

The Texas Natural Resource Conservation Commission (commission or TNRCC) proposes an amendment to §281.5, concerning Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Hazardous Waste, and Industrial Solid Waste Management Permits.

EXPLANATION OF PROPOSED RULE

The primary purpose of the proposed amendment is to conform §281.5 with 30 TAC §305.48, concerning Additional Contents of Applications for Wastewater Discharge Permits, to make both sections consistent with 30 TAC §39.151. Section 305.48 is being amended concurrent with the amendment to §281.5.

Currently, §281.5 requires that applications for wastewater discharge permits must include a list of adjacent and potentially affected landowners and their addresses along with a map locating the property owned by each person. Section 305.48 also currently requires a wastewater discharge applicant to list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of tracts of land that are adjacent to a treatment facility for which a wastewater discharge application has been filed. Section 305.48 is being amended to clarify that permittees seeking renewal of their permit and permittees seeking a new Texas Pollutant Discharge Elimination System (TPDES) permit which do not propose any terms or conditions that would constitute a major amendment to their existing state permit under §305.62 need not submit an adjacent and downstream landowner list. Accordingly, §281.5 is being amended to conform with the change being made to §305.48.

The effect of the rule change will be to make this section consistent with §39.151(b)(2) as well as other amendments being proposed under which applicants for renewals and for certain new TPDES permits will not be required to mail notice to adjacent and potentially affected landowners. In other words, under the proposed rule, the applicant will not be required to provide a list of these adjacent and downstream landowners with their application. Section 39.151(b)(2) already omits renewal permits from this requirement. Applicants for new TPDES permits for which there is already an existing Texas discharge permit issued before September 14, 1998, have already provided an adjacent and downstream landowner list.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 281, Applications Processing, 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 to Chapter 281 will make the chapter consistent with current provisions of Chapter 39, Public Notice, and conform to proposed changes to Chapter 305, Consolidated Permits.

Under the proposed rule, applicants for new TPDES permits where the discharge is authorized by an existing state permit issued before September 1, 1998 and applicants for wastewater permit renewals will not be required to submit a list of adjacent and downstream landowners as part of their application as long as the application does not request a change to any term or condition that would constitute a major amendment to the existing state permit. Applicants who are applying for new TPDES permits

for which an existing state discharge permit exists were required to submit a list of adjacent and downstream landowners when they originally applied for the existing state permit. Fiscal implications are not anticipated to be significant because the proposed changes conform to existing requirements in Chapter 39 and could be viewed as having a potential savings to units of local government.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 281 are in effect, the public benefit anticipated from enforcement of and compliance with the rule will be an improved regulatory process resulting from conformance with existing requirements in Chapter 39 and proposed requirements in Chapter 39 and Chapter 305 of the rules. The fiscal implications to small businesses are in the Small Business Analysis Section of this fiscal note.

SMALL BUSINESS ANALYSIS

The proposed amendments will clarify existing rules which currently provide that a list of downstream and adjacent landowners are not required for applications for wastewater permit renewals. In addition, certain new TPDES discharge permits will not require a list of adjacent and potentially affected landowners unless the application proposes a change that would constitute a major amendment to the existing state permit issued before September 14, 1998.

No significant additional costs are anticipated to any person or small business associated with the proposed amendments to Chapter 281 because the proposed amendments clarify that lists of adjacent and downstream landowners are not required for renewal applications of wastewater permits. This

provision is not a new requirement as it already exists in Chapter 39 relating to public notice of wastewater permits. The proposed amendments will not add any additional regulatory burden to small businesses. The proposed amendments also clarify that for certain new TPDES applications, a list of adjacent and downstream landowners will not be required. The proposed changes may be considered to have potentially positive economic effects for applicants who have applied for a new TPDES permit for a discharge authorized by an existing state permit issued before September 14, 1998, whose application does not propose terms or conditions that would constitute a major amendment to the existing state permit because applicants will not be required to submit a list of adjacent and downstream landowners with the application. Therefore, no adverse economic effects are anticipated to any person or small business as a result of implementing the provisions of the proposed amendments to the rule. In addition, although no adverse economic effects are anticipated, state and federal law do not allow small businesses to be treated differently than large businesses with respect to what is required in an application or what subsequent public notice is required.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the 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 Code. "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. Because the specific

intent of the proposed rulemaking is procedural in nature and makes conforming changes to §281.5 so it is consistent with §39.151(b)(2) and with changes to §305.48, the rulemaking does not meet the definition of a “major environmental rule.” In addition, the proposed amendment to Chapter 281 is not a major environmental rule because the proposed change will not impose any additional notice requirements not already required by state or federal law and the proposed 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.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule pursuant to the Code, §2007.043. The following is a summary of that assessment. Promulgation and enforcement of this rule will not affect private real property because the proposed rulemaking consists only of a clarification of the information required to be submitted for certain permit renewals and new TPDES permits. The proposed rule does not place any additional substantive or procedural requirements on the regulated community that do not currently exist. This rulemaking does not restrict or limit an owner’s right to property that would otherwise exist in the absence of the proposed changes. Any effect on property rights occasioned by the proposed changes would be a result of existing statutes contained in the Texas Water Code, Chapter 26, which mandates the development of a wastewater permitting program.

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 outlines and clarifies the commission's rules concerning public participation in the area of new, amended, and renewal TPDES permits. Specifically, the proposed rule clarifies which documents must be submitted with certain TPDES applications; what TPDES permit changes qualify as major amendments, minor amendments, and minor modifications; and allow the commission the flexibility to issue a permit for less than two years. The proposed rules harmonize the notice requirements of the federal Clean Water Act (CWA), the Code of Federal Regulations that implements the CWA, and the Texas Water Code with regard to minor TPDES permit changes. The rulemaking will also clarify notice procedures for certain new TPDES permits consistent with the same state and federal rules and regulations.

The commission has also determined that the proposed rule will not have a direct and significant adverse effect on Coastal Natural Resource Areas identified in the applicable CMP policies. The proposed rule is procedural and will not have a direct and significant impact that is causally linked to the activity authorized by the permit. Notice requirements applicable to wastewater discharge matters are preliminary to receiving a wastewater discharge permit. The notice is not the causal link to the

discharge activity; it is an initial step that must be taken to obtain a permit. The permit authorizing the discharge is the direct link to the activity.

The commission invites public comment on the applicability of the CMP and on the consistency determination of the proposed rule.

PUBLIC HEARING

A public hearing on this proposal will be held May 6, 1999, at 10:00 a.m. in Room 5108 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, 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 May 10, 1999, and should reference Rule Log Number 99003-039-WT. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Emily W. Rogers at (512) 239-0649.

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. The amendments are also proposed under the specific authority of Texas Water Code, §26.011, which provides the commission the authority to promulgate rules and issue orders relating to waste discharges and impending waste discharges covered by Texas Water Code, Chapter 26; Texas Water Code, §26.027, which allows the commission to issue permits and amend permits for the discharge of waste or pollutants into water of the state; Texas Water Code, §26.028, which describes what notice is required for wastewater applications; and Texas Water Code, §26.029, which describes the required conditions of permits issued.

No other codes, statutes, or rules will be affected by this proposal.

SUBCHAPTER A : APPLICATIONS PROCESSING

§281.5

§281.5. Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Hazardous Waste, and Industrial Solid Waste Management Permits.

Except as provided by §305.48 of this Title (Relating to Additional Contents of Applications for Wastewater Discharge Permits), applications [Applications] for wastewater discharge, underground injection, municipal solid waste, hazardous waste and industrial solid waste management permits must include:

(1) - (7) (No change.)