid Waste Disposal Act [TSWDA], and the Texas Radiation Control Act [TRCA].

(b) - (f) (No change.)