

The Texas Commission on Environmental Quality (commission) proposes amendments to §§305.1, 305.2, 305.41, 305.45, 305.121, 305.123, 305.125, and 305.127.

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 to amend Chapter 305 to clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32.

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 281, Applications Processing; 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 305.1, Scope and Applicability

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

Section 305.2, Definitions

Proposed §305.2(a) is amended by adding TWC, §32.002 to the list of statutes from which Chapter 305, Subchapter B has its authority. This amendment also proposes to add permits that are permitted under TWC, Chapters 26 and 32 to the definition of wastewater discharge permits, which is §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

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

Section 305.45, Contents of Application for Permit

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

Section 305.121, Applicability

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

Section 305.123, Reservation in Granting Permit

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

Section 305.125, Standard Permit Conditions

Proposed §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

Proposed §305.127(4)(A) and (C) is amended by adding 30 TAC Chapter 222, Subsurface Area Drip Dispersal Systems, to the list of chapters specified in 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. Although subsurface area drip dispersal systems are subject to standards and requirements for applications, permits, and actions under current waste disposal rules, HB 2651

amended the TWC by adding Chapter 32. The commission proposes to amend Chapter 305 to clarify the applicability of Chapter 305 to subsurface area drip dispersal systems, as defined by TWC, Chapter 32.

The proposed rulemaking makes it clear that the definition of wastewater discharge permits includes permits for subsurface area drip dispersal systems and that the requirements of Chapter 222 will apply to such permits. These proposed amendments to Chapter 305 will not change the permitting requirements for subsurface area drip dispersal systems, and owners or operators of subsurface area drip dispersal systems will not experience any fiscal implications as a result of the proposed rulemaking.

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 rulemaking makes it clear that the definition of wastewater discharge permits includes permits for subsurface area drip dispersal systems and that the requirements of Chapter 222 will apply to such permits. These proposed amendments to Chapter 305 will not change the permitting requirements for subsurface area drip dispersal systems, and owners or operators of subsurface area drip dispersal systems will not experience any fiscal implications as a result of the proposed rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that may own or operate subsurface area drip dispersal systems. The proposed amendments to Chapter 305 will not change the permitting requirements for subsurface area drip dispersal systems, and owners or operators of subsurface area drip dispersal systems will not experience any fiscal implications as a result of the proposed rulemaking.

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. 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 proposed 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 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 clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32. 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 305 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 305 to clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32. The proposed 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 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 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.

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) 239-4552.

SUBCHAPTER A: GENERAL PROVISIONS

§305.1, §305.2

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 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 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.

§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 [the] Texas Water Code, Chapters 26 - 28 and 32, [26, 27, and 28] and [the] 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 [Commercial Livestock and Poultry Production Operations]);

(B) - (E) (No change.)

(2) The TPDES permit program also applies to owners or operators of any treatment works treating domestic sewage, unless all requirements implementing [the] 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 [the] 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 [the] 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, [and] 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) - (6) (No change.)

(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 [For 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 [For 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) - (9)

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

(11) - (13) (No change.)

(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) - (20) (No change.)

(21) **National Pollutant Discharge Elimination System [(NPDES)]**--The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and

enforcing pretreatment requirements, under Clean Water Act [CWA], §§307, 402, 318, and 405. The term includes an approved program.

(22) (No change.)

(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 [CWA], §306; or

(B) after proposal of standards of performance in accordance with Clean Water Act [CWA], §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) - (27) (No change.)

(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 [RCRA] 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 [§305.532(d)] of this title (relating to Adoption of Appendices by Reference).

(30) - (34) (No change.)

(35) **Regional administrator**--Except when used in conjunction with the words “state director,” or when referring to United States Environmental Protection Agency [EPA] 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) (No change.)

(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 [CWA] and regulations.

(38) - (42) (No change.)

(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 [CWA], §§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 [CWA], §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing Clean Water Act [CWA], §405(d).

(45) (No change.)

(46) **Variance**--Any mechanism or provision under Clean Water Act [CWA], §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 [CWA] 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) (No change.)

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

§305.41, §305.45

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 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 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.

§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) - (5) (No change.)

(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) - (C) (No change.)

(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) (No change.)

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

(A) (No change.)

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

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

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

(E) (No change.)

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

(G) - (H) (No change.)

(I) licenses under the Texas Radiation Control Act [TRCA]; [and]

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

(K) [(J)] 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) (No change.)

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

(i) (No change.)

(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 [Waste] Discharge Permits), §305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses [License]), §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) (No change.)

SUBCHAPTER F: PERMIT CHARACTERISTICS AND CONDITIONS

§§305.121, 305.123, 305.125, 305.127

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 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 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.

§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, [26, 27, and 28] and [the] 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) - (8) (No change.)

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

(A) (No change.)

(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 [TPDES] permit; and [.]

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

(C) (No change.)

(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~~ [§§361.032 - 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) - (B) (No change.)

(C) Records of monitoring activities shall include:

(i) date, time, and place of sample or measurement;

(ii) - (vi) (No change.)

(12) (No change.)

(13) A permit may be transferred only according to the provisions of §305.64 of this title (relating to Transfer of Permits) [and §305.97 of this title (relating to Action on Application for Transfer)].

(14) - (19) (No change.)

(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) [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) - (C) (No change.)

(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 [through] December 11, 1995, [at] in the Federal Register (60 FR [FedReg] 63417). The information repository will be governed by the provisions in 40 CFR §124.33(c) - (f), as amended [through] December 11, 1995, [at] in the Federal Register (60 FR [FedReg] 63417).

(22) (No change.)

§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) - (B) (No change.)

(C) Waste discharge permits.

(i) (No change.)

(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) - (G) (No change.)

(2) (No change.)

(3) Schedule of compliance.

(A) - (C) (No change.)

(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) - (iii) (No change.)

(E) For underground injection control [UIC] 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) - (iii) (No change.)

(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, [and] 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) (No change.)

(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, [and] 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) - (6) (No change.)