

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §50.31, relating to purpose and applicability of actions by the executive director.

EXPLANATION OF PROPOSED RULE

The purpose of the proposed amendment is to clarify which matters may be delegated to the executive director for action on behalf of the commission. The following matters may not be delegated to the executive director: approval of a fire department or fire-fighting service plans under Texas Water Code, §49.351, applications for conversion of a district to a municipal utility district under Texas Water Code, §54.030, and application for creation of a municipal management district under Local Government Code, Chapter 375. Also, pursuant to Senate Bill 1865, Acts of the 75th Legislature, 1997, the executive director may now be delegated authority to act on applications for creation of a district and for approval of standby fees. The executive director may also be delegated authority to act on impact fee petitions under Texas Local Government Code, Chapter 395; therefore, the proposed amendments delete the reference to such petitions in §50.31(c), which specifies the matters on which the executive director may not act.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that, for the first five years these sections as proposed are in effect, there will be no significant fiscal implications for state or local government as a result of enforcing and administering the sections. The effect on state government will be a reduction in cost due to delegation to the executive director of routine matters. The effect on

local government is a reduction in cost due to delegation to the executive director of some routine matters. However, the cost reductions to state and local governments are not expected to be significant.

PUBLIC BENEFIT

Mr. Minick has also determined that, for the first five years these sections as proposed are in effect, the public benefit anticipated as a result of enforcement of, and compliance with, these sections will be increased consistency between state regulations and statutory authority. The proposed rules do not affect small businesses. There are no other anticipated costs to any person required to comply with this section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 “major environmental rule” as defined in the act.

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 rule is to make the rule consistent with statutory authority. The rules will substantially advance this specific purpose by specifying that certain matters may or may not be delegated to the executive director. Promulgation and enforcement of these rules will not burden private real property because private real property is not subject to these rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

SUBMITTAL OF COMMENTS

No public hearing is planned for this proposed rule. Written comments on the proposal should mention Rule Log No. 97143-293-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. Written comments must be received by 5:00 p.m., February 2, 1997. For further information or questions concerning this proposal, please contact Sam Jones, Water Utilities Division, at 239-6167.

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and to implement Texas Water Code, §§36.014, 49.011, 49.231, 51.028, 54.018, 55.042, 58.028, 65.018, and 66.018.

There are no other statutes implemented by this rule.

SUBCHAPTER C : ACTION BY EXECUTIVE DIRECTOR

§50.31

The sections are proposed under Texas Water Code §5.103, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§50.31. Purpose and Applicability.

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

(c) This subchapter does not apply to:

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

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

(3) air quality standard exemptions;

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

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

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

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

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

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

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

(F) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district [for approval to impose a standby fee];

(6) emergency or temporary orders or temporary authorizations;

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

(8) all municipal solid waste facilities authorized to operate by registration under Chapter 330 of this title (relating to Municipal Solid Waste);

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

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

(11) an application for creation of a municipal management district under Local Government Code, Chapter 375 [impact fee petitions under Local Government Code, Chapter 395]; and

(12) interwatershed transfers under Texas Water Code, §11.085.

(d) (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.