

The Texas Natural Resource Conservation Commission (commission or TNRCC) adopts amendments to §305.48, concerning Additional Contents of Applications for Wastewater Discharge Permits, §305.62, concerning Amendments, and §305.71, concerning Basin Permitting. The amendments are adopted without changes to the proposed text as published in the April 9, 1999 issue of the *Texas Register* (24 TexReg 2860) and will not be republished.

EXPLANATION OF ADOPTION

Under the new Texas Pollutant Discharge Elimination System (TPDES) program, when the TNRCC issues a new TPDES permit, it replaces any National Pollutant Discharge Elimination System (NPDES) permit issued by the United States Environmental Protection Agency (EPA) and any state wastewater discharge permit issued by TNRCC before NPDES assumption. All covered discharges that did not have NPDES permits as of the date of assumption of the TPDES program from EPA (September 14, 1998) must be issued new TPDES permits, even if they have current state permits. These rules are intended to assist the TNRCC in efficiently replacing those state permits for which there is no corresponding NPDES permit with TPDES permits while also providing all public participation required under state and federal law. The commission amends applicable provisions of 30 TAC Chapters 39 and 281 concerning the notice required for certain TPDES permits, so as to avoid conflicts within commission rules.

The rules adopted today, §§305.48, 305.62, and 305.71, designate which documents must be submitted with certain TPDES permit applications; establish what TPDES permit changes qualify as major amendments, minor amendments, and minor modifications; and provide the commission the flexibility

to issue a permit for less than two years in those instances where necessary to effectuate an expeditious transition from a state only to a combined TPDES permit.

Previously, the commission's rules in §305.48 required 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 were adjacent to the treatment facility for which a wastewater discharge application had been filed. However, §350.48 was not clear that an applicant was not required to submit the list with a renewal application. As amended, §305.48(2)(A) is now consistent with §39.151. Permittees seeking renewal need not submit an adjacent and downstream landowner list because mailed notice to those persons is not required. Under §305.48(2)(b), a permittee seeking a TPDES permit for the identical discharge as in an existing state permit issued before September 14, 1998, for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62, will not be required to provide an adjacent and downstream landowner list. This reflects traditional practice with regard to renewal applications that propose no change in permit terms.

Previously, §305.62 provided for two types of amendments to wastewater permits, the major amendment and the minor amendment. The NPDES system uses a hybrid of those two, called minor modifications under 40 Code of Federal Regulations (CFR) §122.63. As amended, §305.62 adds a third type of amendment for TPDES permits to accommodate this - the minor modification. This new type of permit amendment meets Clean Water Act (CWA) requirements while also retaining the flexibility of Texas Water Code, §26.028(b) regarding the kinds of amendments considered minor.

Section 305.62(c)(3), relating to minor modifications to TPDES permits, tracks the language in 40 CFR §122.63, relating to minor modifications to NPDES permits, and includes the same list of minor modifications provided in 40 CFR §122.63. All the changes classified as minor amendments under state law will continue to be minor amendments, with the exception of those listed changes that may be processed as minor modifications to TPDES permits, which will use a third set of notice procedures.

Section 39.151(e) is amended to prescribe the notice required for each type of amendment. Notice for major amendments has not changed. For minor amendments to TPDES permits, notice will be mailed to those people required to receive notice under Texas Water Code, §26.028(b) and 40 CFR §124.10(c), which includes the mayor and health authorities of the city in which the facility is located, the county judge and health authorities for the county in which the facility is located, state and federal agencies required to receive notice for TPDES permits, the applicant, and those people on the mailing list maintained by the chief clerk. For minor amendments to major facility TPDES permits, notice will also be published in the *Texas Register*. The text of the notice must meet the requirements of 30 TAC §39.11 and §39.151(b)(4) and provide at least a 30-day public comment period. The executive director will prepare a response under 30 TAC §55.25(b) to all significant public comments timely received by the commission. This is more notice for a minor amendment than what was previously required under the TNRCC's rules.

For minor modifications to TPDES permits, the chief clerk will provide notice as required by Texas Water Code, §26.028(b), which includes mailing to the mayor and health authorities of the city in which the facility is located and the county judge and health authorities for the county in which the

facility is located. The notice will provide a ten-day public comment period. This is the same notice required under state law for minor changes to permits and was previously required under the TNRCC's rules. This contrasts with federal NPDES rules, under which no notice is required for minor modifications. (40 CFR §122.63).

Section 305.62(d) has been amended to add the newly created minor modification to the kinds of changes that the executive director may initiate, and the commission may order, to be made to permits.

The commission has also made §305.62(a) easier to read and understand.

Section 305.71(a) provides that transitional TPDES permits replacing existing state permits may be issued for a term of less than two years. This change was made to allow the TNRCC to put these permits into the basin cycle, which is a goal of the Coastal Management Plan (CMP).

REGULATORY IMPACT EVALUATION

The commission reviewed these rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that they are not subject to §2001.0225 because they do not meet the definition of "major environmental rule" in the Government 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. These rules do not meet the definition because they are procedural,

and their specific intent is to prescribe documents to be submitted with certain TPDES permit applications; to establish which TPDES permit changes constitute major amendments, minor amendments, and minor modifications; and to allow the commission the flexibility to issue a permit for less than two years. These rules do 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 they are procedural and affect changes to the types of amendments available and notice required in TPDES permitting matters. In addition, the rules do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement and, thus, neither a Draft Regulatory Impact Assessment (RIA) nor a Final RIA is required.

TAKINGS IMPACT EVALUATION

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. Promulgation and enforcement of these rules will not affect private real property because they prescribe documents to be submitted with certain TPDES permit applications; establish what TPDES permit changes qualify as major amendments, minor amendments, and minor modifications; and provide the commission the flexibility to issue a permit for less than two years. They do not substantively change the requirements that must be incorporated in permits nor restrict or limit an owner's right to property that would otherwise exist. No additional burdens are placed on private property by this rulemaking. Any effect on property rights would be a result of Texas Water Code, Chapter 26, which requires a wastewater permit. Furthermore, the following exception to the application of Chapter 2007 of the Government

Code applies to these rules because this action is reasonably taken to fulfill an obligation mandated by federal law (Texas Government Code, §2007.003(b)(4)). See 40 CFR §§123.25, 122.21, and 124.10 (requiring a state with a federally delegated NPDES program to incorporate specific notice provisions in that program).

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

Section 505.22 requires, upon adoption of the rule or rule amendment, that an agency affirm that it has taken into account the goals and policies of the CMP by issuing a reasoned determination that the rule or rule amendment is consistent with CMP goals and policies.

The commission has re-reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and affirms that these rules are subject to the CMP and must be consistent with applicable CMP goals and policies. The commission also affirms that this rulemaking is consistent with each applicable CMP goal and policy found in 31 TAC §501.12 and §501.14. All of the goals in §501.12 are applicable. Generally, the CMP goals are aimed at protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resources areas (CNRAs).

Specific CMP policies applicable to this rulemaking are found in 31 TAC §505.14(f), Discharge of Municipal and Industrial Wastewater to Coastal Waters. The only policy applicable to this rulemaking under §505.14(f) is the requirement that it be consistent with CWA and federal regulations. This rulemaking complies with the requirements of the CWA and with the federal regulations implementing

the CWA. The public notice requirements of this rule require the same notice as the CWA or more notice than what is required under the CWA; therefore, this rule is consistent with all applicable policies of the CMP. The TNRCC has satisfied the requirement of the CMP by demonstrating that this action does not conflict, and is therefore consistent, with applicable CMP policies.

PUBLIC HEARING AND COMMENTERS

The commission held a public hearing on these rules on May 6, 1999, at 10:00 a.m. in Room 5108 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. No oral comments were received at the public hearing. Written comments were received from the following in opposition to the changes incorporated in this rulemaking: Clean Water Action, Coalition for Protection of Copano Bay, Lower Laguna Madre Foundation, Public Citizen, San Jacinto River Association, Save Our Springs, Sierra Club, Texas Center for Policy Studies, Texas Committee on Natural Resources, Texas Shrimp Association, and Blackburn & Carter, all as submitted through the law firm of Henry, Lowerre, Johnson & Frederick (collectively referred to herein as Henry, Lowerre), and the National Wildlife Federation (NWF). The following supported the changes incorporated in this rulemaking but recommended additional changes: Reliant Energy.

ANALYSIS OF TESTIMONY

Reliant Energy commented that it believes that a reduction in monitoring frequency is a minor amendment in that it clearly qualifies under §305.62(c)(2). Reliant stated that since a reduction in monitoring does not change the quantity or quality of a discharge, relax a standard or criterion, or result

in water quality impacts, TNRCC is currently authorized to process this change as a minor amendment and a change in the rules is not required.

The TNRCC appreciates the comment regarding reducing monitoring frequency at domestic facilities via a minor amendment under §305.62(c)(2). The *TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits* allows a reduction in monitoring frequency for domestic facilities based on the size of the facility, the receiving waters, the flow rate and/or treatment at the facility, inspection reports, and historical compliance. Enhanced reductions may be available for approved wastewater-related pollution prevention measures and in certain cases where ambient monitoring is conducted.

After careful consideration by TNRCC wastewater permitting program staff and the Office of Legal Services, the commission concludes that the rules require reductions in the monitoring frequency to be processed as major amendments. Minor amendments must improve or maintain water quality and they cannot cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. It appears that the minor amendment rule does not allow a reduction in monitoring frequency because such a change could affect the quality of the water by allowing exceedences of a permit limitation to continue. This could result in a violation of water quality standards. Therefore, monitoring frequency reductions will continue to be processed as major amendments with the concomitant notice provided by the major amendment rules.

Henry, Lowerre and NWF commented that the proposed rules eliminate or limit important provisions for public notice and opportunities for public participation in many TNRCC wastewater discharge permit decisions by eliminating mailed notice to adjacent and downstream landowners. Henry, Lowerre also commented that the rules do not enhance public participation and that they are contrary to state law. NWF commented that the commission is not justified in concluding that downstream and adjacent landowners do not have the potential to be affected by permit renewals or by issuance of TPDES permits.

These rules are intended to assist the Water Quality Division in processing efficiently and quickly the large number of unprocessed NPDES permit applications transferred from EPA to the TNRCC and to provide CWA authorization to those facilities that did not previously have it. As originally contemplated in its NPDES assumption application, the TNRCC intended to process EPA's backlog over a three- to five- year period. However, after assumption, in light of the number of permittees without CWA authorization, the TNRCC decided the better policy would be to bring these facilities into the TPDES fold as quickly as possible.

The adopted rules do not eliminate or reduce public notice or public participation for TPDES permits issued to replace existing state permits, nor do they conflict with Texas law. Rather, they establish notice requirements for TPDES permits issued to replace state discharge permits that have already been through a full notice process, expand the notice requirements for minor amendments, and create a new category of amendment, the minor modification. The minor modification receives the same notice as the same change would have previously, as a minor

amendment. The notice for each kind of change reflects the substance of the change in the permit and is designed to balance the need for public notice to facilitate public participation, the time and resource burdens on the commission and the regulated community, and the potential impacts of the three kinds of amendments.

Texas Water Code, §26.028(a), requires that the commission provide notice to the persons who, in the judgment of the commission, may be affected by the permit. For renewals of state permits, the commission concluded that those individuals who were originally given individual mailed notice of the permit when first proposed are not likely to be differently affected by the renewal of the same permit on the same terms. 30 TAC §39.151(a), promulgated in the December 27, 1996 issue of the *Texas Register* (21 TexReg 12550), states that mailed notice to adjacent and downstream landowners is not required for applications that are submitted to renew a permit. Similarly, in the rule adopted today the commission finds that individuals who received mailed notice of the terms of the existing state permit are not likely to be affected differently by the identical TPDES permit that replaces it. Thus, new TPDES permits that replace existing, identical state permits are in essence renewals of the same discharge. Because the same discharge point and parameters are being authorized, a second notice to downstream or adjacent landowners is not required under Texas law.

This new rule also provides enhanced notice for amendments that will be processed as minor amendments. State statutes require only that the TNRCC mail notice to city and county judges and health officials, and provide a ten-day comment period for all minor amendments. Under

the new rules, the notice and comment period for minor amendments is increased to 30 days. Mailed notice is also provided to persons and entities entitled to receive notice under 40 CFR §124.10, which includes people who have requested to be on the TNRCC mailing list for that permit. Also, for major facilities, notice will be published in the *Texas Register*.

For minor modifications under the new rule, the TNRCC will provide ten-days notice to the city and to the county judges and health officials, as required by Texas Water Code, §26.028. Under 40 CFR §122.63, by contrast, no notice is required for minor modifications. Notice for a minor modification as adopted today is more extensive than what it was while NPDES was administered by EPA under federal rules, and equals what has been required under state law for minor amendments.

Henry, Lowerre commented that the TNRCC should require the applicant to mail notice for applications submitted under this rule.

Although requiring the applicant to mail notice might reduce the cost to the TNRCC, the commission is concerned that it could not be sufficiently assured that mailed notice was completed by the applicant. To adequately establish this, staff time would be required to track notice, which could be difficult. In addition, more applications would probably give rise to defective notice challenges, resulting in delay and in unproductive use of staff and commission time for investigation.

Henry, Lowerre commented that, because TNRCC is eliminating mailed notice, the TNRCC's current newspaper notice requirements are inadequate in that they allow an obscure public notice in the back of the smallest weekly newspaper in the county. The commenter suggested that the TNRCC establish its standard newspaper notice as that provided in §39.5.

The rule does not eliminate mailed notice; it only avoids mailing repeated notice to the same people of the same permit terms. The newspaper notice provisions in §39.151(b)(1) are not part of this rulemaking. The commenter apparently harbors some confusion regarding what constitutes appropriate newspaper notice under that section. It tracks the language of Texas Water Code, §26.028(d); the applicant shall publish notice once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located, and in each county affected by the discharge. The applicant must publish in a regularly circulated newspaper available throughout the county or within the area affected by the discharge, not simply any newspaper within the county. For example, under §39.5(g) an applicant must publish in a newspaper of general circulation in the county in which the facility is located. Although this section is not specifically cross-referenced in §39.151, it represents TNRCC policy applicable to all newspaper notice and is reflective of what constitutes adequate notice. However, the TNRCC will consider revising §39.151(b)(1) in the future to address the commenter's concerns.

Henry, Lowerre also suggested that the commission limit the proposed transition rule to publicly-owned sewage treatment facilities that have only minor discharges and do not have significant compliance problems.

In fact, this rule will primarily apply to municipal minors because they comprise the vast majority of EPA's backlog. Permit applications for new and major amendments in-house at the TNRCC as of September 14, 1998 will not be processed under these new rules. Texas assumed most existing NPDES permits from EPA; they became TPDES permits under 30 TAC §305.533, and applications to amend or renew them will be processed as renewals or amendments under the commission's preexisting rules.

Henry, Lowerre commented that eliminating the requirement to submit adjacent and downstream landowner lists and maps is ill-advised, because these documents provide TNRCC a source of information about who may need to be contacted if there is a problem at the facility.

The rule does not eliminate any current notice requirement. Based on §39.151(a), the commission's practice has been to not require that applicants for permit renewals to submit adjacent or downstream landowner lists with their applications. The amendments in §281.5 and §305.48 adopted today merely reflect the commission's practice that these lists are not required.

The TNRCC uses the lists to provide notice to downstream and adjacent landowners for new and amendment applications. If a serious problem occurred at the facility, the TNRCC or other state and local agencies would use other available and more reliable methods of contacting those people, like broadcast media and door-to-door notification. Additionally, because those lists do not

necessarily provide physical addresses or phone numbers, but rather, they provide mailing addresses, they are unlikely to be useful in contacting people in an emergency.

Henry, Lowerre commented that the proposed rules create a new class of "minor amendments" but do not require any newspaper notice or any mailed notice, thereby creating a lack of notice.

The commission disagrees. Texas Water Code, §26.028(b), requires notice of minor amendments to be mailed to the mayor, county judge, and city and county health officials. The notice provides a ten-day comment period, but does not require newspaper notice. The new rule for minor amendments will require mailed notice to the mayor, county judge, city and county health officials, and state and federal agencies specified in 40 CFR §124.10(c), persons on the mailing list maintained by the Chief Clerk's Office either as required by 30 TAC §39.7 or 40 CFR §124.10(c)(1)(ix), and the applicant. Additionally, it expands the comment period to 30 days.

In addition, under the rules, publication in the *Texas Register* is required for minor amendments to major facilities. EPA regulations require published notice for amendments to permits of NPDES major discharges. The rules adopted today require *Texas Register* notice for minor amendments for major facilities instead of newspaper notice because in practice many minor amendments are staff-initiated to address water quality concerns. For example, under TPDES the TNRCC will be incorporating whole effluent toxicity (WET) limits into permits, generally as staff-initiated minor amendments. Publishing in the *Texas Register* will be a less expensive alternative to commercial papers.

Henry, Lowerre also suggested that the TNRCC extend the comment period for minor amendments from the proposed ten days to 30 days.

Although state statute requires only ten days' notice of minor amendments, the rule extends the comment period for these amendments to 30 days to match federal regulations for NPDES permits. For minor modifications, however, there will be a ten-day comment period. Federal regulations do not require any notice of minor modifications; state law requires at least ten days.

Henry, Lowerre also commented that the TNRCC is proposing to reduce public notice and, thus, public participation to save money due to inadequate funding of the NPDES program. NWF commented that the cost associated with compiling a landowner list is not substantial and that the potential savings are outweighed by the potential loss associated with making permitting decisions without obtaining all reasonably available information.

These rules will assist the Water Quality Division in processing efficiently and quickly the large number of unprocessed permit applications transferred from EPA to the TNRCC. The focus is policy, not finances. As stated in the FISCAL NOTE of the proposed preamble, the TNRCC does not anticipate significant positive or negative financial implications from implementing this rule.

Henry, Lowerre questioned the number of facilities that are part of the backlog of applications assumed by the TNRCC from EPA. The commenter also appeared to be concerned about which applications will be processed under these rules and about whether an appropriate review will be conducted.

There are approximately 800 facilities with no CWA authorization. About 1,100 facilities have pending renewal NPDES applications. These are the 1,800, or so, unprocessed permit applications assumed from EPA.

The adopted rule is intended to assist the TNRCC in processing those permit applications received from EPA. This rule will not apply to renewals and major amendments for discharges having both NPDES and state-only permits. Applications for renewals of state-only permits and NPDES permits will be processed under preexisting renewal rules. The same public notice that is required under Texas law for renewals will be required for new TPDES permits for discharges currently authorized by existing state permits.

Some of the discharges with in-house state renewal applications also had pending permit applications at EPA. Although the TNRCC will be processing these as “new” TPDES permits, these applications are for identical discharges and discharge parameters already authorized in the corresponding existing state permits. The TNRCC will conduct the same review of these applications as that conducted for renewals. New information from the application or new knowledge obtained since the last permit was issued (e.g., change in water quality standards, receiving water, etc.) will be considered and may result in more stringent requirements being added to the TPDES permit. As warranted, new requirements for toxic pollutants and sludge management will be added.

Henry, Lowerre commented that there is no clear division for what is a "major amendment" in the context of what the TNRCC is proposing. Specifically, the commenter is concerned that the TNRCC has processed some changes to permits as minor amendments that could be considered major amendments.

This rule does not change what is considered a major amendment. When deciding what constitutes a major amendment, the TNRCC follows state law and §305.62(c) of its rules. All minor amendments are screened by the Executive Review Committee of the Water Quality and Environmental Law Divisions to ensure that the rules and law are consistently interpreted. Generally, the staff determines whether the proposed change would result in a material change in the pattern or place of the discharge; if so, it is a major amendment under TNRCC regulations and notice to downstream and adjacent landowners is required.

Henry, Lowerre and NWF commented that when TNRCC considers amendments to, or renewal of, an existing permit, the public, particularly downstream and adjacent landowners, is in the best position to raise issues regarding compliance and water quality problems.

There is notice and an opportunity to participate in the renewal and TPDES-issuance process. The executive director or the commission will address all comments received relating to these facilities.

Additionally, the opportunity to make the agency aware of a compliance problem is available at any time, not simply during a renewal or issuance of a permit. Documented problems at the facility are an important source of information during the permitting process. The executive director considers a facility's compliance history and relevant self-reported data when evaluating a renewal application. The TNRCC will also consider compliance history when processing TPDES permit applications replacing existing state permits. If a member of the public is concerned about a particular facility or has information regarding problems at a facility, that person should report it to the appropriate regional office so that the complaint can be handled properly.

NWF also commented that TNRCC should not attempt to create a new category of permit action.

Section 26.028 of the Water Code establishes three categories: permit issuance, permit renewals, and permit amendments. The commenter is concerned that the term "minor modification" is not consistent with the statutory scheme of Chapter 26 of the Water Code and believed that it creates unnecessary ambiguity.

A new classification called "minor modifications" is nothing more than a subset of minor amendments as contemplated by Texas Water Code, §26.028(b). The category of minor modification will not create unnecessary ambiguity because it is limited to seven enumerated items.

NWF commented that the public benefit analyses supporting the proposed reduction in public notice are without substance and the rule does not provide regulatory flexibility other than that gained by §305.71.

NWF also commented that there is no basis for the contention that the rule will result in an improved regulatory process.

The public benefit gained by this rule is greater than that associated with the amendment of §305.71. Bringing CWA coverage to permittees who do not have it is of utmost importance to the public because positive elements of the CWA such as WET limits, anti-backsliding, and mandatory development of Pretreatment Programs, will be incorporated into TPDES permits. To that end, this rulemaking will assist the TNRCC in efficiently processing permit applications assumed from EPA.

NWF also commented that the TNRCC should not adopt the proposed changes to §39.17 (to the extent the changes reference minor modifications of wastewater permits or create exceptions to the landowner notice requirements) and §§281.5, 305.48, or 305.62 (to the extent the changes create a category of permit “modifications”).

The commission disagrees. The minor modification category is currently part of federal rules and is adopted to be consistent with the NPDES program. Nonetheless, the TNRCC is providing notice for minor modifications where none is required by NPDES.

Henry, Lowerre also commented that the rules will affect private real property and that a proper Takings Impact Evaluation should be prepared. The commenter believed that eliminating opportunities for a landowner to know of a change in a permit that affects his or her property does affect private real

property, and that TNRCC's proposed change in public notice requirements could result in a negative effect on property because the landowner has no notice of the opportunity to provide TNRCC with information needed by the agency to adequately protect the landowner's property. Also, the commenter stated that the "mandated by federal law" excuse is clearly an improper justification because reducing public notice is clearly not required by federal law.

Chapter 2007 of the Government Code requires a state agency engaged in rulemaking to prepare a written takings impact assessment on any governmental action (e.g., rulemaking) that may result in a taking. A "taking" is defined in §2007.002(5)(b) as a governmental action that affects an owner's private real property that is the subject of the governmental action. These new rules apply to permits to discharge wastewater into or adjacent to waters in the state. Adjacent and downstream landowners' property is not the subject of this rulemaking. Therefore, this rule does not affect the private real property of adjacent and downstream landowners. Nor does it affect the property of the applicant in a manner that constitutes a taking, as explained in the proposal preamble. The statement in the proposal preamble that "any effect on property rights occasioned by these proposed changes would be a result of existing Texas Water Code, Chapter 26, which mandates the development of the wastewater permitting program," was aimed at property owned by permittees, which is the subject of this rulemaking.

The rule adopted today does not eliminate opportunities or reduce public notice to adjacent and downstream landowners. Any person may request to be put on the mailing list maintained by the

chief clerk for a particular facility. In this case, the affected person will receive notice of action taken with regard to the permit at that facility.

40 CFR §§123.25, 122.21, and 124.10 require a state with a federally delegated NPDES program to incorporate specific notice provisions. The TNRCC has done so. The commenter is correct that federal regulation does not require the TNRCC to reduce notice. In fact, with regard to minor modifications, federal regulation does not require the TNRCC to provide any notice. Nevertheless, this rule requires notice to city and county officials and a ten-day comment period. Contrary to the assertion, the rule does not reduce notice to any person entitled to receive notice under the previous rules.

Henry, Lowerre also commented that the TNRCC's conclusion that the rule is not a major environmental rule because the specific intent is procedural and the changes will not impose additional notice requirements is incorrect and that a proper RIA should be prepared. The commenter asserted that procedural rules can be major environmental rules, and that additional burdens on nearby property can make a rule a major environmental rule.

This is not a major environmental rule, by definition. Section 2001.0225(g)(3) defines major environmental rule as 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. That is not the intent of this rule.

The specific intent of this rule is to set out the notice and public participation requirements associated with certain wastewater discharge applications. If a rule does not meet the definition of a major environmental rule, the agency is not required to perform an RIA under §2001.0225. Even if this rule met the definition of a major environmental rule, a full RIA would not be required, because the statute exempts actions taken pursuant to a state or federal law and those that do not exceed standards set by the state or federal law which mandates the action. Section 2001.0225 provides exemptions from the requirement to perform a full RIA as long as the rule being enacted does not impose any requirements not already required by state or federal law, exceed a standard set by federal law or state law, or exceed a requirement of a delegation agreement. These rules are required by Texas Water Code, §26.028, and by 40 CFR §§123.25, 122.21, and 124.10. Although the minor modification portion of the rule exceeds federal notice requirements, the level of notice provided in the rule is specifically required by state law. Additionally, the minor amendment portion of the rule exceeds state notice requirements, but the level of notice is specifically required by federal law. No other portions of the rule exceed any standards articulated by state or federal law, nor do they exceed any requirement of TNRCC's NPDES authorization agreement with EPA.

NWF asserted that the discussion of CMP consistency is without basis and indicated that the process for permit issuance is irrelevant to CMP compliance and to the contents of permits. 31 TAC §501.12(9) provides that a goal of the CMP is to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP. This statement recognizes that public participation

opportunities are an integral component of CMP implementation. According to the commenter, it appeared that TNRCC is moving away from the position that public participation is an important component of informed decision-making.

The TNRCC disagrees. Under 31 TAC §501.10, TNRCC rulemaking actions must comply with the goals and policies of the CMP. The goals are set out in §501.12 and the policies in §§501.13, 501.14, and 501.15. Chapter 505 of Title 31 sets out the procedures for ensuring that state actions (which include rulemaking) are consistent with the CMP goals and policies.

Section 505.11(b)(4) states that any rule governing an individual action, such as a wastewater discharge permit, is subject to the CMP. Section 505.22 sets out the requirements in a rulemaking that must be met to establish that the rulemaking complies with the CMP. Specifically, §505.22(a) requires the agency to state in the preamble that the proposed rule or rule amendment is subject to the CMP and therefore, must be consistent with all applicable CMP policies; to state a reasoned justification explaining the basis upon which the agency concluded the proposed rule is consistent with each applicable CMP policy; and to request public comment on the consistency of the proposed rule or rule amendment. Section 505.22 requires, upon adoption of the rule or rule amendment, that an agency affirm that it has taken into account the goals and policies of the CMP by issuing a reasoned determination that the rule or rule amendment is consistent with CMP goals and policies.

The CMP goals are found in §501.12 of Title 31 and are too numerous to list in the preamble.

Generally the goals, among other things, are to protect preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. The CMP policies are found in §§501.13, 501.14, and 501.15. Section 505.13, entitled Administrative Policies, does not apply to this rulemaking because the policies in §505.13 are aimed at individual actions identified in §505.11, such as individual permitting actions. Section 505.15, Policy for Major Actions, does not apply because a major action is described as an activity for which a federal environmental impact statement under the National Environmental Policy Act is required.

Conversely, §505.14, Policies for Specific Activities and Coastal Natural Resource Areas, does apply to this rulemaking. Specifically, §505.14(f), Discharge of Municipal and Industrial Wastewater to Coastal Waters, applies because this rulemaking must comply with the requirements of the CWA and EPA's regulations. Therefore, it must be consistent with the policies articulated in §505.14(f). The public notice requirements of this rule require the same notice as the CWA or more notice than what is required under the CWA; therefore, this rule is consistent with applicable policies of the CMP.

The commenter highlights the goal of making the coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP and asserts that this rulemaking is inconsistent with this goal. The CMP rules are not clear on how public participation in the ongoing development and implementation of the Texas CMP is to be accomplished, but even if it

means that the public participation envisioned by the CMP rules must be the same as the public participation provided for by Chapter 26 of the Texas Water Code in permitting matters, the TNRCC believes this rulemaking satisfies this goal because this rule provides either the same or enhanced public notice and participation as that required by state and federal law.

TNRCC affirms that this rulemaking is consistent with the CMP goals and has satisfied the requirement of the CMP by demonstrating that this action does not conflict, and is therefore, consistent with applicable CMP policies.

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. The amendment is also adopted 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 the notice required for wastewater applications; and Texas Water Code, §26.029, which describes the required conditions of permits.

SUBCHAPTER C : APPLICATION FOR PERMIT

§305.48

§305.48. Additional Contents of Applications for Wastewater Discharge Permits.

(a) The following shall be included in an application for a wastewater discharge permit.

(1) (No change.)

(2) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information. This subsection does not apply to:

(A) an application to renew a permit; and

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(3) (No change.)

(b) - (c) (No change.)

**SUBCHAPTER D : AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS,
REVOCATION, AND SUSPENSION OF PERMITS**

§305.62, §305.71

STATUTORY AUTHORITY

The amendments are 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. The amendments are also adopted 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.

§305.62. Amendment.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an

amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) (No change.)

(c) Types of amendments.

(1) (No change.)

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this

chapter that will not cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) - (4) (No change.)

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) - (i) (No change.)

§305.71. Basin Permitting.

(a) Upon receipt of wastewater discharge permit applications, excluding permits for confined animal feeding operations, the commission, to the greatest extent practicable, will evaluate all future applications within a single river basin within the same year. The future expiration dates for all permits issued after the effective date of this section shall be in accordance with the basin schedules in subsection (b) of this section. However, no permit shall be issued for a term of less than two years, except as specified in this subsection. If the schedule indicates a term of less than two years, then two terms between two and five years in length will be utilized in order to coincide with the schedule. There may be instances where two permit cycles are needed for some permits before they are on the basin cycle. The commission may issue new Texas Pollutant Discharge Elimination System (TPDES) permits for less than two years duration for discharges authorized by an existing state permit issued before September 14, 1998.

(b) - (e) (No charge.)