The Texas Commission on Environmental Quality (commission) adopts the repeal of Chapter 449, General Provisions, §§449.1 - 449.7, 449.21, 449.22, 449.31 - 449.35, 449.41 - 449.46, 449.71, 449.81 - 449.87, and 449.91 - 449.93. The repeals are adopted *without change* as proposed in the September 19, 2003 issue of the *Texas Register* (28 TexReg 8118) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEAL

Chapter 449 was initially adopted by the Texas Low-Level Radioactive Waste Disposal Authority ("Authority") to implement provisions of the Texas Low-Level Radioactive Waste Disposal Authority Act (1989 Texas General Laws, Chapter 678, §1, 71st Legislature), codified in Texas Health and Safety Code, Chapter 402. House Bill (HB) 2954 (76th Legislature, 1999) created new Texas Health and Safety Code, §402.004 (1999 Texas General Laws, Chapter 1449, §4.01, 76th Legislature), which abolished the "Authority," and stated that any reference in Texas Health and Safety Code, Chapter 402, or another law to the "Authority," or board of directors of the "Authority," meant the Texas Natural Resource Conservation Commission (later renamed as the Texas Commission on Environmental Quality). HB 2954 (1999 Texas General Laws, Chapter 1449, §4.02, 76th Legislature) also provided that all rules of the "Authority" were to be continued in effect as the rules of the commission until superseded by a rule of the commission.

Chapter 449 implemented the powers and duties assigned to the "Authority" by statute and established policies, procedures, and standards which were specifically applicable to the "Authority" (and later to the commission) relating to the management of low-level radioactive waste (LLRW) disposal. The chapter includes provisions relating to administration of the rules, rulemaking procedures, site selection hearings, private donors, above and belowground disposal, the historically underutilized business program, and training and education for employees.

HB 1567, 78th Legislature, 2003, and its amendments to Texas Health and Safety Code, Chapter 401 (also known as the Texas Radiation Control Act), provides for the licensing of an LLRW disposal facility and establishes procedures for the commission to accept and evaluate license applications from private entities to dispose of LLRW. HB 1567 also repealed Texas Health and Safety Code, Chapter 402 in its entirety, which eliminated most of the duties and responsibilities that were transferred from the "Authority" to the commission in 1999. HB 1567 retained authority with the commission for specific support and liaison responsibilities related to LLRW that were part of the duties of the abolished "Authority." HB 1567 also repealed Texas Health and Safety Code, §401.203 (License Restricted to Public Entity), which provided that an LLRW disposal license be issued only to a public entity specifically authorized for LLRW disposal. Under a separate rulemaking action, Rule Project Number 2003-037-336-WS, the commission is amending 30 TAC Chapters 37, 39, 305, and 336 to implement HB 1567 and to receive and evaluate license applications for the disposal of LLRW by a private entity. Therefore, Chapter 449 is being repealed in its entirety because the reasons for the rules no longer exist and the rules are being superseded by other rules of the commission.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the 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 rulemaking action does not meet the definition of "major environmental rule" because the rulemaking action is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the

rulemaking action is intended to repeal Chapter 449, which consists of obsolete and unused rules which are superseded by other rules of the commission.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The proposed action implements legislative requirements in HB 1567, which repealed Texas Health and Safety Code, Chapter 402. The repeal of 30 TAC Chapter 449 implements the repeal of Texas Health and Safety Code, Chapter 402.

The repeal of these rules would be neither a statutory nor a constitutional taking of private real property. The subject repeal does not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking action and determined that the rules are neither identified in, nor will their repeal affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program. Therefore, the rulemaking action is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The comment period closed on October 10, 2003. There were no comments received.

SUBCHAPTER A: ADMINISTRATIVE

§§449.1 - 449.7

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the Texas Water Code; and §5.103, concerning Rules, which provides 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 and other laws of this state.

§449.1. Purpose of Rules.

§449.2. Business Offices and Mailing Address of the Authority.

§449.3. Board Meetings.

§449.4. Seal of Authority.

§449.5. Minutes of Board Meetings.

§449.6. Liaison with Secretary of State.

§449.7. Official Records.

SUBCHAPTER B: RULEMAKING PROCEDURES

§449.21, §449.22

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the Texas Water Code; and §5.103, concerning Rules, which provides 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 and other laws of this state.

§449.21. Adoption of Rules.

§449.22. Petition for Adoption of Rules; Submission and Disposition.

SUBCHAPTER C: SITE SELECTION HEARINGS

§§449.31 - 449.35

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the Texas Water Code; and §5.103, concerning Rules, which provides 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 and other laws of this state.

§449.31. Purpose of Rules.

§449.32. Notice.

§449.33. Content of Notice.

§449.34. Conduct of Hearing.

§449.35. Post-hearing Actions.

SUBCHAPTER D: PRIVATE DONORS

§§449.41 - 449.46

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the Texas Water Code; and §5.103, concerning Rules, which provides 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 and other laws of this state.

§449.41. Purpose of Rule.

§449.42. Definition.

§449.43. Acceptance and Administration of Funds.

§449.44. Use of Authority Property and Employees.

§449.45. Monetary Enrichment.

§449.46. Yearly Report.

SUBCHAPTER F: ABOVE AND BELOWGROUND DISPOSAL

§449.71

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the Texas Water Code; and §5.103, concerning Rules, which provides 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 and other laws of this state.

§449.71. Above and Belowground Disposal.

SUBCHAPTER G: HISTORICALLY UNDERUTILIZED BUSINESSES PROGRAM

§§449.81 - 449.87

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the Texas Water Code; and §5.103, concerning Rules, which provides 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 and other laws of this state.

§449.81. Policy and Goal.

§449.82. Definitions.

§449.83. Annual Procurement Utilization Goals.

§449.84. Subcontracts.

§449.85. Agency Planning Responsibilities.

§449.86. Reporting Requirements.

§449.87. Use of the Directory.

SUBCHAPTER H: TRAINING AND EDUCATION FOR EMPLOYEES

§§449.91 - 449.93

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the Texas Water Code; and §5.103, concerning Rules, which provides 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 and other laws of this state.

§449.91. Training and Education.

§449.92. Eligibility.

§449.93. Employee Obligation.