

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§305.29, 305.30, 305.62, 305.125, 305.127, 305.151, 305.152, and 305.154, and new §305.72 concerning Consolidated Permits. The purposes of these proposed changes are: to maintain consistency with federal regulations applicable to the state Underground Injection Control (UIC) Program, to maintain state primacy for the UIC Program, to clarify existing rules and make editorial changes, and to provide more flexibility in modifying permits.

Proposed §305.29(a), (b), (c) and (d) contain amendments to make minor editorial changes. Proposed §305.29(d) also contains an amendment, per 40 Code of Federal Regulations (CFR) §144.34(b), to limit the duration of UIC emergency orders to periods no longer than needed to prevent the hazard.

Proposed §305.30(a), (b), (c), (d), and (f) contain amendments to make minor editorial changes. Proposed §305.30(e) contains amendments to make minor editorial changes and §305.30(e)(5) is being added to incorporate, per 40 CFR §144.34(b), a limit on the duration of UIC emergency orders to periods no longer than necessary to prevent the hazard.

Proposed §305.62(a), (b), (c), and (d) contain amendments to make editorial changes. Section 305.62(d)(6) is also being amended, per 40 CFR §144.39(a)(2), to add to the present list of good causes for amendments, one for UIC area permits, i.e., any information that cumulative effects on the environment are unacceptable.

Proposed new §305.72 is being added, per 40 CFR §144.41, to allow for minor modifications to UIC permits.

Proposed §305.125 contains amendments to make minor editorial changes throughout the section. Section 305.125(5) contains an addition, under 40 CFR §144.51(e), to elaborate on proper operation and maintenance.

Proposed §305.127 contains amendments to make editorial changes throughout the section. Under 40 CFR §144.36(a), §305.127(1)(A)(i) is amended to also make term limits applicable to Class V well permits. A new §305.127(3)(e) is added, per 40 CFR §§144.53, to establish interim requirements schedules for compliance.

Proposed §305.151 contains amendments, per 40 CFR §144.51(o), to make standard permit conditions in Chapter 305, Subchapter H (relating to Additional Conditions for Injection Well Permits) applicable to Class V well permits.

Proposed §305.152 contains an amendment at the beginning to add that corrective action requirements are limited to Class I and III wells only; as a result, the subsections are renumbered as paragraphs. Section 305.152(1), (4), and (6) are being amended to make editorial changes. Section 305.152(3) is being amended, per 40 CFR §144.55(b)(1), to make the requirement for a corrective action compliance schedule in the permit for an existing well mandatory.

Proposed §305.154(a), (a)(2), (3), and (9) renumbered to (8) contain amendments to make editorial changes. Section 305.154(a)(4) is amended, per 40 CFR §144.51(m), regarding requirements prior to commencing injection. Section 305.154(a)(6) is amended, per 40 CFR §§ 124.6(d)(3) and 144.54, to elaborate on monitoring requirements. Section 305.154(a)(7) is amended, per 40 CFR §144.52(a)(6), to expand on well plugging and abandonment after cessation of operations. New §305.154(a)(9) is added to incorporate financial assurance requirements, per 40 CFR §144.52(a)(7). New §305.154(a)(11) is added to incorporate liability insurance requirements, per Texas Water Code §27.051(d)(3). New §305.154(b) is added to incorporate area permit requirements, per 40 CFR §144.33(b) and (c).

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect there are no significant fiscal implications anticipated for state or local governments as a result of enforcement and administration of the sections.

Mr. Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be clarification of existing regulations relating to underground injection control and consistency between state and federal regulations. Compliance with the proposed state regulations will result in no costs to affected parties that would not otherwise result from compliance with the existing federal regulation proposed for incorporation. There are no additional costs anticipated for any person required to comply with the sections as proposed.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to incorporate federal language into current state regulations so that the Underground Injection Control (UIC) program can maintain compliance with the federal program. The rules will substantially advance this specific purpose by allowing the commission to maintain primacy, and thus state control, for the UIC program. Promulgation and enforcement of these rule amendments will not create a burden on private real property.

These rule amendments are administrative in nature and do not impose any additional or substantial burden on private real property. Underground Injection Control (UIC) facilities are already subject to this federal requirement, this amendment merely incorporates the federal requirement into the state UIC program. Also, because this rulemaking is reasonably taken to fulfill an obligation mandated by Federal Law, this rule amendment is excepted from the Private Real Property Preservation Act pursuant to §2007.3(b)(4) of Texas Government Code (the "Act").

Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received within 30 days following the date of this publication and should reference Rule Log No. 96140-281-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Kathy Vail at (512) 239-6637.

The amendments and new rule are proposed under the Texas Water Code, §§5.103 and 5.105, and 27.019, which authorizes the commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §§361.017 and 361.024 (Vernon 1992), which further authorizes the commission to promulgate rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

The proposed amendments implement Texas Water Code §27.019.

**SUBCHAPTER B: EMERGENCY ORDERS, TEMPORARY ORDERS,
AND EXECUTIVE DIRECTOR AUTHORIZATIONS**

§305.29, §305.30

The amendments are proposed under the Texas Water Code, §§ 5.103, 5.105, and 27.019, which authorizes the commission to propose rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §§361.017 and 361.024, which further authorizes the commission to propose rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

The proposed amendments implement Texas Water Code §27.019.

§305.29. Emergency Orders for Solid Waste Activities.

(a) The commission may issue a [an] mandatory or prohibitory emergency order[, either mandatory or prohibitory in nature,] regarding any activity of solid waste management within its jurisdiction, whether the [such] activity is covered by a permit or not, if the commission determines that an emergency exists requiring immediate action to protect [the] public health and safety or the environment. The order may be issued without notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.

(b) If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing before [to be held by] the commission [in accordance with commission rules, so as] to affirm, modify, or set aside the [emergency] order.

(c) The requirements of Health and Safety Code §361.088 [the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)], relating to [public] notice do not apply to a hearing to affirm, modify or set aside an emergency order issued under this section, but such general notice of the hearing shall be given in accordance with commission rules.

(d) An [Any] emergency order issued under this section shall not exceed 90 days in duration but may be renewed. For emergency orders affecting UIC permits, the duration may be no longer than required to prevent the hazard.

§305.30. Emergency Actions Concerning Hazardous Waste.

(a) Whenever there is good reason to believe that the storage, processing, or disposal of hazardous waste should be authorized [in order] to alleviate an imminent and substantial endangerment to human health or safety or the environment and if there are no alternative, permitted facilities [that are] reasonably available for the proper management of the waste, the commission, on its own motion or the request of the executive director or any other party, may issue an emergency order authorizing the processing, storage, or disposal of the hazardous waste at a non-permitted facility or at a permitted

facility with no authorization under its permit to receive the hazardous waste in need of immediate management.

(b) A party, other than the executive director, requesting such an emergency order [approving the storage, processing or disposal of hazardous waste], shall file a written request with the executive director setting forth the reason for the request including a description of the imminent and substantial endangerment to human health or safety or the environment, and alternatives investigated.

(c) The executive director shall review the request and may require the requesting party [applicant for an emergency order] to supply additional information as may be reasonably required to assist the commission in making the [necessary] findings set out in subsection (a) of this section.

(d) The executive director shall forward the request [for an emergency order] and the executive director's recommendation, including any proposed emergency order and findings to the commission.

(e) An [Any] emergency order issued by commission under this section:

(1) - (2) (No change.)

(3) may be terminated by the commission at any time without notice and hearing if it determines that termination is appropriate to protect human health or the environment; [and]

(4) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste); and[.]

(5) for UIC permits issued under this section, shall be for no longer duration than required to prevent the hazard.

(f) Public notice shall accompany the emergency order₂[. The notice] shall allow at least 45 days for public comment and shall be given at least 30 days before the hearing on the emergency order. Public notice of the [emergency] order may be given at the same time as public notice and opportunity for comment on the [emergency] order, and the two notices may be combined. If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing before [to be held by] the commission [in accordance with the commission rules, so as] to affirm, modify, or set aside the emergency order. The notice shall include:

(1) - (5) (No change.)

(6) the name and address of the commission (the office granting the [emergency] order).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 1, 1996.

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

§305.62, §305.72

The amendments and new rules are proposed under the Texas Water Code, §§5.103, 5.105, and 27.019, which authorizes the commission to propose rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §§361.017 and 361.024, which further authorizes the commission to propose rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

§305.62. Amendment.

(a) Causes for amendment. Except as provided in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), and in §305.66 of this title (relating to Corrections of Permits), a change in a term, condition, or provision of a permit requires an amendment. The permittee or an affected person may request an amendment [to a permit]. If the permittee requests an amendment, the application shall be processed in accordance with Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.69 of this title (relating to Municipal Solid Waste Permit Modification at the Request of the Permittee). If the permittee requests a modification of a solid waste

permit, the application shall be processed in accordance with §305.69 of this title (relating to Solid Waste Class I Modifications). If an affected person requests an amendment, the [such] request shall be submitted to the executive director for review. If the executive director determines the [such a] request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting such amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that such a request is justified, the amendment will be processed in accordance with subsections (d) and (f) of this section.

(b) Application for amendment. An application for [an] amendment [to a permit] shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in §§305.41-305.53 of this title (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) (No change.)

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of

discharge of injection[, except a minor amendment to an Texas pollutant discharge systems (TPDES) permit which is defined in subparagraph C of this paragraph]. A minor amendment includes any other change to a permit issued under this chapter that will not cause₂ [a potential deterioration of quality of water in the state] nor relax a standard or criterion which may result in₂ a potential deterioration of quality of water in the state. A minor amendment also includes, but is not limited to[, the following]:

(A) - (B) (No change.)

(C) for TPDES permits [only the following changes constitute minor amendments]:

(i) correcting [correct] typographical errors;

[(ii) require more frequent monitoring or reporting by the permittee;]

[(iii) 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;]

[(iv) change a new source construction schedule or delete a point source outfall as follows:]

(ii)(I) changing [change] the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under 40 Code of Federal Regulations (CFR) §122.19;

(iii)(II) deleting [delete] a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

(iv)(v) when the permit becomes final and effective on or after March 9, 1982, conforming [conform] to changes respecting to 40 CFR §§122.41(e), (l), (m)(4)(i)(B) and 122.42(a) issued September 26, 1984; or

(v)(vi) incorporate conditions of a public owned treatment work (POTW) pretreatment program [that has been] approved in accordance with the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution) as enforceable conditions of the POTW's permit.

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order an amendment to a permit and the executive director may request an updated application if necessary. Good cause includes but is not limited to [the following]:

(1) (No change.)

(2) information, not available at the time of permit issuance, is received by the executive director, [and such information] justifying [justifies] amendment of existing permit conditions;

(3) - (5) (No change.)

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) - (h) (No change.)

§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 judgement 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;
- (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).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 1, 1996.

SUBCHAPTER F: PERMIT CHARACTERISTICS AND CONDITIONS

§305.125, §305.127

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 27.019, which authorizes the commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §§361.017 and 361.024 (Vernon 1992), which further authorizes the commission to promulgate rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

The proposed amendments implement Texas Water Code §27.019.

§305.125. Standard Permit Conditions.

[The following] Conditions [conditions are] applicable to all permits issued under [within the scope of] this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are: [.]

(1) The permittee has a duty to comply with all permit conditions [of the permit].

Failure to comply with any permit condition is [constitutes] a violation of the permit and statutes under which it was issued [the Texas Water Code or the Texas Solid Waste Disposal Act, and for Texas pollutant discharge elimination system (TPDES) permits the Clean Water Act,] and is grounds for

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

(2) The permittee must apply for an amendment or renewal before the [prior to] 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 [will terminate] upon the effective denial of said application.

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

(4) (No change.)

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) [which are] installed or used by the permittee to achieve compliance with the permit conditions [of the permit]. For UIC 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 [. The permittee shall also furnish to the executive director, upon request,] copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director before [prior to] 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) (No change.)

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

(A) [Report of] Such [such] information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission [of such information] 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 [anticipated] 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 [shall be included as information which] must be reported within 24 hours under this paragraph.

(i) (No change.)

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

(10) Inspection and entry shall be allowed under [as prescribed in the] Texas Water Code[,] Chapters 26-28, Health and Safety Code §§ 361.032-361.033 and 361.037, [the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §7,] 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) (No change.)

(B) Except for records of monitoring information required by a [this] 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 [may] be extended at the request of the executive director.

(C) Records of monitoring activities shall include [the following]:

(i) - (vi) (No change.)

(12) - (19) (No change.)

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

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

§305.127. Conditions to be Determined for Individual Permits.

Conditions [The following] [conditions are] to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable, [shall be] incorporated into the permit expressly or by reference, are:[.]

(1) Duration.

(A) Injection well permits.

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

(ii) Permits for Class III wells or projects may be [effective] 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 [effective] for a fixed term not to exceed ten years.

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

(iii) (No change.)

(C) Waste discharge permits.

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

(ii) All other permits shall be [effective] as follows:

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

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

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

(E) (No change.)

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

(2) (No change.)

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate law [act], 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) - (C) (No change.)

(D) For TPDES permits the following additional conditions [for schedules of compliance] apply:

(i) - (iii) (No change.)

(E) For 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) 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;

(-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) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 1, 1996.

SUBCHAPTER H: ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS

§§305.151-305.152, 305.154

The amendments are proposed under the Texas Water Code, §§ 5.103, 5.105, and 27.019, which authorizes the commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §§361.017 and 361.024, which further authorizes the commission to promulgate rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

The proposed amendments implement Texas Water Code §27.019.

§305.151. Applicability.

Unless stated otherwise, the following conditions apply to all Class I, [and] Class III, and Class V injection well permits and shall be incorporated into the permit expressly or by reference. [The commission may require such conditions for Class V injection well permits as are necessary to prevent pollution of fresh water.] These conditions are in addition to those set forth in §§305.121-305.128 of this title (relating to Permit Characteristics and Conditions).

§305.152. Corrective Action.

For Class I and III wells only:

(1)[(a)] For [such] wells within the area of review which are inadequately constructed, completed, or abandoned, and which as a result of the injection activities may cause the pollution of fresh water, the commission shall prescribe or incorporate into the permit [a] conditions [condition] requiring corrective action adequate to prevent such pollution. Corrective action will be required unless the owner or operator demonstrates to the executive director that, despite the owner or operator's best efforts, he is unable to obtain the necessary permission to undertake such action.

(2)[(b)] The criteria of §331.44 of this title (relating to Corrective Action Standards) will be used to determine adequacy.

(3)[(c)] A permit issued for an existing injection well requiring corrective action shall [may] include a compliance schedule in compliance with §305.127(3)(E) of this title (relating to Conditions to be Determined for Individual Permits) prescribing the time within which [the] corrective action must be completed.

(4)[(d)] As part of the corrective action plan, the commission may impose an injection pressure limitation that does not cause the pressure in the injection zone to exceed hydrostatic pressure in those wells described in paragraph (1) of this section [subsection (a) of this section], which condition shall expire upon [adequate] completion of all corrective action measures.

(5)[(e)] Action prescribed by a corrective action plan for new wells or new areas must be completed to the satisfaction of the executive director before operation of the well begins.

(6)(f) If [In the event that, after an authorization for injection has been granted,]
additional information is submitted or discovered, after an authorization for injection has been granted,
that a well within the [applicable] area of review might pose a hazard to a freshwater aquifer, the
commission may prescribe a corrective action plan and compliance schedule as a condition for
continued injection activities.

§305.154. Standards.

(a) In addition to other standard permit conditions listed elsewhere in this chapter, the following conditions and other applicable standards listed in Chapter 331 of this title (relating to Underground Injection Control) shall be incorporated into each permit expressly or by reference to this chapter. The commission may impose stricter standards where appropriate. [Although the commission may impose stricter standards where appropriate, at a minimum the permittee shall comply with the standards prescribed by Chapter 331 of this title (relating to Underground Injection Control), and the rules referenced herein:]

(1) Construction requirements. Section 331.62 and §331.82 of this title (relating to Construction Standards; Construction Requirements).

(2) Compliance schedule. See §305.127(3)(E) of this title (relating to Schedule of Compliance). [The commission may establish a compliance schedule for existing wells to achieve compliance with the requirements of this section.]

(3) Construction plans. Changes in construction plans shall be approved [by certification] under §331.45 of this title (relating to Executive Director Approval [Certification] of Construction and Completion), or, by minor modification according to §305.72 of this title (relating to UIC Permit Modifications at the Request of the Permittee). [if required, by permit amendment before such changes may be physically incorporated into construction of the well.]

(4) Commencing operations. Commencement of injection operations before [prior to] approval [certification] by the executive director of [that] construction and completion is [are compliant shall constitute] a violation of the permit and may be considered grounds for revocation or suspension of the permit, and [as well as] for enforcement action. Except for new wells authorized by an area permit under §305.154(b) of this title (relating to Standards), a new injection well may not commence injection until construction is complete, and

(A) the permittee has submitted notice of completion of construction to the Director; and

(B) the executive director has inspected or otherwise reviewed the new injection well and finds it complies with the conditions of the permit; or

(C) the permittee has not received notice from the executive director of intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in subparagraph (A) of this paragraph, in which case prior inspection or review is waived and the

permittee may commence injection. The executive director shall include in the notice a reasonable time period in which he shall inspect the well.

(D) for Class I wells, submission of the completion report required by §331.65(a)(1) of this title (relating to Monitoring Requirements) shall constitute the notice required in subparagraph (A) of this paragraph.

(5) Operating requirements. Section 331.63 of this title (relating to Operating Requirements) and §331.83 of this title (relating to Operating Requirements).

(6) Monitoring and reporting. All permits shall specify requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring. Reporting shall be no less frequent than specified in the appropriate sections of Chapter 331 of this title (relating to Underground Injection Control. Section 331.64 and §331.65 of this title (relating to Monitoring Requirements; Reporting Requirements); §331.84 and §331.85 of this title (relating to Monitoring Requirements; Reporting Requirements); or Chapter 331, Subchapter F [§331.101 through 331.107] of this title (relating to Standards for Class III Well Production Area Development).

(7) Closure [Plugging]. The permittee shall notify the executive director and obtain approval before plugging an injection well. After failing to operate for a period of two years, the owner or operator shall close the well in accordance with an approved plan unless:

(A) notice is provided to the executive director; and,

(B) actions and procedures are described, satisfactory to the executive director, that the owner or operator will take to ensure that the well will not endanger underground sources of drinking water (USDWs) during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable, unless waived by the executive director.

[(8) Plugging and Abandonment Requirements. The permittee shall notify the executive director and obtain approval before plugging an injection well. Section 331.46 of this title (relating to Plugging and Abandonment Standards).]

(8)[(9)] Corrective action requirements. Section 331.44 of this title (relating to Corrective Action Standards) and §305.152 of this title (relating to Corrective Action).

(9) Financial assurance requirements. The permittee is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the executive director. The permittee shall show evidence of such

financial responsibility to the executive director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the executive director.

(10) Post-closure requirements. Section 331.68 of this title (relating to Post-Closure Standards).

(11) Liability insurance requirements. The permittee of hazardous waste injection wells shall maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this paragraph if the policy covers the injection well and is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

[Post-closure requirements. Section 331.68 of this title (relating to Post-Closure Standards).]

(b) Area permits shall specify:

(1) The area within which underground injections are authorized, and

(2) The requirements for construction, monitoring, reporting, operation, and abandonment for all wells authorized by the permit.

(3) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(A) The permittee notifies the executive director at such time as the permit requires;

(B) The additional well satisfies the criteria in §331.7(b) of this title (relating to Permit Required) and meets the requirements specified in the permit under paragraphs (1) and (2) of this subsection; and

(C) The cumulative effects of drilling and operation of additional injection wells are considered by the executive director during evaluation of the area permit application and are acceptable to the executive director.

(4) If the executive director determines that any well constructed pursuant to paragraph (3) of this subsection does not satisfy any of the requirements of this subsection, the executive director may amend, terminate, or take enforcement action. If the executive director determines that cumulative effects are unacceptable, the permit may be amended under §305.62 of this title (relating to Amendment).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 1, 1996.