

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of Chapter 343, Oil and Hazardous Substances, §343.1, Definitions, and §343.2, Permit Exemption for Emergency Cleanup Activities. As published in the Rules Review section of this issue of the *Texas Register*, the commission is also proposing the review of this chapter in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The commission has made a preliminary assessment under its review of the rules in Chapter 343 that the reason for the rules no longer continue to exist, inasmuch as the rules have been superseded by rules in Chapter 327.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

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 consists of only two sections. Section 343.1 provides a definition of hazardous substances. Section 343.2 provides 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 applies 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 apply if the cleanup activities are conducted under the supervision of the executive director or his designated representative. The section requires that the executive director file a report with the commission within 60 days of completion of the disposal activities. The commission is then required to hold a public hearing to determine if the disposal has created or will 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed repeals are in effect, there will be no significant fiscal implications for units of state and local government as a result of the proposed repeals. The proposal would repeal Chapter 343, Oil and Hazardous Substances, which has been superseded by updated rules in Chapter 327, Spill Prevention and Control.

The commission has reviewed the continued need for Chapter 343 and has determined that the provisions within this chapter are no longer used or required. These provisions were originally adopted to provide for the expedited response to oil or hazardous substance spills or discharges occurring within coastal lands or waters within Texas through implementation of certain provisions in the Texas Oil and Hazardous Substances Spill Prevention and Control Act. However, that act was superseded by the Texas Hazardous Substances Spill Prevention and Control Act, which is implemented by updated provisions within Chapter 327.

Facilities that were affected by Chapter 343 rules included ships, tanker trucks, pipelines, chemical plants, and refineries that caused spills into coastal lands and waters. The commission anticipates no significant fiscal implications to units of state and local government due to the proposed repeal of Chapter 343.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the proposed repeals would be the elimination of unused rules contained in Chapter 343, and continued environmental protection through the enforcement of the more current Chapter 327 rules.

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refineries that caused spills into coastal lands and waters. The commission anticipates no significant fiscal implications to individuals and businesses due to the proposed repeal of Chapter 343.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-businesses as a result of implementing the proposed repeals because the elimination of obsolete and unused rules is an administrative action that has no fiscal impact to any small or micro-businesses. There are no known small or micro-businesses that would be adversely affected by the proposed repeals.

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DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed 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 proposal does not meet the definition of “major environmental rule” because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking is intended to repeal Chapter 343 which consists of obsolete and unused rules which have 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 proposed repeal of rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to repeal Chapter 343 which consists of obsolete and unused rules which have 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 are obsolete and are not being used by the commission since they have been superseded by other rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that the rules proposed for repeal are 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 do they affect any action or authorization identified in the Coastal Coordination Act Implementation Rules, §505.11. This proposed rulemaking concerns only the repeal of obsolete and unused rules of the commission. Therefore, the rulemaking is not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-011-343-WS. Comments must be received by 5:00 p.m., April 23, 2001. For further information or questions concerning this proposal, please contact Hector Mendieta, Policy and Regulations Division, (512) 239-6694.

STATUTORY AUTHORITY

The repeals are proposed under the 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 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.

No other codes, rules, or statutes will be affected by this proposal.

SUBCHAPTER A: GENERAL PROVISIONS

§343.1 - §343.2

§343.1. Definitions.

§343.2. Permit Exemption for Emergency Cleanup Activities.