

The Texas Commission on Environmental Quality (commission) proposes the repeal of §§294.1 - 294.4, 294.10 - 294.12, and 294.60 - 294.63.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

Senate Bill 2, §2.22, 77th Legislature, 2001, transferred the authority to designate groundwater management areas from the commission to the Texas Water Development Board (TWDB). Texas Water Code (TWC), §35.004, provides that the TWDB shall designate all the management areas in the state by September 1, 2003. The TWDB has designated these areas. Three groundwater management areas were designated by the commission under TWC, Chapter 52 and one management area was designated under TWC, Chapter 35, which was renumbered from former Chapter 52. The commission proposes to repeal these groundwater management areas because they are no longer valid and to avoid confusion with the TWDB groundwater management area designations.

SECTION BY SECTION DISCUSSION

Chapter 294 is proposed to be renamed Priority Groundwater Management Areas to accurately reflect the content of the chapter after the proposed repeals.

Subchapters A, B, and F are proposed to be repealed because the authority to designate groundwater management areas was transferred to the TWDB. Subchapter A, Carrizo-Wilcox Aquifer, contains §294.1, Definitions; §294.2, Designation of Management Area 3 of the Carrizo-Wilcox Aquifer; §294.3, Designation of Management Area 4 of the Carrizo-Wilcox Aquifer; and §294.4, Description of Boundaries. Subchapter B, Antlers Sand Aquifer, contains §294.10, Definitions; §294.11, Designation

of Union Hill Underground Water Management Area of the Antlers Sand Aquifer; and §294.12, Description of Boundaries. Subchapter F, East Texas Groundwater Management Area, contains §294.60, Purpose and Scope; §294.61, Definitions; §294.62, Designation of East Texas Groundwater Management Area (ETGMA); and §294.63, Boundaries.

FISCAL NOTE

Jan Washburn, Manager of Strategic Planning, determined that for the first five years that the proposed repeals are in effect, there will be no fiscal impact to the state or local governments from the proposed repeals. Senate Bill 2 transferred the authority to designate groundwater management areas from the commission to the TWDB. The TWDB has designated management areas under its authority which replace those designated by the commission. The proposed repeals delete designations of four management areas from commission rules. Ms. Washburn also determined that for each of the first five years the proposed repeals are in effect, the public benefit anticipated from the repeals is the elimination of potential confusion between the TWDB's and the commission's responsibilities. No fiscal implications are anticipated for any individual or business due to the repeal of these groundwater management areas in the rules as no new requirements are being added, and businesses were not affected by the management area designations when the rules were adopted.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Additionally, no fiscal implications are anticipated for any small or micro-businesses due to the repeal of the rules for the same reasons as stated previously.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect.

DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as set out in that statute. The proposal would not meet the definition of major environmental rule because it would not adversely affect, in a material way, the economy, a section 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 rulemaking would repeal management area designations made by the commission under repealed law. The TWDB currently designates management areas.

The proposed repeals also do not meet the criteria for a "major environmental rule" as set out in the Texas Government Code, because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The repeals are

proposed under a specific state law, TWC, §35.004, which provides that the TWDB currently designates management areas. The repeals do not 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. The repeals do not go beyond specific state and federal law, but implements the law by repealing the TCEQ designated management areas. Therefore, the commission concludes that a regulatory analysis is not required in this instance because the proposed repeals do not meet the definition of major environmental rule and do not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of the proposed rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed rulemaking is to repeal management area designations made by the commission based on repealed law. Current law requires the TWDB to create management areas, and the TWDB has done so. The proposed repeals will substantially advance this stated purpose by repealing the management area designations made by the commission. These proposed repeals do not impact real property because groundwater management area designation has no regulatory effect. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to the proposed repeals because this is an action that does not adversely affect real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rulemaking is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-014-294-WT. Comments must be received by 5:00 p.m., December 22, 2003. For further information, please contact Emily Barrett, Policy and Regulations Division, (512) 239-3546.

SUBCHAPTER A: CARRIZO-WILCOX AQUIFER

§§294.1 - 294.4

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

The proposed repeals implement TWC, §35.004, which provides that the TWDB shall designate all the management areas in the state by September 1, 2003.

§294.1. Definitions.

§294.2. Designation of Management Area 3 of the Carrizo-Wilcox Aquifer.

§294.3. Designation of Management Area 4 of the Carrizo-Wilcox Aquifer.

§294.4. Description of Boundaries.

SUBCHAPTER B: ANTLERS SAND AQUIFER

§§294.10 - 294.12

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

The proposed repeals implement TWC, §35.004, which provides that the TWDB shall designate all the management areas in the state by September 1, 2003.

§294.10. Definitions.

§294.11. Designation of Union Hill Underground Water Management Area of the Antlers Sand Aquifer.

§294.12. Description of Boundaries.

SUBCHAPTER F: EAST TEXAS GROUNDWATER MANAGEMENT AREA

§§294.60 - 294.63

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

The proposed repeals implement TWC, §35.004, which provides that the TWDB shall designate all the management areas in the state by September 1, 2003.

§294.60. Purpose and Scope.

§294.61. Definitions.

§294.62. Designation of East Texas Groundwater Management Area (ETGMA).

§294.63. Boundaries.