

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §39.13 and §39.103, concerning public notice. The amendments are adopted without changes to the proposed text as published in the April 9, 1999 issue of the *Texas Register* (24 TexReg 2846) and will not be republished.

EXPLANATION OF ADOPTED RULES

The primary purpose of the adopted amendments is to revise the state rules to reflect certain federal hazardous waste regulations relating to public participation. These rules are intended to provide earlier opportunities for public involvement in the hazardous waste permitting process and expand public access to information throughout the permitting process and the operational lives of certain hazardous waste management facilities. The amendments include, for certain hazardous waste facility permit applications, requirements relating to pre-application public meeting and notice, requirements concerning public notice that a Part B hazardous waste permit application has been submitted, and requirements for information repositories. The amendments also include a clarification to the requirements for publishing notice of draft permit for industrial and hazardous waste facilities. The amendments reflecting federal public participation regulations are needed to establish equivalency with federal regulations and will enable the State of Texas to retain authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). The federal regulations upon which the rules are based are found at 40 Code of Federal Regulations (CFR) Part 124, Subpart A, which relates to public notice of permit actions and public comment period, and Subpart B, which relates to specific procedures applicable to hazardous waste permits.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." "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 rulemaking is not a major environmental rule because it is not adopted with the specific intent of protecting the environment or reducing risks to human health or the environment. The specific intent of the rule is to provide earlier opportunities for public involvement with regard to authorization of certain hazardous waste management activities and expand public access to information throughout the permitting process and the operational lives of certain hazardous waste management facilities. In addition, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the aforementioned aspects of the state because the rule simply updates the state's hazardous waste regulations by revising the rules to conform to certain federal hazardous waste regulations, adding enhanced public participation procedures. The rulemaking is specifically required by federal law because states such as Texas that are authorized to administer and enforce the RCRA program in lieu of EPA under §3006 of RCRA are required to modify their programs by adopting equivalent requirements, as necessary. The delegation agreement between the commission and EPA expressly requires the commission to maintain RCRA authorization. Finally, this rulemaking is not being adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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 provide earlier opportunities for public involvement in the hazardous waste permitting process, to expand public access to information throughout the permitting process and the operational lives of certain hazardous waste management facilities, to provide enhanced consistency between federal and state waste regulatory requirements, to clarify certain state rules, and to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The adopted rules will substantially advance this stated purpose by referencing specific federal regulations or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations for hazardous waste facilities and by incorporating certain clarifications to the requirements for mailing notice and for publishing notice of draft permit for industrial and hazardous waste facilities. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the rule language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations, as well as language which clarifies certain existing requirements, which would increase public participation, thus providing the benefits of earlier opportunities for public involvement and expanded public access to information throughout the permitting process and the operational lives of certain hazardous waste management facilities. These requirements give applicants a better opportunity to address public concerns in making decisions about the facility and in subsequent permitting activities. The permitting process will be streamlined in some cases, since the public will

raise issues, and the applicant can address the issues, at an earlier stage in the process. This earlier involvement may well reduce costs associated with delays, litigation, and other consequences of dispute. The subject regulations do not affect a landowner's rights in private real property because this rulemaking does not restrict or limit the owner's right to property that would otherwise exist in the absence of the regulations, because a property owner may continue to use the property for the management of hazardous waste. In other words, since these rules merely revise public participation and notice requirements, they do not restrict the owner's right to property. Also, the following exception to the application of Chapter 2007 of the Texas Government Code, listed in Texas Government Code, §2007.003(b), applies to these rules: this action is reasonably taken to fulfill an obligation mandated by federal law. See Title 40 CFR §271.21(e)(1), which states that as the federal hazardous waste program changes, authorized state programs such as the commission's hazardous waste program must be revised to remain in compliance with 40 CFR Part 271, Subpart A.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that the adoption is a rulemaking subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for the rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). CMP policies focus on construction and operation of solid waste treatment, storage, and disposal facilities such that new solid waste facilities and areal

expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq.

Promulgation and enforcement of this rule is consistent with the applicable CMP goals and policies because the rule amendments merely update and enhance the commission's rules concerning public participation in the hazardous and industrial solid waste area by providing earlier opportunities for public involvement and by expanding public access to information throughout the permitting process. These rules do not address protection, preservation, restoration, or enhancement of the diversity, quality, quantity, functions, or values of CNRAs, nor do they relate to the authorization of construction and/or operation of solid waste treatment, storage, or disposal facilities. Thus, the rule does not violate any applicable provisions of the CMP's stated goals and policies, because there are no applicable CMP goals or policies that this rule could violate.

HEARINGS AND COMMENTERS

The commission did not hold a public hearing on the proposed rule changes. The comment period for the proposed rules closed at 5:00 p.m., May 10, 1999. There were no comments received.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the

provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

SUBCHAPTER A : APPLICABILITY AND GENERAL PROVISIONS

§39.13

§39.13. Mailed Notice.

(a) When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

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

(7) if applicable, local, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c), as amended and adopted in the CFR through May 2, 1989, at 54 FedReg 18786;

(8) - (14) (No change.)

(b) (No change.)

SUBCHAPTER B : PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§39.103

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

§39.103. Application for Industrial or Hazardous Waste Facility Permit.

(a) Preapplication requirements.

(1) If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality. Mailed notice shall be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant

shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth at 40 CFR §124.31(b)-(d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a “significant change” is any change that would qualify as a class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(b) Notice of receipt of application. When the executive director receives an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed

in §39.13 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 Code of Federal Regulations (CFR) §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417. The requirements of this paragraph relating to 40 CFR §124.32(b)-(c) do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(c) (No change.)

(d) Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is located.

(2) - (4) (No change.)

(e) - (f) (No change.)

(g) Information repository. The requirements of 40 Code of Federal Regulations (CFR) §124.33(b)-(f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, apply to all applications for hazardous waste permits.

(h) This section does not apply to applications for an injection well permit.