

The commission adopts new §50.45, concerning nonsubstantive corrections to permits, with changes to the proposed text as published in the January 10, 1997, issue of the *Texas Register* (22 TexReg 592).

The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Program specific requirements governing corrections and endorsements in Chapters 291, 295, 297, and 305 are being repealed concurrently.

EXPLANATION OF ADOPTED RULE

The new section is divided into three subsections. Subsection (a) provides that the section applies to a permit as defined in 30 TAC §3.2, concerning Definitions, except that it does not apply to air quality permits under Chapter 122, concerning Federal Operating Permits. The subsection allows the executive director, on his own motion or at the request of the permittee, to make a nonsubstantive correction to a permit without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

New subsection (b) provides the conditions under which the executive director can issue the nonsubstantive permit corrections, such as corrections of typographical errors, changes to a mailing address, and corrections that provide more accurate information.

New subsection (c) provides for the review of certain proposed corrections by the general counsel within five business days. The subsection as proposed was amended to allow certain changes to

proceed without general counsel review, and to allow the executive director to issue the correction if the general counsel takes no action within the five business days. If the general counsel determines that the proposed correction should not be issued, the matter may be set for commission action during a commission meeting. The proposal was further modified to provide the public interest council the opportunity to review the proposed correction and provide comment to the general counsel. Changes to the proposal were made to further refine the process.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section. Promulgation of the rule will not burden private real property which is the subject of the rule because it concerns only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

HEARING AND COMMENTERS

A public hearing was held to receive oral and written comment on the proposed rules at commission offices in Austin on February 5, 1997. The public comment period closed February 10, 1997. No written or oral testimony was received on the proposed rule.

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

SUBCHAPTER C : ACTION BY EXECUTIVE DIRECTOR

§50.45

§50.45. Corrections to Permits.

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits). The executive director, on his own motion or at the request of the permittee, may make a nonsubstantive correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue nonsubstantive permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided

by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

(4) to describe more accurately the location of the area certificated under a certificate of convenience and necessity;

(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;

(6) to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

(7) to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(8) to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;

(9) to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or

(10) to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 16, 1997.

The commission adopts the repeal of §291.108, concerning nonsubstantive corrections to certificates of convenience and necessity. The repeal is adopted without changes to the proposed text as published in the January 10, 1997, issue of the *Texas Register* (22 TexReg 592) and will not be republished. The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

EXPLANATION OF ADOPTED RULE

The provisions of the repealed section are replaced with a new §50.45, concerning Corrections to Permits, that is adopted concurrently, and the repeal simply removes duplicative requirements.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section and repealing duplicative requirements. Promulgation of the rule will not burden private real property which is the subject of the rule because it concerns only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

HEARING AND COMMENTERS

A public hearing was held to receive oral and written comments on the proposed rules at commission offices in Austin on February 5, 1997. The public comment period closed February 10, 1997. No written or oral testimony was received on the proposed rule.

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

SUBCHAPTER G : CERTIFICATES OF CONVENIENCE AND NECESSITY

§291.108

§291.108. Corrections to Certificates of Convenience and Necessity.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 16, 1997.

The commission adopts an amendment to §295.158, concerning amendments to water rights. The amendment is adopted without changes to the proposed text as published in the January 10, 1997, issue of the *Texas Register* (22 TexReg 592) and will not be republished. The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

EXPLANATION OF ADOPTED RULE

The amendment deletes subsection (c)(2)(A), which provides for the correction of nonsubstantive errors in a permit or certificate of adjudication, such as in the name of the water right holder, boundary description, or other details that were incorrectly transcribed. The amendment also deletes subsection (d), which provides for notice of the amendment to the water right holder, the executive director, the public interest advocate, and appropriate parties. The requirements of the deleted provisions are addressed in a new §50.45, concerning Corrections to Permits, which is being adopted concurrently, and this modification of §295.158 simply removes duplicative requirements.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section and repealing duplicative requirements. Promulgation of the rule will not burden private real property

which is the subject of the rule because it concerns only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

HEARING AND COMMENTERS

A public hearing was held to receive oral and written comment on the proposed rules at commission offices in Austin on February 5, 1997. The public comment period closed February 10, 1997. No written or oral testimony was received on the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

SUBCHAPTER C : NOTICE REQUIREMENTS FOR WATER USE PERMIT APPLICATIONS

§295.158

§295.158. Notice of Amendments to Water Rights.

(a) - (b) (No change.)

(c) Not requiring mailed and published notice.

(1) Only an application to amend an existing permit, certified filing, or certificate of adjudication which does not contemplate an additional consumptive use of state water or an increased rate or period of diversion and which, in the judgment of the commission, has no potential for harming any other existing water right, is subject to amendment by the commission without notice other than that provided to the record holder. Upon filing such an application, the commission shall consider whether additional notice is required based on the particular facts of the application.

(2) Applications of the following descriptions may not require additional notice:

(A) to cure ambiguities or ineffective provisions in a water right;

(B) to reduce an appropriation or rate of diversion;

(C) to change the place of use when there will be no increased use of state water and the change will not operate to the injury of any other lawful user of state water. If a water right is owned by more than one party, all other parties will be notified of the proposed changes by certified mail and given two weeks to protest. If no protest is received, further notice will not be required;

(D) to change the point of diversion when the existing rate of diversion will not be increased and there are no interjacent water users of record between the originally authorized point of diversion and the new one, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(E) to add additional points of diversion where the existing rate of diversion will not be increased and there are no water users of record between any originally authorized point of diversion and the new one to be added, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(F) to increase the rate or period for diversion from a storage reservoir.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 16, 1997.

The commission adopts the repeal of §297.62, concerning nonsubstantive changes and corrections to water rights. The repeal is adopted without changes to the proposed text as published in the January 10, 1997, issue of the *Texas Register* (22 TexReg 592) and will not be republished. The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

EXPLANATION OF ADOPTED RULE

The provisions of the repealed section are replaced with a new §50.45, concerning Corrections to Permits, that is adopted concurrently, and the repeal simply removes duplicative requirements.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section and repealing duplicative requirements. Promulgation of the rule will not burden private real property which is the subject of the rule because it concerns only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

HEARING AND COMMENTERS

A public hearing was held to receive oral and written comments on the proposed rules at commission offices in Austin on February 5, 1997. The public comment period closed February 10, 1997. No written or oral testimony was received on the proposed rule.

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

SUBCHAPTER F : AMENDMENTS TO WATER RIGHTS;

CORRECTIONS TO WATER RIGHTS

§297.62

§297.62. Corrections of Water Rights by the Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 16, 1997.

The commission adopts the repeal of §305.65, concerning nonsubstantive changes to permits. The repeal is adopted without changes to the proposed text as published in the January 10, 1997, issue of the *Texas Register* (22 TexReg 592) and will not be republished. The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

EXPLANATION OF ADOPTED RULE

The provisions of the repealed section are replaced with a new §50.45, concerning Corrections to Permits, that is adopted concurrently, and the repeal simply removes duplicative requirements.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section and repealing duplicative requirements. Promulgation of the rule will not burden private real property which is the subject of the rule because it concerns only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

HEARING AND COMMENTERS

A public hearing was held to receive oral and written comments on the proposed rules at commission offices in Austin on February 5, 1997. The public comment period closed February 10, 1997. No written or oral testimony was received on the proposed rule.

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

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

§305.65

§305.65. Corrections of Permits.

This agency hereby certifies that the repeal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 16, 1997.