

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts the repeal of Chapter 322, Community Wastewater Planning, which includes §322.1, Definitions; §322.2, Scope and Applicability; §322.3, Municipality Request for Implementation of a Regional Plan; §322.4, Application Requirements; §322.5, Notification; and §322.6, Commission Consideration of Regional Plans. The purpose of the repeal is to remove unnecessary and unused rules. The proposed repeal was published in the May 4, 2001 issue of the *Texas Register* (26 TexReg 3376).

The commission is also adopting, in concurrent action, the rules review of Chapter 322 as required by Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The adopted rules review can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS

The commission's review of Chapter 322 revealed that the rules in this chapter have not proven to be an effective mechanism for promoting regionalization. Chapter 322 was originally adopted in response to a request from the City of Houston to assist in implementing its long-term wastewater regional plan. In the years since its adoption in 1992, neither the City of Houston, nor any other municipality has asked the TNRCC to use the authority under this chapter.

The commission is committed to promoting the development and use of regional and area-wide wastewater systems as required by the Texas Water Code (TWC); however, it believes these rules are unnecessary because there are other more effective mechanisms for promoting regionalization already in

place. For example, in accordance with TWC, §26.027, and 30 TAC Chapter 305, the TNRCC executive director has revised the wastewater permit application to require applicants to submit detailed explanations regarding whether there is a wastewater treatment and collection system, within three miles of the area to be serviced by the proposed facility, that is willing and able to service the area and, if so, to submit an economic justification as to why the applicant is pursuing a permit rather than connecting to the existing system. Furthermore, TWC, Chapter 13, Subchapter G, Certificates of Convenience and Necessity, allows districts to apply for certificates of convenience and necessity (CCNs), although districts are not required to obtain such a certificate. The commission has adopted a detailed policy statement and rules that address regionalization through the CCN process (*see* 30 TAC §291.102(b), effective October 19, 2000). Regionalization for districts and other entities is available through this process, as well as through the process set forth in TWC, Chapter 26, Subchapter C, Regional and Area-wide Systems, to promote regional and area-wide waste collection, treatment, and disposal systems. For these reasons, rather than readopt unnecessary and unused rules, the commission adopts the repeal of Chapter 322.

#### SECTION BY SECTION DISCUSSION

Section 322.1, Definitions; §322.2, Scope and Applicability; §322.3, Municipality Request for Implementation of a Regional Plan; §322.4, Application Requirements; §322.5, Notification; and §322.6, Commission Consideration of Regional Plans are repealed because the rules are unnecessary and unused.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the 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 the repeal of Chapter 322 will not result in a rule which meets 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. Because the specific intent of the adopted rulemaking is to repeal unnecessary and unused rules, and does not add regulatory requirements to existing rules, the rulemaking is not anticipated to have an adverse material effect on 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. In addition, this repeal is not intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, this rulemaking does not meet the definition of a “major environmental rule.” In addition, §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 rulemaking is adopted specifically to repeal unnecessary and unused rules and does not meet any of these four criteria

of a “major environmental rule.” The commission invited public comment on the draft regulatory impact analysis determination, and no comments were received.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted repeals and performed a final assessment of whether the repeals constitute a taking under Texas Government Code, Chapter 2007. The following is a summary of that assessment. The specific purpose of the rulemaking is to repeal Chapter 322 because the rules are unnecessary and unused. The adopted repeals do not affect private real property, restrict or limit the owner’s right to property that otherwise would exist in the absence of the rulemaking, or cause a reduction in the market value of private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it does affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, because the Chapter 322 rules concern commission consideration of regional plans when evaluating domestic wastewater discharge permit applications. Therefore, applicable goals and policies of the Texas Coastal Management Program (CMP) were considered during the rulemaking process. The commission reviewed the repeal for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with the goals and policies of the CMP. Because this adoption of the repeal of Chapter 322 repeals unnecessary and unused rules, it does not have direct or significant adverse effect on any coastal natural resource areas, nor does the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARING AND COMMENTERS

The public comment period closed on June 4, 2001, and no comments were received. A public hearing was not held.

#### STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC, and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state. The repeals are adopted as a result of a rules review done in accordance with the requirements of Texas Government Code, §2001.039, and in accordance with the requirements of the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

**COMMUNITY WASTEWATER PLANNING**

**§§322.1 - 322.6**

**§322.1. Definitions.**

**§322.2. Scope and Applicability.**

**§322.3. Municipality Request for Implementation of a Regional Plan.**

**§322.4. Application Requirements.**

**§322.5. Notification.**

**§322.6. Commission Consideration of Regional Plans.**