

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §281.18, Applications Returned. This amendment implements certain requirements of Senate Bill (SB) 486, 76th Legislature, 1999 by changing the maximum response time an applicant has to submit information or material the executive director needs to declare a permit application administratively complete. Section 281.18 is adopted without changes to the proposed text as published in the February 25, 2000 issue of the *Texas Register* (25 TexReg 1562) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

SB 486, 76th Legislature, 1999, amended Texas Health and Safety Code (THSC), §361.066 by requiring the commission to establish a rule that sets a submittal deadline for a permit applicant who has received notice from the commission that the executive director needs additional information or materials to declare the application administratively complete. Additionally, the bill deleted from THSC, §361.066 the 270-day deadline for receipt of additional information or materials after the applicant receives notice of the deficiency. To incorporate these statutory changes, the commission adopts an amendment to §281.18.

Section 281.18 sets out certain procedures for applications which are not administratively complete. Under this section, if an application is received which is not administratively complete, the executive director notifies the applicant of the deficiencies and if the necessary additional information is received within 30 days of receipt of the deficiency notice, the executive director evaluates the information and, where applicable, prepares a statement of receipt of the application and declaration of administrative completeness.

SECTION BY SECTION DISCUSSION

Adopted §281.18(b) establishes that if the applicant can offer sufficient proof that an adequate response cannot be submitted within the initial 30-day period, the applicant may have the time limit extended an additional 60 days to a maximum total of 90 days. This new 90-day time period replaces the previous rule language which allowed up to 270 days. The adopted amendment reads as follows: “For applications involving industrial, hazardous, or municipal waste, or for new, renewal, or major amendment applications for radioactive material licenses, the executive director may grant an extension of an additional 60 days beyond the original 30 days allowed under the rule for a total response time of 90 days upon sufficient proof from the applicant that an adequate response cannot be submitted within 30 days.”

FINAL REGULATORY IMPACT ANALYSIS

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 does not meet the definition of a major environmental rule as defined in that statute. “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. The amendment to Chapter 281 reduces the maximum number of days the executive director may allow an applicant to provide the executive director with the additional information or material needed to make an application administratively complete. The amendment does not impose additional fiscal requirements to existing requirements and may have the positive effect of

preventing applications from being drawn out over longer periods of time. The amendment is not anticipated to have an adverse effect in a material way on 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. In addition, this rulemaking does not meet any of the four applicability requirements of a “major environmental rule” under Texas Government Code, §2001.0225. Specifically, the amendment does not exceed a federal standard, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. The amendment was not developed solely under the general powers of the agency but were specifically developed to make state rules conform to the THSC as amended by SB 486.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule amendment pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the amendment is to set a submission deadline for a permit applicant who has received notice from the executive director that the executive director needs additional information or materials to declare the applicant’s application administratively complete. Promulgation and enforcement of this rule will not burden private real property because the issue concerns the enforcement of procedural time frames based upon an incomplete application, wherein the applicant has no property rights.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with Texas Coastal Management Program (CMP) goals and policies in accordance with the rules of the Coastal Coordination Council.

The commission has found that the adoption is a rulemaking which relates to an action or actions subject to the CMP, in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et seq.), and the commission's rules at 30 TAC Chapter 281, Subchapter B, relating to consistency with the CMP. Therefore, as required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, this rule must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this 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, §§6901 et seq. Promulgation and enforcement of this rule would be consistent with the applicable CMP goals and policies because the rule would facilitate the permitting process by reducing the time allowed for the applicant to submit additional information or material after the applicant receives notice from the commission that the information or material is needed to make the application administratively complete. Thus, the rule would serve to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. The rule also serves 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, §§6901 et seq. The commission has determined that the specific actions detailed in this section and earlier in this preamble under the sections concerning Background and Summary of the Factual Basis for the Adopted Rule, Section by Section Discussion, Final Regulatory Impact Analysis, and Takings Impact Analysis will comply with the goals and policies of the CMP. In addition, the rule does not violate any applicable provisions of the CMP's stated goals and policies.

HEARINGS AND COMMENTERS

The commission did not hold a public hearing on the proposed rule changes. The comment period for the proposed rule closed at 5:00 p.m., March 27, 2000. There were no comments received.

STATUTORY AUTHORITY

This amendment is adopted under Texas Water Code (TWC), §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 TWC or other laws of this state; and under the THSC, §361.017 and §361.024, which authorize the commission to regulate solid waste and municipal hazardous waste and to adopt rules consistent with the general purposes of the THSC. Additionally, THSC, §361.066 as amended by SB 486, 76th Legislature, 1999, specifically states that the commission shall establish by rule a deadline for applicants to submit additional information or materials after the commission notifies the applicant that the additional information or materials are needed to make the application administratively complete.

SUBCHAPTER A: APPLICATIONS PROCESSING

§281.18

§281.18 Applications Returned

(a) If an application or petition is received which is not administratively complete, the executive director shall notify the applicant of the deficiencies prior to expiration of the applicable review period established by §281.3(a), (b) and (d) of this title (relating to Initial Review) by certified mail return receipt requested. If the additional information is received within 30 days of receipt of the deficiency notice, the executive director will evaluate the information within eight working days and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative completeness in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). For applications for radioactive material licenses, the executive director shall evaluate the information received in response to a notice of deficiency within thirty days. If the required information is not received from the applicant within 30 days of the date of receipt of the deficiency notice, the executive director shall return the incomplete application to the applicant.

(b) For applications involving industrial, hazardous, or municipal waste, or for new, renewal, or major amendment applications for radioactive material licenses, the executive director may grant an extension of an additional 60 days beyond the original 30 days allowed under the rule for a total response time of 90 days upon sufficient proof from the applicant that an adequate response cannot be submitted within 30 days. Unless there are extenuating circumstances, if an applicant does not submit

an administratively complete application as required by this chapter, the application shall be considered withdrawn. However, if applicable, the applicant is responsible for the cost of any notice provided under §281.17 of this title and the costs of such notice shall be deducted from any filing fees submitted by the applicant prior to return of the incomplete application.

