

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §305.51, concerning consolidated permits.

EXPLANATION OF PROPOSED RULES

The purpose of the proposed 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 proposed 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 proposed rule is being conformed was promulgated by the U.S. Environmental Protection Agency (EPA) on June 19, 1998 at 63 FedReg 33782. Under proposed §305.51(c)(8), the following phrase is proposed to be 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 percent of the capital cost of a comparable entirely new hazardous waste management facility.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 305 are in effect, there will be no significant fiscal implications for state government or units of local government as a result of administration or enforcement of the

proposed amendments. The proposed amendments revise state rules to conform with federal regulations regarding revision of applications for hazardous waste permits.

In 1980, owners and operators of hazardous waste management facilities were required to submit a hazardous waste Part A permit application in order to qualify for “interim status” to continue to operate. Currently, Chapter 305 states that hazardous waste facilities must file a revised application for any of the following changes during interim status: new hazardous wastes not identified in the original application are stored, processed or disposed of at the facility; increases in the design capacity of processes used at the facility occur; changes in the processes for management of the waste occur or additional processes are added; changes in the ownership or operational control of a facility are made; or newly regulated units for the storage, processing, or disposal of hazardous waste are added.

For some changes, significant capital investment is required, and if this investment exceeds 50% of the capital costs of a comparable entirely new hazardous waste management facility (i.e., reconstruction), it is not allowed under interim status, except for the changes listed under 30 TAC §305.51(c), and if all other requirements are met. The proposed amendments add the following to the list of such allowable changes: “changes necessary to comply with standards under 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.” In effect, this exception to the reconstruction ban allows existing hazardous waste facilities to make changes even if the capital costs amount to reconstruction, if the changes are necessary to comply with the aforementioned federal standards. The EPA has encouraged states to adopt this regulation as quickly as their legislative and regulatory processes will allow.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 305 are in effect, the public benefit anticipated from enforcement of and compliance with these rules will be enhanced consistency between state and federal hazardous waste regulatory requirements, enhanced regulatory flexibility for waste management facilities in interim status, and the removal of the reconstruction restriction when the cost exceeds 50 percent of the capital costs of a new comparable facility and when changes are necessary to comply with certain national air standards. The fiscal implications to individuals and small business are contained in the Small Business Analysis section of this preamble.

SMALL BUSINESS ANALYSIS

The purpose of the proposed amendments to Chapter 305 is to revise current rules so they conform to the requirements of federal regulations. On June 19, 1998, EPA promulgated regulations which allowed changes to hazardous waste permits during interim status if changes were necessary to comply with National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. The use of the exemption contained in the proposed change is voluntary. There are no significant economic costs anticipated to any person or small business required to comply with the proposed amendments.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of the 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." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Although this rule is proposed to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does 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.

The rule will not adversely affect in a material way the aforementioned aspects of the state because the rule updates the state's hazardous waste regulations, which in turn provides an overall benefit, as explained below. This overall benefit from updating the hazardous waste regulations is derived from proposing to adopt a more recent federal hazardous waste regulation relating to changes during interim status. Under this regulation, changes necessary to comply with standards under 40 CFR Part 63, Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors 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 percent of the capital cost of a comparable entirely new hazardous waste management facility. Thus, under this proposal, a certain impediment in the existing rules would be removed. Basically, the restriction from making changes necessary to comply with certain national air standards, if the cost exceeds 50 percent of the cost of the entire facility, would be removed.

The rule provides a benefit, as opposed to an adverse effect in a material way, to the economy, a sector of the economy, productivity, competition, and jobs, by providing for enhanced consistency between

federal and state waste regulatory requirements, which leads to more cost-effective regulation of waste management activities. An analysis of the specific regulations under this proposal shows that the rule will not adversely affect in a material way the aforementioned aspects of the state because the regulation is less stringent than current rules. The reason there is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state is because these proposed rules provide benefit to these aspects of the state by providing for enhanced consistency between federal and state waste regulatory requirements, which leads to improvements in the management of hazardous waste and hazardous waste facilities, and because these proposed rules are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state.

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. This proposal does not exceed a standard set by federal law because the main purpose of this proposal is to adopt a state rule which is equivalent to the corresponding federal regulation. This proposal does not exceed an express requirement of state law because there are no express requirements in state law under which these rules are proposed. This proposal does not 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 because the EPA has encouraged states to adopt this regulation as quickly as their legislative and regulatory processes will allow (see 63 FedReg 33818). This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Health and Safety Code,

Solid Waste Disposal Act, §361.017 and §361.024). Finally, this rulemaking is not being proposed or 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 proposed rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of these proposed 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 proposed 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 proposed rules would not affect private real property which is the subject of the rules because the proposed 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 proposed 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 right to property.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed 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 proposed rules are subject to the CMP and must be consistent with applicable CMP goals and policies. The commission has determined that the proposed rulemaking is consistent with each applicable CMP goal and policy, which are found in 31 TAC §§501.12 and 501.14. The rulemaking would revise 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 proposed 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 proposed rules would 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. The commission invites public comment on the applicability of the CMP and on the consistency determination of the proposed rule.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Bettie Bell, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808.

All comments must be received by July 19, 1999, and should reference Rule Log No. 98080-335-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 Ray Henry Austin at (512) 239-6814.

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

SUBCHAPTER C : APPLICATION FOR PERMIT

§305.51

§305.51. Revision of Applications for Hazardous Waste Permits.

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

(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) - (5) (No change.)

(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; [and]

(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.