

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §50.31, Purpose and Applicability.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

This rulemaking applies to both the radiation control and water programs.

This radiation control program portion is a part of a larger radiation control rule package that has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal begun before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

Texas Water Code (TWC), §5.122, provides authority for the commission to delegate to the executive director, by rule or order, its authority to act on certain uncontested matters. The commission has therefore delegated authority to the executive director to act on various matters in §50.31. Senate Bill (SB) 1421 amended TWC, §17.927, Application for Financial Assistance, to require an applicant for financial assistance to include, at the request of the Texas Water Development Board, a written determination by the commission on the financial, managerial, and technical capacity of the applicant to operate the system for which assistance is being requested. SB 1421 also amended Texas Civil Statutes, Article 6243-101, the Texas Plumbing Licensing Law, to require the commission to certify organizations that provide “self-help” project assistance, without a plumbing license, in a county any part of which is within 50 miles of an international border.

#### SECTION BY SECTION DISCUSSION

Section 50.31(b) is proposed to be amended by capitalizing the word “subchapter”. Section 50.31(b)(11) is proposed to be amended to delete “radioactive waste or” because the term “radioactive material” in the same paragraph includes “low-level radioactive waste.” New §50.31(b)(21) would delegate to the executive director the determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency. New §50.31(b)(22) would delegate to the executive director the certification of an organization that is installing plumbing in a “self-help” project in a county within 50 miles of an international border.

#### FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rule is in effect, there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed rule.

The proposed rule would implement certain provisions of HB 1172, 76th Legislature, 1999, (an Act relating to the definition of low-level radioactive waste) by deleting a redundant reference to radioactive waste.

The proposed rule would implement certain provisions of SB 1421, 76th Legislature, 1999 (an Act related to the regulation of the subdivision or development of land in certain economically distressed areas, including colonias and certain areas; providing penalties) by requiring the TNRCC to provide a written determination on the managerial, financial, and technical capacity of a political subdivision to operate a system for which financial assistance is being requested upon a request from the Texas Water Development Board and would delegate to the executive director the certification of an organization that is installing plumbing in a “self-help” project in a county within 50 miles of an international border.

#### PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed rule is in effect, the anticipated public benefit from enforcement of and compliance with the proposed rule will be clearer language on the radiation control program application requirements and increased assurance that

a political subdivision will have the managerial, financial, and technical capacity to operate a system for which financial assistance has been requested.

No adverse economic costs to any person, business, or facility is anticipated as a result of implementing the proposed rule. The proposed rule would implement certain provisions of HB 1172, by deleting a redundant reference to radioactive waste. The proposed rule would also implement certain provisions of SB 1421, by requiring the TNRCC to provide a written determination on the managerial, financial, and technical capacity of a political subdivision to operate a system for which financial assistance is being requested upon a request from the Texas Water Development Board and would delegate to the executive director the certification of an organization that is installing plumbing in a “self-help” project in a county within 50 miles of an international border.

#### SMALL BUSINESS AND MICRO-BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business or micro-business as a result of implementing the proposed rule. The proposed rule would implement certain provisions of HB 1172, 76th Legislature, 1999, (an Act relating to the definition of low-level radioactive waste) by deleting a redundant reference to radioactive waste. The proposed rule would implement certain provisions of SB 1421, 76th Legislature, 1999 (an Act related to the regulation of the subdivision or development of land in certain economically distressed areas, including colonias and certain areas; providing penalties) by requiring the TNRCC to provide a written determination on the managerial, financial, and technical capacity of a political subdivision to operate a system for which financial assistance is being requested upon a request from the Texas Water Development Board and would delegate to the executive director

the certification of an organization that is installing plumbing in a “self-help” project in a county within 50 miles of an international border.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 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 proposed rule 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. The proposed rule does not place any requirements on the regulated community not already required by law. In addition, the proposed rule is not a “major environmental rule” because it does not meet the applicability requirements of a “major environmental rule.” The proposed rule does not exceed a standard set by federal law, does not exceed an express requirement of state law, nor does it exceed a requirement of a delegation agreement, and is not promulgated solely under the general authority of the agency. This rulemaking specifically implements provisions of SB 1421 and HB 1172. The rule simply deletes a redundant reference to radioactive waste; requires the TNRCC to provide a written determination on the managerial, financial, and technical capacity of a political subdivision to operate a system for which financial assistance is being requested upon a request from the Texas Water

Development Board and would delegate to the executive director the certification of an organization that is installing plumbing in a “self-help” project in a county within 50 miles of an international border.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the proposed rule amendment under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendment is to improve the language of the radiation control program requirement and to provide for the implementation of provisions in SB 1421. The proposed rule amendment will substantially advance the specific purpose by amending §50.31 to improve the language of the radiation control program requirement and to incorporate the new provisions in SB 1421. Promulgation and enforcement of the amendment will not burden private real property because the actions that are required by the rule amendments relate to internal actions of the commission and not to private real property owners. Therefore, this proposal will not constitute a takings under Texas Government Code, Chapter 2007.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

#### PUBLIC HEARING

A public hearing on this proposal will be held in Austin on July 6, 2000, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. 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.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3078 or faxed to (512) 239-4808.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-057-336-WS. Comments must be received by 5:00 p.m., July 17, 2000. For further information, please contact Hygie Reynolds, Waste Permits Division, (512) 239-6825.

#### STATUTORY AUTHORITY

The amendment is proposed under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b)-(e), 401.106(b) and (c), 401.201-401.203, 401.303,

401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103. The amendment is also proposed under TWC, §5.122, which provides authority for the commission to delegate to the executive director, by rule or order, its authority to act on certain uncontested matters; and §17.927, which authorizes the commission to make determinations of financial, managerial, and technical capacity of applicants for financial assistance for operation of a water system; and Texas Civil Statutes, Article 6243-101, §3, which authorizes the commission to certify an organization, that does not have a plumbing license, to provide assistance on “self-help” water and sewer projects in certain counties.

The proposed amendment implements THSC, Chapter 401; TWC, Chapter 17; and Texas Civil Statutes, Article 6243-101.

**SUBCHAPTER C: ACTION BY THE EXECUTIVE DIRECTOR**

**§50.31**

**§50.31. Purpose and Applicability.**

(a) (No change.)

(b) This subchapter applies to any application that is declared administratively complete before September 1, 1999. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter [subchapter] G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

(1)-(10) (No change.)

(11) [radioactive waste or] radioactive material permits or licenses;

(12)-(18) (No change.)

(19) irrigator or installer registrations under Texas Water Code, Chapter 34; [and]

(20) municipal management district matters under Local Government Code, Chapter

(21) determination of the financial, managerial, and technical qualifications of applicants for loans from the Texas Water Development Board, if requested by that agency; and

(22) certification of an organization that is installing plumbing in a “self-help” project, in a county any part of which is within 50 miles of an international border.

(c)-(d) (No change.)