

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of Chapter 343, Oil and Hazardous Substances, §343.1, Definitions, and §343.2, Permit Exemption for Emergency Cleanup Activities, in accordance with Texas Government Code, §2001.039, and 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 review must include an assessment of whether the reasons for the rules continue to exist. The notice of intention to review was published in the March 23, 2001 issue of the *Texas Register* (26 TexReg 2412). The commission reviewed the rules in Chapter 343 and made an assessment that the reason for their adoption no longer continues to exist.

As published in the Rules Review section of this issue of the *Texas Register*, the commission is also adopting the review of this chapter in accordance with Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEAL

Chapter 343 was adopted by the Texas Department of Water Resources (predecessor agency of the commission) with an effective date of February 17, 1978, to implement the Texas Oil and Hazardous Substances Spill Prevention and Control Act of 1977. In 1983, the 68th Legislature amended the provisions of the Texas Oil and Hazardous Substances Spill Prevention and Control Act of 1977, and redesignated the act as the Texas Hazardous Substances Spill Prevention and Control Act. No changes were made to Chapter 343 as a result of the amended act. However, Chapter 327, Spill Prevention and Control, was later adopted to implement the Texas Hazardous Substances Spill Prevention and Control

Act and it included the rules in Chapter 343, updated to conform with the amended act, thus rendering Chapter 343 obsolete.

#### SECTION BY SECTION DISCUSSION

Chapter 343 consisted of only two sections. Section 343.1 provided a definition of hazardous substances. Section 343.2 provided permit exemptions for emergency cleanup activities as a means of establishing immediate and necessary control, containment, removal, and disposal of oil or hazardous substances spills or discharges within coastal lands or waters in the state. The section applied to such spills or discharges where delay necessitated by obtaining commission authorization would seriously impair efforts to prevent the imminent or substantial endangerment to health or the environment. The exemptions applied if the cleanup activities were conducted under the supervision of the executive director or his designated representative. The section required that the executive director file a report with the commission within 60 days of completion of the disposal activities. The commission was then required to hold a public hearing to determine if the disposal had created or would cause an adverse effect on the waters in the state or an impairment of the health, welfare, and physical property of the people in the state.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking 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 does not meet the definition of “major environmental rule” because the rulemaking was not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking was intended to repeal Chapter 343 which consisted of obsolete and unused rules which had been superseded by other rules adopted by the commission in Chapter 327.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking for the repeal of rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking was to repeal Chapter 343 which consisted of obsolete and unused rules which had been superseded by other rules adopted by the commission in Chapter 327. The repeal of these rules will not burden private real property which is the subject of the rules because these rules were obsolete and were not being used by the commission since they had been superseded by other rules.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that the repealed rules were neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor did they affect any action or authorization identified in the Coastal Coordination Act Implementation Rules, §505.11. This

rulemaking concerned only the repeal of obsolete and unused rules of the commission. Therefore, the rulemaking is not subject to the CMP.

#### PUBLIC COMMENT

The public comment period closed on April 23, 2001. No comments on whether the reasons for the rules continue to exist were received.

#### STATUTORY AUTHORITY

The repeals are adopted 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 adopted as a result of a rule review done in accordance with the requirements of Texas Government Code, §2001.039, and 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.

**SUBCHAPTER A: GENERAL PROVISIONS**

**§343.1 - §343.2**

**§343.1. Definitions.**

**§343.2. Permit Exemption for Emergency Cleanup Activities.**