

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the repeal of §§339.1 - 339.3 *without changes*, as published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 478), and therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The TCEQ Sunset Legislation, House Bill (HB) 2694, Article 2, passed by the 82nd Legislature, 2011, and signed by the governor, transferred from the TCEQ to the Railroad Commission of Texas (RRC) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, HB 2694, Article 2, amended the Texas Natural Resources Code to revise §91.011, add §§91.0115, 91.020, and 91.1015, and amended the Texas Water Code (TWC), §27.033. On September 1, 2011, the law transferred from the commission to the RRC those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. Since the transfer, the RRC has been responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the RRC.

The TCEQ Surface Casing Program and staff transferred to the RRC on September 1, 2011. The RRC's Surface Casing Program was renamed the Groundwater Advisory Unit, and is now located in the William B. Travis Building, 1701 North Congress, Austin.

The RRC has adopted amendments to their regulations to reflect the changes in law made under HB 2694, Article 2. The rules in Chapter 339 authorized the commission to provide groundwater protection letters to the RRC for use in various activities and applications before the RRC and to collect a fee for the expedited processing of a request for a groundwater protection recommendation. Because the commission no longer provides the groundwater protection letters to the RRC, the commission's rules in Chapter 339 are no longer necessary. The RRC adopted amendments to their regulations on May 24, 2013. These regulations became effective January 1, 2014. Therefore, the commission adopts the repeal of §§339.1 - 339.3 in their entirety.

Section by Section Discussion

§339.1, Purpose

The commission adopts the repeal of §339.1. This section authorized the executive director to provide groundwater protection letters to the RRC. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

§339.2, Applicability

The commission adopts the repeal of §339.2. This section explained the applicability for the types of applications for which a recommendation to the RRC was provided on depth or depths to usable-quality groundwater. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

§339.3, Groundwater Protection Letter Requests, Expedited Processing, and Fee

The commission adopts the repeal of §339.3. This section authorized the executive director to establish procedures and to collect fees for the processing of applications for groundwater protection recommendations. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of 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 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 adoption 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 339, which is no longer

necessary because the functions and authorization provided in the rules were transferred by statute from the commission to the RRC.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The adopted action implements legislative requirements in HB 2694, 82nd Legislature, 2011, which transferred duties from the commission to the RRC relating to the preparation of groundwater protection letters for certain activities and applications before the RRC. The repeal of these rules would be neither a statutory nor a constitutional taking of private real property. The adopted repeals do 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 the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received.

Public Comment

The commission held a public hearing on February 18, 2014. The comment period closed on March 3, 2014. No comments were received.

§§339.1 - 339.3

Statutory Authority

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

The adopted repeals implement House Bill 2694, 82nd Legislature, 2011.

§339.1. Purpose.

§339.2. Applicability.

§339.3. Groundwater Protection Letter Requests, Expedited Processing, and Fee.