

The Texas Natural Resource Conservation Commission (commission) proposes amendment to §305.50 and repeal of §305.146, concerning Consolidated Permits.

#### EXPLANATION OF PROPOSED RULES

This rulemaking eliminates hazardous waste storage, processing, and disposal applicant requirements that are more stringent than state statute or unnecessary and eliminates a redundant reporting requirement.

Section 305.50(2), concerning Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit, is proposed to be amended to delete the requirement that an industrial solid waste permit applicant must submit listings of evidence of non-compliance concerning solid waste management in the application and to delete the requirement that an applicant must submit information on debts owed to the state. 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. 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 proposes to eliminate the requirement that the applicant submit such information. The commission staff wants to retain the requirement for listings of sites owned, operated, or controlled by the applicant to aid in the preparation of internal compliance summaries.

Section 305.146, concerning Reporting, is proposed to be repealed because its reporting requirements are redundant to reporting requirements in Chapter 335, Subchapter A, concerning Industrial Solid Waste and Municipal Hazardous Waste in General.

#### 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.

#### FISCAL NOTE

Mr. Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the rules, as proposed, are in effect, there will be no significant fiscal implications for state or local government.

#### PUBLIC BENEFIT

Mr. Horvath has also determined that for the first five years the rules as proposed are in effect the public benefit anticipated, as a result of the administration of these sections, will be reduction of certain permit application requirements for hazardous waste storage, processing, and disposal facilities. The proposed rules will result in no increase in costs to the affected parties because the certain permit application requirements have been reduced. Anticipated cost savings to persons, and businesses, large and small, applying for hazardous waste storage, processing, and disposal facilities permits are not

quantifiable at this time and are not expected to be significant.

#### DRAFT REGULATORY IMPACT ANALYSIS

The rule proposal 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 proposed 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 propose to 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 proposal 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 proposed 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 proposed 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 proposed rule does not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rule.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by March 8, 1999, and should reference Rule Log No. 98024-305-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 Wayne Harry at (512) 239-6619.

#### STATUTORY AUTHORITY

This rule amendment is proposed 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 proposed 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.

The proposed amendment implements Texas Health and Safety Code Chapter 361.

**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 [evidence of non-compliances concerning solid waste management by the permit holder in the preceding five years at the permitted site, listings of evidence of non-compliances concerning solid waste management in the preceding five years at any] sites[site] owned, operated, or controlled by the applicant in the state of Texas[, a summary of the attempts of the permit holder to correct the environmental violations, and an indication of whether the permit holder or applicant is indebted to the

state for fees, payment of penalties, or taxes imposed by the Texas Solid Waste Disposal Act or by any rule of the commission]. 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 proposed 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 proposed 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.

The proposed repeal implements Texas Health and Safety Code Chapter 361.

**§305.146. Reporting.**