

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §50.31 and §50.131.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 1998, the commission entered into a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency (EPA) related to the Texas Pollutant Discharge Elimination System (TPDES) program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the United States (U.S.) under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. This rulemaking removes references to concentrated animal feeding operations under Chapter 321 that are obsolete and no longer applicable.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 321, Control of Certain Activities by Rule and 30 TAC Chapter 305, Consolidated Permits.

SECTION BY SECTION DISCUSSION

The commission proposes amendments to §50.31(c)(9) to remove the references to concentrated animal feeding operations (CAFOS) under Chapter 321, Subchapter K from the list of applications that are subject to §50.31. Section 50.31(c)(10) has been renumbered accordingly.

The commission proposes amendments to §50.131(c)(7) to remove the references to concentrated animal feeding operations (CAFOS) under Chapter 321, Subchapter K from the list of things excluded from coverage under §50.131. Section 50.131(c)(8) has been renumbered accordingly.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has 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. The proposed rules would eliminate rules governing wastewater discharges that have been replaced by general permits authorized under the Texas Pollutant Discharge Elimination System (TPDES).

The discharge of wastewater from certain activities into or adjacent to water in the state is authorized by 30 Texas Administrative Code (TAC), Chapter 321. In 1998, the commission entered into a Memorandum of Understanding (MOU) with the EPA related to the TPDES program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the U.S. under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. As a result, some subchapters of Chapter 321 are now obsolete and/or do not meet the federal requirements for discharges into waters of the United States as required by TPDES. This rulemaking repeals the subchapters that have been replaced by general permits and discharges governed by TPDES individual permits. In addition, this rulemaking amends parts of 30 TAC Chapter 50, Action on Applications and other Authorizations and 30 TAC Chapter 305, Consolidated Permits, as needed to coincide with the repeal of these obsolete subchapters.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes in the proposed rules will be the elimination of

extraneous rules that are no longer valid.

No fiscal implications are anticipated for regulated entities since they will still be required to comply with requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses must still comply with the requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has 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 amendments are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment,

or the public health and safety of the state or a sector of the state.

The proposed actions are amendments to remove obsolete references to concentrated animal feeding operations in Chapter 321. Chapter 321, Subchapters G, H, J, K, M, and O are specified for repeal because they are inactive, obsolete, and have been replaced by TPDES general permits. Therefore, it is not anticipated that the proposed amendments will 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 commission concludes that these proposed amendments do not meet the definition of a “major environmental rule.”

Furthermore, even if the proposed amendments did meet the definition of a major environmental rule, the proposed amendments are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 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 §50.31 or §50.131 will not cause any of the results listed in §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory

impact analysis. Because the proposed amendments do not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed amendments and performed an assessment of whether the proposed amendments constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to remove references to inactive and obsolete sections that have been replaced by general permits. The proposed amendments would substantially advance this stated purpose. Promulgation and enforcement of these proposed amendments would be neither a statutory nor a constitutional taking of private real property because the proposed amendments do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed amendments would eliminate an unnecessary reference to an obsolete rule that is being repealed. Because the amendments do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the amendment.

Therefore, these amendments will not constitute a taking under Texas Government Code, Chapter 2007.

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, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the proposed amendments, which are procedural mechanisms for removing references to subchapters no longer applicable, are consistent with CMP goals and policies and will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

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

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lisa Martin, Texas Register Team, Texas Commission on Environmental Quality, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-051-321-PR. The comment period closes June 25, 2007. For further information, please contact Yvonna Pierce, Wastewater Permits Section, (512) 239-6922.

SUBCHAPTER C: ACTION BY EXECUTIVE DIRECTOR

§50.31

STATUTORY AUTHORITY

The rulemaking is proposed under Texas Water Code (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 to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; and §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.

The proposed amendments implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

§50.31. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to any application that is declared administratively complete before September 1, 1999. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

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

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

(4) certificates of convenience and necessity;

(5) district matters under Chapters 49 - 66 of the Texas Water Code;

(6) districts' proposed impact fees, charges, assessments, or contributions approvable under Local Government Code, Chapter 395;

(7) extensions of time to commence or complete construction;

(8) industrial and hazardous waste permits;

(9) municipal solid waste permits;

(10) on-site waste water disposal system permits;

(11) radioactive material permits or licenses;

(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;

(13) underground injection control permits;

(14) water rights permits;

(15) wastewater permits;

(16) weather modification measures permits;

(17) driller licenses under Texas Water Code, Chapter 32;

(18) pump installer licenses under Texas Water Code, Chapter 33;

(19) irrigator or installer registrations under Texas Water Code, Chapter 34;

(20) municipal management district matters under Local Government Code, Chapter 375;

(21) determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency; and

(22) certification of an organization that is installing plumbing in a "self-help" project, in a county any part of which is within 50 miles of an international border.

(c) This subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality permits under Chapter 122 of this title (relating to Federal Operating Permits);

(3) air quality standard exemptions;

(4) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(5) district matters under Texas Water Code, Chapters 49 - 66, as follows:

(A) an appeal under Texas Water Code, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under Texas Water Code, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under Texas Water Code, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under Texas Water Code, §54.239, of a board decision involving the cost, purchase, or use of facilities;

(E) an application under Texas Water Code, §49.351 for approval of a fire department or fire-fighting services plan; or

(F) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(6) emergency or temporary orders or temporary authorizations;

(7) actions of the executive director under Chapters 101, 111, 112, 113, 114, 115, 117, 118, and 119 of this title (relating to General Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; Control of Air Pollution Episodes; and Control of Air Pollution From Carbon Monoxide);

(8) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(9) [concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);]

[(10)] an application for creation of a municipal management district under Local Government Code, Chapter 375₂ [; and]

(d) Notwithstanding subsections (b) or (c) of this section, when the rules governing a particular

type of application allow a motion for reconsideration, §50.39(b) - (f) of this title (relating to Motion for Reconsideration) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

SUBCHAPTER G: ACTION BY THE EXECUTIVE DIRECTOR

§50.131

STATUTORY AUTHORITY

The rulemaking is proposed under Texas Water Code (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 to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; and §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.

The proposed amendments implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

§50.131. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission. This subchapter does not affect the executive director's authority to act on an application where that authority is delegated elsewhere.

(b) This subchapter applies to applications that are administratively complete on or after September 1, 1999 to certifications of Water Quality Management Plan (WQMP) updates. Applications that are administratively complete before September 1, 1999 are subject to Subchapter B of this chapter. Except as provided by subsection (c) of this section, this subchapter applies to:

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

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

(4) certificates of convenience and necessity;

(5) district matters under Chapters 49 - 66 of the Texas Water Code;

(6) districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(7) extensions of time to commence or complete construction;

(8) industrial and hazardous waste permits;

(9) municipal solid waste permits;

(10) on-site wastewater disposal system permits;

(11) radioactive waste or radioactive material permits or licenses;

(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11,
12, or 13;

(13) underground injection control permits;

(14) water rights permits;

(15) wastewater permits;

(16) weather modification measures permits;

(17) driller licenses under Texas Water Code, Chapter 32;

(18) pump installer licenses under Texas Water Code, Chapter 33;

(19) irrigator or installer registrations under Texas Water Code, Chapter 34; and

(20) municipal management district matters under Texas Local Government Code, Chapter 375.

(c) In addition to those things excluded from coverage under this chapter in §50.102 of this title (relating to Applicability), this subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Exemptions from Permitting) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(3) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(4) district matters under Texas Water Code, Chapters 49 - 66, as follows:

(A) an appeal under Texas Water Code, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under Texas Water Code, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under Texas Water Code, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under Texas Water Code, §54.239, of a board decision involving the cost, purchase, or use of facilities; or

(E) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(5) actions of the executive director under Chapters 101, 111, 112, 113, 114, 115, 117, 118, and 119 of this title (relating to General Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; Control of Air Pollution Episodes; and Control of Air Pollution From Carbon Monoxide);

(6) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(7) [concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations); and]

[(8)] an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Notwithstanding subsections (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b) - (f) of this title (relating to Motion to Overturn Executive Director's Decision) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.