

The Texas Commission on Environmental Quality (commission) adopts amendments to §§305.1, 305.2, 305.41, 305.45, 305.121, 305.123, 305.125, and 305.127 *without changes* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 998) 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 305 to clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32.

The commission also adopts additional rulemaking in 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 281, Applications Processing; 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 adopts 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 305.1, Scope and Applicability

Adopted §305.1 is amended by adding TWC, Chapter 32 to the list of statutes from which Chapter 305, Subchapter A has authority.

Section 305.2, Definitions

Adopted §305.2 is amended by adding TWC, §32.002 to the list of statutes from which Chapter 305, Subchapter B derives authority. This amendment also adds permits issued under TWC, Chapters 26 and 32 to the definition of wastewater discharge permits found in §305.2(47). Subsurface area drip dispersal systems are permitted under TWC, Chapters 26 and 32. This section clarifies that the definition of wastewater discharge permits includes subsurface area drip dispersal systems.

Section 305.41, Applicability

Adopted §305.41 is amended by adding TWC, Chapter 32 to the list of statutes from which Chapter 305, Subchapter C derives authority.

Section 305.45, Contents of Application for Permit

Adopted §305.45(a) is amended by adding paragraph (7)(J) to include subsurface area drip dispersal systems in the list of permits and construction approvals that must be included in the application for a permit action.

Section 305.121, Applicability

Adopted §305.121 is amended by adding subsurface area drip dispersal systems as a subset of injection wells to the list of systems covered by Chapter 305, Subchapter F.

Section 305.123, Reservation in Granting Permit

Adopted §305.123 is amended by adding TWC, Chapter 32 to the list of statutes from which Chapter 305, Subchapter F derives authority.

Section 305.125, Standard Permit Conditions

Adopted §305.125(10) is amended by adding TWC, Chapter 32 to the list of statutes that authorizes inspection and entry.

Section 305.127, Conditions to be Determined for Individual Permits

Adopted §305.127(4)(A) and (C) are amended by adding Chapter 222, Subsurface Area Drip Dispersal Systems, to the list of chapters covered by this section.

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 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. The specific intent of this rulemaking is to amend Chapter 305 to clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32. The adopted amendments will add permits that are permitted under TWC, Chapters 26 and 32 to the definition of wastewater discharge permits, which is defined as a permit issued under TWC, Chapter 26.

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 clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32. 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 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 adopted amendments to Chapter 305 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 305 to clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32. The adopted amendments will add permits that are permitted under TWC, Chapters 26 and 32 to the definition of wastewater discharge permits, which is defined as a permit issued under TWC, Chapter 26. 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 and determined that Chapter 305 does not impact any CMP goals or policies because it regulates the permitting process. Chapter 305 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. 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 A: GENERAL PROVISIONS

§305.1, §305.2

STATUTORY AUTHORITY

The amendments are 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 considered 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 by HB 2651, §2.

The adopted 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.

§305.1. Scope and Applicability.

(a) The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under Texas Water Code, Chapters 26 - 28 and 32, and Texas Health and Safety Code, Chapters 361 and 401.

(b) The national pollutant discharge elimination system (NPDES) program, as delegated to the State of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system (TPDES). The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in Texas Water Code, §26.001.

(1) The following are point sources requiring TPDES permits for discharges:

(A) concentrated animal feeding operations as defined in Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(B) concentrated aquatic animal production facilities as defined in 40 Code of Federal Regulations (CFR) §122.24;

(C) discharges into aquaculture projects as set forth in 40 CFR §122.25;

(D) discharges from separate storm sewers as set forth in 40 CFR §122.26;

and

(E) silvicultural point sources as defined in 40 CFR §122.27.

(2) The TPDES permit program also applies to owners or operators of any treatment works treating domestic sewage, unless all requirements implementing Clean Water Act (CWA), §405(d), applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of Subtitle C, the Federal Solid Waste Disposal Act, the Safe Drinking Water Act, Part C, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the regional administrator as adequate to assure compliance with CWA, §405.

(3) The executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA, §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement of basis for the permit.

§305.2. Definitions.

The definitions contained in Texas Water Code, §§26.001, 27.002, 28.001, and 32.002, and Texas Health and Safety Code, §§361.003, 401.003, and 401.004, apply to this chapter. The following words and terms, when used in this chapter, have the following meanings.

(1) **Application**--A formal written request for commission action relative to a permit or a post-closure order, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

(2) **Bypass**--The intentional diversion of a waste stream from any portion of a treatment facility.

(3) **Class I sludge management facility**--Any publicly owned treatment works identified under 40 Code of Federal Regulations §403.10(a), as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(4) **Component**--Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

(5) **Continuous discharge**--A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(6) **Corrective action management unit (CAMU)**--An area within a facility that is designated by the commission under 40 Code of Federal Regulations Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes while implementing such corrective action requirements at the facility.

(7) **Daily average concentration**--The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) Domestic wastewater treatment plants. When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous

four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) All other wastewater treatment plants. When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

(8) **Daily average flow**--The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

(9) **Direct discharge**--The discharge of a pollutant.

(10) **Discharge monitoring report**--The United States Environmental Protection Agency uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

(11) **Disposal**--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

(12) **Disposal facility**--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(13) **Effluent limitation**--Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

(14) **Facility**--Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units; and

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner and operator seeking a permit for the storage, processing, and/or disposal of

hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste).

(15) **Facility mailing list**--The mailing list for a facility maintained by the commission in accordance with 40 Code of Federal Regulations (CFR) §124.10(c)(1)(ix) and §39.7 of this title (relating to Mailing Lists). For Class I injection well underground injection control permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(16) **Functionally equivalent component**--A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(17) **Indirect discharger**--A non-domestic discharger introducing pollutants to a publicly owned treatment works.

(18) **Injection well permit**--A permit issued in accordance with Texas Water Code, Chapter 27.

(19) **Land disposal facility**--Includes landfills, waste piles, surface impoundments, land farms, and injection wells.

(20) **Licensed professional geoscientist**--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(21) **National Pollutant Discharge Elimination System**--The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under Clean Water Act, §§307, 402, 318, and 405. The term includes an approved program.

(22) **New discharger**--

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective National Pollutant Discharge Elimination System permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

(23) **New source**--Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under Clean Water Act , §306; or

(B) after proposal of standards of performance in accordance with Clean Water Act, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

(24) **Operator**--The person responsible for the overall operation of a facility.

(25) **Outfall**--The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to water in this state.

(26) **Owner**--The person who owns a facility or part of a facility.

(27) **Permit**--A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, for radioactive material disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radioactive material disposal license, and an injection well permit.

(28) **Post-closure order**--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation Recovery Act and solid waste management units.

(29) **Primary industry category**--Any industry category listed in 40 Code of Federal Regulations Part 122, Appendix A, adopted by reference by §305.532 of this title (relating to Adoption of Appendices by Reference).

(30) **Process wastewater**--Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(31) **Processing**--The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for

transport, or amenable to recovery, storage, or volume reduction. The meaning of transfer as used here, does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline, or other means.

(32) **Publicly owned treatment works (POTW)**--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(33) **Radioactive material**--A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(34) **Recommencing discharger**--A source which recommences discharge after terminating operations.

(35) **Regional administrator**--Except when used in conjunction with the words "state director," or when referring to United States Environmental Protection Agency approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Commission on Environmental Quality, or to the Texas Commission on Environmental Quality, consistent with the organization of the agency as set forth in Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state

director” in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 Code of Federal Regulations Part 122, is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(36) **Remediation waste**--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code (TWC), §7.031 (relating to Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under TWC, §7.031; §335.166(5) of this title (relating to Corrective Action Program); or §335.167(c) of this title.

(37) **Schedule of compliance**--A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with the Clean Water Act and regulations.

(38) **Severe property damage**--Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of

natural resources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

(39) **Sewage sludge**--The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

(40) **Site**--The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(41) **Solid waste permit**--A permit issued under Texas Health and Safety Code, Chapter 361, as amended.

(42) **Storage**--The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere.

(43) **Texas pollutant discharge elimination system (TPDES)**--The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under Clean Water Act, §§307, 318, 402, and 405; Texas Water Code; and Texas Administrative Code regulations.

(44) **Toxic pollutant**--Any pollutant listed as toxic under Clean Water Act, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing Clean Water Act, §405(d).

(45) **Treatment works treating domestic sewage**--A publicly owned treatment works or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

(46) **Variance**--Any mechanism or provision under Clean Water Act, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act or this title.

(47) **Wastewater discharge permit**--A permit issued under Texas Water Code, Chapter 26 or under Texas Water Code, Chapters 26 and 32.

(48) **Wetlands**--Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

§305.41, §305.45

STATUTORY AUTHORITY

The amendments are 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 considered 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 by HB 2651, §2.

The adopted 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.

§305.41. Applicability.

The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under Texas Water Code (TWC), Chapters 26 - 28 and 32, and Texas Health and Safety Code (THSC), Chapters 361 and 401. The sections of this subchapter also apply to post-closure orders issued under the authority of THSC, §361.082 and TWC, §7.031.

§305.45. Contents of Application for Permit.

(a) Forms for permit applications will be made available by the executive director. Each application for permit must include the following:

- (1) the name, mailing address, and location of the facility for which the application is submitted;
- (2) the ownership status as federal, state, private, public, or other entity;
- (3) the applicant's name, mailing address, and telephone number;

(4) a brief description of the nature of the business;

(5) the activities conducted by the applicant which require a permit;

(6) a topographic map, ownership map, county highway map, or a map prepared by a registered professional engineer or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the map area;

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped, and so forth;

(C) the location of any waste disposal activities conducted on the tract not included in the application;

(D) the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity; and

(E) such other information that reasonably may be requested by the executive director;

(7) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management Program under the Texas Solid Waste Disposal Act;

(B) Underground Injection Control Program under the Texas Injection Well Act;

(C) National Pollutant Discharge Elimination System Program under the Clean Water Act and Waste Discharge Program under Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration Program under the Federal Clean Air Act (FCAA);

(E) Nonattainment Program under the FCAA;

(F) national emission standards for hazardous air pollutants preconstruction approval under the FCAA;

(G) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) dredge or fill permits under the FCAA;

(I) licenses under the Texas Radiation Control Act;

(J) subsurface area drip dispersal system permits under Texas Water Code, Chapter 32; and

(K) other environmental permits; and

(8) a supplementary technical report submitted in connection with an application. The report shall be prepared either by a Texas licensed professional engineer, a licensed professional geoscientist, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report must include the following:

(A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;

(B) for each outfall, injection well, place of deposit, or place of disposal:

(i) the volume and rate of disposal of the defined waste or of fluid injection, including appropriate averages, the maximum rates of disposal or injection over representative periods of time, and detailed information regarding patterns of disposal or injection; and

(ii) the physical, chemical, and radiological properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radiological properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved; and

(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order), §305.48 of this title (relating to Additional Contents for

Applications for Wastewater Discharge Permits), §305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses), §336.207 of this title (relating to General Requirements for Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Application), and Chapter 330, Subchapter E of this title (relating to Permit Procedures).

(b) Only one application needs to be filed for each geographical location in which waste is or will be disposed of or discharged from, even though there may be more than one outfall, place of deposit, or other place of disposal covered in the application.

SUBCHAPTER F: PERMIT CHARACTERISTICS AND CONDITIONS

§§305.121, 305.123, 305.125, 305.127

STATUTORY AUTHORITY

The amendments are 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 considered 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 by HB 2651, §2.

The adopted 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.

§305.121. Applicability.

The provisions of this subchapter establish the characteristics and standards for permits issued for injection wells including subsurface area drip dispersal systems, waste discharge, radioactive material disposal, and solid waste management, including sewage sludge.

§305.123. Reservation in Granting Permit.

Every permit is subject to further orders and rules of the commission. In accordance with the procedures for amendments and orders, the commission may incorporate into permits already granted any condition, restriction, limitation, or provision reasonably necessary for the administration and enforcement of Texas Water Code, Chapters 26 - 28 and 32, and Texas Health and Safety Code, Chapters 361 and 401.

§305.125. Standard Permit Conditions.

Conditions applicable to all permits issued under this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are as follows.

(1) The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued and is

grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

(2) The permittee must apply for an amendment or renewal before the expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity terminates upon the effective denial of said application.

(3) It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions. For Underground Injection Control permits proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit conditions.

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit, and copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director before physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A) Such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission shall also be provided within five days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(B) The following must be reported within 24 hours under this paragraph:

(i) any unanticipated bypass which exceeds any effluent limitation in a Texas Pollutant Discharge Elimination System permit; and

(ii) violation of a maximum daily discharge limitation for any pollutants listed in a Texas Pollutant Discharge Elimination System permit to be reported within 24 hours.

(C) Holders of radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules) shall report noncompliances/incidents to the executive director according to the requirements of §336.335 of this title (relating to Reporting Requirements for Incidents).

(10) Inspection and entry shall be allowed under Texas Water Code, Chapters 26 - 28 and 32, Texas Health and Safety Code, §§361.032, 361.033, 361.037, and 401.063, and 40 Code of Federal Regulations (CFR) §122.41(i). The statement in Texas Water Code, §26.014, that commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

(11) Monitoring and reporting requirements are as follows.

(A) Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

(B) Except as otherwise required by Chapter 336 of this title or for records of monitoring information required by a permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, application, or certification. This period shall be extended at the request of the executive director.

(C) Records of monitoring activities shall include:

- (i) date, time, and place of sample or measurement;
- (ii) identity of individual who collected the sample or made the measurement;
- (iii) date of analysis;

(iv) identity of the individual and laboratory who performed the analysis;

(v) the technique or method of analysis; and

(vi) the results of the analysis or measurement.

(12) Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly shall be reported to the executive director as promptly as possible.

(13) A permit may be transferred only according to the provisions of §305.64 of this title (relating to Transfer of Permits).

(14) All reports and other information requested by the executive director shall be signed by the person and in the manner required by §305.128 of this title (relating to Signatories to Reports).

(15) A permit may be amended, suspended and reissued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(16) A permit does not convey any property rights of any sort, or any exclusive privilege.

(17) Monitoring results shall be provided at the intervals specified in the permit.

(18) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

(19) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application, or in any report to the executive director, it shall promptly submit such facts or information.

(20) The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code, §§26.136, 26.212, and 26.213 for violations including, but not limited to, the following:

(A) negligently or knowingly violating Clean Water Act (CWA), §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, §402, or any requirement imposed in a pretreatment program approved under CWA, §402(a)(3) or (b)(8);

(B) falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under a permit; or

(C) knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.

(21) For hazardous waste management facility permits, the executive director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR §124.33(b), as amended December 11, 1995, in the *Federal Register* (60 FR 63417). The information repository will be governed by the provisions in 40 CFR §124.33(c) - (f), as amended December 11, 1995, in the *Federal Register* (60 FR 63417).

(22) Notice of bankruptcy.

(A) Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:

(i) the permittee;

(ii) an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or

(iii) an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.

(B) This notification must indicate:

(i) the name of the permittee;

(ii) the permit number(s);

(iii) the bankruptcy court in which the petition for bankruptcy was filed; and

(iv) the date of filing of the petition.

§305.127. Conditions to be Determined for Individual Permits.

Conditions to be determined on a case-by-case basis according to the criteria specified in this section, and when applicable, incorporated into the permit expressly or by reference, are listed in the following paragraphs.

(1) Duration.

(A) Injection well permits.

(i) Permits for Class I and Class V wells shall be for a fixed term not to exceed ten years.

(ii) Permits for Class III wells or projects may be for the life of the well or project, and shall be reviewed at least once every five years.

(B) Solid waste permits.

(i) Hazardous waste permits shall be for a fixed term not to exceed ten years.

(ii) Other solid waste permits may be for the life of the project.

(iii) Each permit for a land disposal facility used to manage hazardous waste shall be reviewed by the executive director five years from the date of permit issuance or reissuance and shall be modified as necessary by the commission, as provided in §305.62(e) of this title (relating to Amendment).

(C) Waste discharge permits.

(i) Texas pollutant discharge elimination system (TPDES) permits, including sludge permits, shall be for a term not to exceed five years.

(ii) All other permits shall be as follows.

(I) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be for a term not to exceed five years.

(II) Confined animal feeding operation permits may be for the life of the project.

(III) Other wastewater permits, including permits which regulate land disposal systems shall be for a term not to exceed ten years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be for a term not to exceed ten years.

(E) Term of permit. The term of a permit shall not be extended by amendment beyond the maximum duration specified in this section.

(F) Duration of permit. The executive director may recommend that a permit be issued and the commission may issue any permit, for a duration less than the full allowable term under this section.

(G) Radioactive material licenses.

(i) A license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be issued for an initial term of 15 years from the date of issuance. After the initial 15 years, the commission may renew the license for one or more terms of ten years. The authority to dispose of waste expires on the date stated in the license except as provided in §336.718(a) of this title (relating to Application for Renewal or Closure).

(ii) Other radioactive material licenses shall be for a fixed term not to exceed ten years.

(2) Monitoring, recording, and reporting.

(A) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods shall be specified by the commission as appropriate.

(B) The type, intervals, and frequency of monitoring shall be set to yield data representative of the monitored activity, at a minimum as specified in commission rules for monitoring and reporting.

(C) Other requirements for monitoring and reporting shall be set at a minimum as specified in commission rules for monitoring and reporting.

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate law, and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit. For TPDES permits the schedule of compliance shall require compliance not later than authorized by Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

(C) Reporting requirements for each schedule of compliance shall be specified by the commission as appropriate. Reports of progress and completion shall be submitted to the executive director no later than 14 days after each schedule date.

(D) For TPDES permits the following additional conditions apply.

(i) The first TPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction, but less than three years before commencement of the relevant discharge.

(ii) For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(iii) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the permit schedule shall set forth interim requirements and the dates for their achievement.

(E) For underground injection control permits, the time for compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit. Except as provided in clause (iii)(I)(-b-) of this subparagraph, if a permit establishes a

schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(iii) A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows.

(I) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(-a-) the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(-b-) the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(II) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the cessation date, the permit shall contain a schedule leading to cessation of activities which will ensure timely compliance with applicable requirements.

(III) If the permittee is undecided whether to cease conducting regulated activities, the executive director may issue or modify a permit to contain two schedules as follows:

(-a-) both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(-b-) one schedule shall lead to timely compliance with applicable requirements;

(-c-) the second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements; and

(-d-) each permit containing two schedules shall include a requirement that after the permittee has made a final decision under item (-a-) of this subclause, it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to cessation if the decision is to cease conducting regulated activities.

(IV) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the executive director, such as a resolution of the board of directors of a corporation.

(4) Requirements for individual programs.

(A) Requirements to provide for and assure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in permits on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment. Reference is made to Chapter 330 of this title (relating to Municipal Solid Waste) for municipal solid waste facility standards, to Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 335 of this title (relating to Industrial Solid Waste and

Municipal Hazardous Waste) for solid waste facility standards, to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards, to Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting) for waste discharge standards, to Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards, and to Chapter 222 of this title (relating to Subsurface Area Drip Dispersal Systems) for subsurface area drip dispersal systems standards.

(B) Any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of an application for a permit or prior to the amendment, modification, or suspension and reissuance of a permit shall be included in the permit.

(C) New, amended, modified, or renewed permits shall incorporate any applicable requirements contained in Chapter 331 of this title for injection well standards, Chapter 335 of this title for solid waste facility standards, Chapter 336 of this title, Chapter 309 of this title for waste discharge standards, Chapter 329 of this title for drilled or mined shaft standards, and Chapter 222 of this title for subsurface area drip dispersal systems standards.

(5) Wastes authorized.

(A) Injection well permits. Each category of waste to be disposed of by injection well shall be authorized in the permit.

(B) Drilled or mined shaft permits. Each category of waste to be handled, stored, processed, or disposed of in a drilled or mined shaft, or in associated surface facilities shall be authorized in the permit.

(C) Unauthorized wastes. Wastes not authorized by permit are prohibited from being transported to, stored, and processed or disposed of in a permitted facility.

(6) Permit conditions. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or requirements must be given in the permit.