

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §305.51, concerning consolidated permits. The amendment is adopted without changes to the proposed text as published in the June 18, 1999, issue of the *Texas Register* (24 TexReg 4530) and will not be republished.

EXPLANATION OF ADOPTED RULES

The purpose of the adopted amendments is to revise the state rules to conform to a certain federal regulation with regard to changes during interim status necessary to comply with certain national air emission standards. The amendments include conforming changes that are needed to establish equivalency with the federal regulations, which will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program. The federal regulation to which this adopted rule is being conformed was promulgated by the U.S. Environmental Protection Agency (EPA) on June 19, 1998 at 63 FedReg 33782. Under adopted §305.51(c)(8), the following phrase is added as a new paragraph (8): “changes necessary to comply with standards under 40 CFR Part 63, Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors,” so that these changes would be allowed under interim status, if all other requirements are met, even if the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility.

FINAL REGULATORY IMPACT ASSESSMENT

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” as defined in the act. “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. Specifically, the exclusion contained in the amendments is voluntary and is not anticipated to 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 specific intent of the rulemaking is to revise current rules to conform with federal regulations, the rulemaking is procedural in nature and does not meet the definition of a “major environmental rule.” In addition, the amendments do not meet the applicability criteria of a “major environmental rule.” Section 2001.0225 applies only to a major environmental rule the result of which is to:

- (1) exceed a standard set by federal law, unless the rule is specifically required by state law;
- (2) exceed an express requirement of state law, unless the rule is specifically required by federal law;
- (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program or;
- (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet the applicability criteria of a “major environmental rule” because the amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. In addition, the changes are not adopted solely under the general rulemaking authority of the commission but rather are adopted under a specific state law, Texas Health & Safety Code §361.017 and §361.024, and to conform to the requirements of federal regulations.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these adopted rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of these adopted rules is to revise the state rules to conform to a certain federal regulation with regard to changes during interim status necessary to comply with certain national air emission standards. The adopted rules would substantially advance this stated purpose by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulation. Promulgation and enforcement of these rules would not affect private real property which is the subject of the rules because the adopted rule language consists of an update to bring a certain state hazardous waste regulation into equivalence with a more recent federal regulation. There is no burden on private real property because the regulation is less stringent than current rules. The subject adopted 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. That is, a property owner may continue to use the property for the management of hazardous waste. In other words, since these rules merely revise the state rules to conform to a certain federal regulation with

regard to changes during interim status necessary to comply with certain national air emission standards, they do not restrict the owner's property rights.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the adopted rules are subject to the CMP and must be consistent with applicable CMP goals and policies. The commission has determined that the adoption is consistent with each applicable CMP goal and policy, which are found in 31 TAC §501.12 and §501.14. The rulemaking revises the commission rules to conform to certain federal regulations regarding changes during interim status necessary to comply with certain national air emission standards. The commission has also determined that the adopted rule will not have a direct and significant adverse effect on Coastal Natural Resource Areas (CNRAs) identified in the applicable CMP policies. For example, the adopted rules update and enhance the commission's rules concerning consolidated permits relating to revision of applications for hazardous waste permits, thereby 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.

HEARING 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., July 19, 1999. Written comments were submitted by BP Amoco Corporation (BP Amoco), Central and South West Services, Inc. (CSW), The Dow Chemical Company (Dow), and the Gasification Technologies Council (the Council).

ANALYSIS OF COMMENTS

The comments which were submitted made no reference to the Chapter 305 portion of this rulemaking (i.e., Rule Log No. 98080-335-WS). The comments which were submitted referenced the Chapter 335 portion of this rulemaking.

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 (the 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 C : APPLICATION FOR PERMIT

§305.51

§305.51. Revision of Applications for Hazardous Waste Permits.

(a) Owners or operators of hazardous waste management facilities, who qualify for interim status pursuant to 40 Code of Federal Regulation Part 270, Subpart G, who have continuing authority to store, process, and/or dispose of hazardous waste pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and who filed a Part A permit application pursuant to 40 Code of Federal Regulations §270.10 shall file a revised Part A application with the executive director for any of the following changes during interim status:

- (1) new hazardous wastes not identified in the original application are stored, processed or disposed of at the facility;
- (2) increases in the design capacity of processes used at the facility occur;
- (3) changes in the processes for management of the waste occur or additional processes are added;
- (4) changes in the ownership or operational control of a facility are made; or

(5) newly regulated units for the storage, processing, or disposal of hazardous waste are added.

(b) The purpose of this section is to delineate requirements for filing a revised application, not to authorize any changes in facility operation. Changes in facility operations will be reviewed and approved by the executive director. In deciding whether to approve the proposed change, the executive director may consider the requirements set forth in 40 Code of Federal Regulations §270.72. For changes in the ownership or operational control of a facility, the new owner or operator shall submit a revised Part A permit application no later than 90 days prior to the scheduled change and shall also comply with the requirements set forth in 40 Code of Federal Regulations §270.72(d). A permit will be required for the operation of an above-grade landfill not described in a Part A application filed pursuant to §335.43 of this title (relating to Permit Required) prior to the effective date of this section.

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) changes made solely for the purposes of complying with the requirements of 40 Code of Federal Regulations (CFR) §265.193 for tanks and ancillary equipment;

(2) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of §3004(o) of the Resource Conservation and Recovery Act (RCRA), as amended;

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been stored, processed, or disposed of at the facility prior to the effective date of the United States Environmental Protection Agency (EPA) regulation establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the EPA under §3008(h) of the RCRA, as amended, or other federal authority, by an authorized State under comparable state authority, or by a court in a judicial proceeding brought by the EPA or an authorized State, provided that such changes are limited to the storage, processing, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to store or process, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by 40 CFR, Part 268 or by §3004 of the RCRA, provided that such changes are made solely for the purpose of complying with 40 CFR, Part 268 or §3004 of the RCRA, as amended;

(7) addition of newly regulated units under subsection (a)(5) of this section; and

(8) changes necessary to comply with standards under 40 CFR Part 63, Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.