

The Texas Commission on Environmental Quality (TCEQ, agency or commission) adopts an amendment to §305.72 *without changes* to the proposed text as published in the March 14, 2008 issue of the *Texas Register* (33 *TexReg* 2230) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

This rulemaking amends §305.72 in order to implement House Bill (HB) 2654, 80th Legislature, 2007, and its amendments to Texas Water Code (TWC), §27.021. HB 2654 removed the requirement for a contested case hearing under the provisions of TWC, §27.018 for Class I injection wells that dispose of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals. HB 2654 does not exclude Class I injection wells for the disposal of any other waste streams from the requirement to provide an opportunity for a contested case hearing.

The purpose of this rulemaking is to subject permit amendments to the opportunity for a contested case hearing when the amendment is to a Class I injection well permit authorizing only disposal of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals and the amendment requests authority to dispose of other types of wastes. The rulemaking specifies that a permit for a Class I injection well used only for the disposal of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals may not be administratively modified, under §305.72(b)(4), in order to add waste streams disposed in the Class I injection well other than nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals. A permit change to dispose of other types of wastes will require a major amendment under §305.62(c)(1)(A), which provides an opportunity for a contested case hearing.

This rulemaking ensures that the hearing requirements of TWC, §27.018 for conventional Class I injection well permits will be retained after a permit is issued under the provisions of HB 2654.

Amendments to 30 TAC Chapters 50, 55 and 331 are also adopted in this issue of the *Texas Register* to implement HB 2654 and to incorporate other changes to facilitate disposal of nonhazardous desalination brine and nonhazardous drinking water treatment residuals.

SECTION DISCUSSION

§305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee.

This rulemaking amends §305.72(b)(4) to specify that the kind of permit modification allowed to a conventional Class I injection well permit by this paragraph shall not include modifying a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals to a conventional Class I injection well permit. This amendment effectively precludes a permit holder for this type of Class I injection well (used only for the disposal of nonhazardous brine produced by a desalination operation or of nonhazardous drinking water treatment residuals) from adding other types of waste streams without providing the opportunity for a contested case hearing.

The commission adopts an administrative change in §305.72(b)(4) to correct the spelling of "judgement" to "judgment."

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined by 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. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not intended to reduce risks to human health from environmental exposure, nor does it 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 intent of this rulemaking is to implement HB 2654, passed during the 80th Legislature, 2007, and to revise criteria for authorizing Class I nonhazardous wells injecting desalination concentrate and other water treatment residuals from public water systems so that the state's rules are no more stringent than federal Class I nonhazardous injection well regulations. The specific intent of the amendment to §305.27 is to protect the opportunity for a contested case hearing when a permittee proposes to add a type of waste other than desalination concentrate or drinking water treatment residuals to those permitted to be injected to its Class I injection well and the permit was issued without the opportunity for a contested case hearing. The rule substantially advances this purpose by providing that a minor modification shall not be used to add a waste stream other than desalination concentrate or drinking water treatment residuals to the permit of a Class I injection well issued without the opportunity for a contested case hearing.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the amendment would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the amendment will be significant with respect to the economy; therefore, the amendment will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, this rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, 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. This rulemaking does not meet any of these four applicability requirements because this rulemaking does not exceed any standard set by federal law but rather amends the rules so that they are no more stringent or restrictive than the federal regulations. The adopted rule does not exceed the requirements of state law under the TWC, Chapter 27. Further, the adopted rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program. Finally, the rule is not adopted solely under the general powers of the agency, but rather specifically under TWC, §27.023(m), which allows the commission to adopt rules to implement the general permit authorizing use of a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water

treatment residuals and TWC, §27.109, which authorizes the commission to adopt rules to implement TWC, Chapter 27 (regarding Injection Wells), as well as the other general powers of the agency.

The commission invited public comment regarding the regulatory impact analysis determination during the public comment period. No comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the amendment to Chapter 305 and performed a preliminary assessment of whether the amendment would constitute a taking under Texas Government Code, Chapter 2007. The primary purposes of the amendment are to implement HB 2654 and correct a misspelling identified during review of the rule language. The amendment would substantially advance these purposes by amending §305.72 to ensure that additional waste streams shall not be added as minor modifications to a Class I injection well permitted in such a manner that no opportunity exists for a contested case hearing, and by changing the spelling of "judgement" to "judgment."

Promulgation and enforcement of the amendment would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rule because the amendment neither relates to, nor has any impact on the use or enjoyment of private real property, and there would be no reduction in property value as a result of this rule. Therefore, the adopted rule would not constitute a taking under Texas Government Code, Chapter 2007.

The commission has no reasonable alternative that could accomplish the specific purpose of ensuring that additional waste streams are not added as minor modifications to a Class I injection well permitted in such

a manner that no opportunity exists for a contested case hearing. Without the amendment, a Class I injection well for disposal of only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals could be permitted under an individual permit or other authorization not requiring a contested case hearing, then add another waste stream as a minor modification without the public ever having an opportunity to contest the additional waste stream through the contested case hearing process.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The proposal was published in the March 14, 2008 issue of the *Texas Register* (33 *TexReg* 2230). The commission held a public hearing in Austin on April 8, 2008. The comment period closed on April 14, 2008. No comments pertaining to the proposed amendments to Chapter 305 were received.

**SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS,
REVOCATION, AND SUSPENSION OF PERMITS**

§305.72

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The amendment implements TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee.

- (a) This section applies only to Underground Injection Control permits.

(b) With the permittee's consent, the executive director may modify administratively a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures and notice requirements of this chapter. Any change to the permit not processed as a minor modification under this section must be made for cause and in compliance with appropriate public notice requirements. Minor modifications may only:

(1) correct typographical errors;

(2) require more frequent monitoring or reporting by the permittee;

(3) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) change quantities or types of fluids injected which are within the capacity of the facility as permitted and in the judgment of the executive director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification, provided however, that this provision shall not be used to add a waste stream other than nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals to the permit of a Class I injection well issued without the opportunity for a contested case hearing;

(5) change construction requirements, provided that the alterations comply with the requirements of Chapter 331 of this title (relating to Underground Injection Control); or

(6) amend a plugging and abandonment plan which has been updated under §305.154(7) of this title (relating to Standards).