

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of Chapter 322, Community Wastewater Planning, including §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 ineffective and unused rules.

The commission also is proposing, in concurrent action, the review of the rules in Chapter 322 as required by Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The proposed notice of 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 PROPOSED REPEALS

The commission originally proposed to readopt Chapter 322 in the rules review notice published in the October 20, 2000 issue of the *Texas Register* (25 TexReg 10572) because the chapter provides a mechanism for municipalities to implement a regional wastewater plan. The commission believed this mechanism would advance the policy of the state to encourage and promote the development and use of regional and area-wide wastewater systems (*see, e.g.,* Texas Water Code, §26.003 and §26.081).

However, upon further reflection the commission concludes that the rules in this chapter have not proven to be an effective mechanism for promoting regionalization and also believes the rules are unnecessary because there are other more effective mechanisms for promoting regionalization already in place. 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. During the comment period for the rules review that was published in the October 20, 2000 issue of the *Texas Register*, the commission received one comment. That comment, submitted on behalf of Travis County Water Control and Improvement District No. 17 (District 17), urged the TNRCC to expand the scope of the rules to require the TNRCC to follow regional plans adopted by districts, as well as those adopted by municipalities. Prior to this, in 1998, the commission denied District 17's petition for rulemaking that made the same request.

The commission is committed to promoting the development and use of regional and area-wide wastewater systems as required by the Texas Water Code. For example, in accordance with Texas Water Code, §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, an economic justification as to why the applicant is pursuing a permit rather than connecting to the existing system. Furthermore, Texas Water Code, 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 Texas Water Code, 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 ineffective and unused rules, the commission proposes 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 proposed for repeal because the rules are ineffective and unused.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period after the proposed repeal of this chapter, there will be no significant implications for units of state and local government as a result of the repeal.

This chapter was originally adopted as a mechanism for municipalities to implement a regional wastewater plan to promote the state policy of regionalization. However, the chapter has proven to be an ineffective mechanism for promoting regionalization. In the years since its adoption in 1992, no municipality has asked the TNRCC to use the authority under this chapter.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years after the proposed repeal of this chapter, the public benefit anticipated from the repeal will be removal of ineffective and unused rules promulgated under this chapter.

This chapter was originally adopted as a mechanism for municipalities to implement a regional wastewater plan to promote the state policy of regionalization. No significant fiscal implications are anticipated to any person or business as a result of repealing the provisions of this chapter because it has not been used since adopted in 1992. There are no known individuals or businesses that would be affected by this rulemaking.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated to any small or micro-business as a result of repealing the provisions of this chapter because this chapter has not been used since adopted in 1992. This chapter was originally adopted as a mechanism for municipalities to implement a regional wastewater plan to promote the state policy of regionalization. There are no known small or micro-businesses that would be affected by this rulemaking.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

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 the proposed repeal of Chapter 322 would 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 proposed rulemaking is to repeal ineffective 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 proposed specifically to repeal ineffective and unused rules and does not meet any of these four criteria of a “major environmental rule.” The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed repeal and performed a preliminary assessment of whether the proposed repeal constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that assessment. The specific purpose of the proposed rulemaking is to repeal Chapter 322 because the rules are ineffective and unused. Adoption of the repeal would 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 be the producing cause of the reduction in the market value of private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking that will 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) must be considered during the rulemaking process.

The commission reviewed the proposed 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 the proposed action would repeal unused and ineffective rules, it will not have direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

The commission is accepting public comments in regards to this CMP consistency determination.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-039-322-WT. Comments must be received by 5:00 p.m., June 4, 2001. For further information, please contact Jill Burditt, Regulation Development Section, at (512) 239-0560.

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the 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 the TWC and other laws of this state. The repeals are proposed as a result of a rule 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.

The proposed repeals implement TWC, §5.102, General Powers, and §5.103, Rules.

**Chapter 322: 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.**