The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §305.64 and the repeal of §305.149.

**Background and Summary of the Factual Basis for the Proposed Rules**

The proposed rulemaking is intended to update some of the commission’s procedural rules and is not intended to impose any new procedural or substantive requirements. This rulemaking would correct a typographical error in §305.64 (Transfer of Permits). Additionally, this rulemaking would repeal §305.149 (Time Limitation for Construction of Commercial Hazardous Waste Management Units), because the statutory authority for this rule was repealed.

As part of this rulemaking, the commission is proposing revisions to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the *Texas Register*.

**Section by Section Discussion**

In addition to the proposed revisions associated with this rulemaking, various non-substantive changes are proposed to update references or correct grammar. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion portion of this preamble.

§305.64, *Transfer of Permits*
The commission proposes to amend §305.64(c) to remove a misplaced space between 'transfer' and 'or' in the word "transferor," which made the language unclear.

§305.149, Time Limitation for Construction of Commercial Hazardous Waste Management Units

The commission proposes the repeal of §305.149. The statutory basis for this section, THSC, §361.0232, was repealed.

**Fiscal Note: Costs to State and Local Government**

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rulemaking.

This rulemaking addresses necessary changes to provide consistency with state law and improve readability.

**Public Benefits and Costs**

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be coordination with state law and improved readability. The proposed repeal of §305.149 is necessary because the state law that authorized the regulation was repealed.
Local Employment Impact Statement
The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Rural Community Impact Statement
The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment
No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect.

Small Business Regulatory Flexibility Analysis
The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for
the first five years the proposed rulemaking is in effect.

**Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation; however, it does repeal a regulation that is no longer required by state law. This proposed repeal may decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state’s economy.

**Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is 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 amendment of §305.64 is procedural in nature; and
the proposed repeal of §305.149 is necessary because THSC, §361.0232 was repealed.
Neither of these changes is specifically intended to protect the environment or reduce
risks to human health from environmental exposure, nor do they 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.
Rather, the proposed rulemaking would correct a typographical error to ensure there is
no confusion regarding the rule language and repeal obsolete rule requirements.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result
of which is to: exceed a standard set by federal law, unless the rule is specifically
required by state law; exceed an express requirement of state law, unless the rule is
specifically required by federal law; 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; or adopt a rule solely under the general
authority of the commission. The proposed rulemaking does not exceed an express
requirement of state law or a requirement of a delegation agreement and was not
developed solely under the general powers of the agency but is authorized by specific
sections of the Texas Water Code and THSC that are cited in the Statutory Authority
section of this preamble. Therefore, this rulemaking is not subject to the regulatory
Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

**Takings Impact Assessment**

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

**Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed rulemaking affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal
Management Program (CMP).

Written comments on the consistency of this rulemaking with the CMP goals and policies may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 6, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission’s central office located at 12100 Park 35 Circle. 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 be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Kris Hogan, MC 205, Office of Legal Services,
Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-085-335-WS. The comment period closes on February 11, 2020. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarita Sepulvado, Industrial and Hazardous Waste Permits Section, (512) 239-4413.
SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

§305.64

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment implements THSC, Chapter 361.

§305.64. Transfer of Permits.

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.
(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

1. the name and address of the transferee;

2. date of proposed transfer;

3. if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

4. a fee of $100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fee);

5. a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and

6. any other information the executive director may reasonably require.
(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the approved transfer. This section is not intended to relieve a transferor [transfer or] of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior
written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), until the new owner or operator has demonstrated compliance with the requirements of Chapter 37, Subchapter P of this title. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title within six months of the date of the change of ownership or operational control of the facility. Prior to the executive director issuing the permit modification transferring the permit, the new owner or operator must provide proof of financial assurance in compliance with Chapter 37, Subchapter P of this title. Upon demonstration to the executive director of compliance with Chapter 37 of this title (relating to Financial Assurance), the executive director shall notify the old owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title as of the date of demonstration.

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:
(1) the permittee no longer owns the permitted facilities;

(2) the permittee is about to abandon or cease operation of the facilities;

(3) the permittee has abandoned or ceased operating the facilities; and

(4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

(1) the permittee no longer owns or controls the permitted facilities;

(2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;

(3) the permittee has failed or is failing to comply with the terms and conditions of the permit;
(4) the permitted facilities have been or are about to be abandoned;

(5) the permittee has violated commission rules or orders;

(6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

(8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.
(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

(k) For standard permits, changes in the ownership or operational control of a facility may be made as a Class 1 modification to the standard permit with prior approval from the executive director in accordance with §305.69(k) of this title.
SUBCHAPTER G: ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS

[§305.149]

Statutory Authority
The repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed repeal implements THSC, Chapter 361.

[§305.149. Time Limitation for Construction of Commercial Hazardous Waste Management Units.]

[(a) Applicability. This section applies to facilities which provide commercial capacity for the storage, processing or disposal of hazardous waste and for which]
permit applications, Class 3 permit modification requests or major permit amendment requests are filed after the effective date of this rule.]

[(b) Schedule for construction of commercial hazardous waste management units.]

[(1) The facility owner or operator shall construct all permitted units within two years of final administrative and judicial disposition of the permit, modification or amendment referenced in subsection (a) of this section. Within 90 days after the end of the two-year construction period time limit, the facility owner or operator shall certify to the executive director that the unit has been constructed in accordance with applicable permit provisions.]

[(2) A one-time six-month extension to the two-year construction period time limit may be requested as a Class 2 permit modification. All modification requests and subsequent procedures must comply with applicable provisions of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request. The request must be made within the initial two-year period and, if granted, the six-month extension shall begin at the end of the initial two-year construction period time limit specified under paragraph (1) of this subsection. Construction of the unit is
authorized under this subsection until the commission takes final action on the modification request; however, in no event shall authorization continue under this subsection beyond six months following the end of the initial two-year construction period specified under paragraph (1) of this subsection. Within 90 days of the end of the authorized extension period, the facility owner or operator shall certify to the executive director that the unit has been constructed in accordance with applicable permit provisions.]

[(3) Extensions for greater than six months, or any extension to the construction period time schedule authorized under an approved Class 2 permit modification pursuant to paragraph (2) of this subsection, shall be requested as a Class 3 permit modification. All requests and subsequent procedures must comply with applicable provisions of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.]

[(A) Extension requests made under this paragraph shall be submitted during the periods authorized under paragraph (1) or (2) of this subsection. Construction of the unit is authorized under this subsection until the commission takes final action on the modification request.]
[(B) The commission shall not consider requests made under this paragraph which are submitted after the expiration of the time periods authorized under paragraph (1) or (2) of this subsection.]

[(4) Under circumstances which require a delayed or staged unit construction schedule longer than that specified under paragraph (1) of this subsection, justification for the proposed extended schedule shall be submitted with the permit application. The submitted schedule shall become part of the permit only upon the approval of the commission. Requests for changes to the approved schedule submitted during the period covered by the approved schedule shall comply with Class 2 or Class 3 permit modification rules, pursuant to §305.69. The class of the modification shall be determined by the length of the extension requested. An extension request of six months or less shall be a Class 2 modification and an extension request of greater than six months shall be a Class 3 modification request. All requests and subsequent procedures must comply with applicable provisions of §305.69 and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.]

[(c) Authorization status. Unit construction or management of hazardous waste in a unit is not authorized under any of the following conditions:]
[(1) the permittee has not constructed the unit within the time period specified under subsection (b)(1) of this section and:]

[(A) the permittee does not submit a modification request as specified in subsection (b)(2) or (3) of this section; or]

[(B) the commission has denied a request for an extension under subsection (b)(2) or (3) of this section and the construction period time limit specified in subsection (b)(1) or (2) of this section has expired;]

[(2) the unit has not been constructed within the time period specified in the permit as per subsection (b)(4) of this section and:]

[(A) the permittee does not submit a modification request as specified in subsection (b)(4) of this section; or]

[(B) the commission has denied a request for an extension under subsection (b)(4) of this section and the construction period time limit specified in the permit has expired.]