

The Texas Natural Resource Conservation Commission (commission) adopts amendment to §305.50 and repeal of §305.146, concerning Consolidated Permits. The amendment and repeal are adopted without change to the proposed text as published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 676).

EXPLANATION OF ADOPTED RULES

This rule adoption deletes the requirement that an industrial solid waste permit applicant must submit listings of evidence of noncompliance concerning solid waste management (although this information could still be voluntarily provided for Texas Natural Resource Conservation Commission consideration); deletes the requirement that an applicant must submit information on debts owed to the state; and repeals a redundant reporting requirement.

Texas Health and Safety Code §361.084, concerning Compliance Summaries, provides that evidence of noncompliance may be offered and admitted into evidence for consideration by the commission in determining whether to issue a permit; however, it does not require this information to be submitted by the applicant as part of a permit application. The agency, separate from the permit application process, generates the information concerning evidence of noncompliance that is proposed to be deleted as a permit application requirement, so there is no loss of information by the elimination of this application requirement. Additionally, commission staff can easily obtain information on an applicant's debts owed to the state, for example, by accessing the agency's database on fee status. Therefore, the commission deleted the requirements that the applicant submit evidence of noncompliances and information on debts

owed to the state. The commission retained the requirement for listings of sites owned, operated, or controlled by the applicant to aid in the preparation of internal compliance summaries.

SMALL BUSINESS ANALYSIS

The commission has reviewed the adopted rulemaking in light of Texas Government Code §2006.002 requirements and has determined that there is no adverse economic effect on small businesses because the rulemaking reduces regulatory requirements.

FINAL REGULATORY IMPACT ANALYSIS

The rule adoption would not 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 because the rule eliminates certain permit application requirements relating to evidence of noncompliance and debts owed to the state, and eliminates a redundant reporting requirement, which in turn provides benefits to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state, as explained below. The elimination of these requirements would provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. The rule would not have an adverse effect in a material way, to the environment and the public health and safety of the state and affected sectors of the state, because the information which is currently being collected through the proposed-to-be-eliminated requirements is already available in other ways or databases at the agency. For example, the agency, separately from the permit application process, generates the information concerning evidence of noncompliance that is proposed to

be deleted as a permit application requirement, so there is no loss of information by the elimination of this application requirement. In addition, this adopted rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to delete the mandatory requirement that an industrial solid waste permit applicant submit listings of evidence of non-compliance concerning solid waste management in the application, to delete the requirement that an applicant must submit information on debts owed to the state, and to repeal a redundant reporting requirement. The rules will substantially advance this specific purpose by amending 30 TAC §305.50(2), concerning Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit, and by repealing 30 TAC §305.146, concerning Reporting.

Promulgation and enforcement of these rules will not burden private real property because they reduce hazardous waste storage, processing and disposal facility permit application requirements and repeal a redundant reporting requirement. Real property is not the subject of these rules, and therefore, the rule changes do not affect real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that the adoption is a rulemaking subject to the 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 this adopted 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 the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are 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 adopted rule would be consistent with the applicable CMP goals and policies because the rule amendments would streamline certain state permit application requirements which are unnecessary and/or redundant, thereby providing for a more efficient permitting system, thus serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are 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. In addition, the adopted rule does not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed March 8, 1999.

Written comments were submitted by the Texas Chemical Council (TCC).

ANALYSIS OF COMMENTS

The TCC comment letter supported the Chapter 305 changes.

STATUTORY AUTHORITY

This rule amendment is adopted under the Texas Water Code §5.103, which provides the commission 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; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also adopted 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 hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

SUBCHAPTER C : APPLICATION FOR PERMIT

§305.50

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit.

Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

(1) (No change.)

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the state of Texas. For purposes of this subsection, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) - (14) (No change.)

**SUBCHAPTER G : ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL
SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS**

§305.146

STATUTORY AUTHORITY

This rule repeal is adopted under the Texas Water Code §5.103, which provides the commission 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; and §26.011, which requires the commission to control the quality of water by rule. This rule repeal is also adopted 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 hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

§305.146. Reporting.