

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§325.1, 325.2, 325.4, 325.6 - 325.8, 325.10, 325.12, 325.14, 325.22, 325.24, 325.26, 325.28, 325.30, 325.101, 325.102, 325.104 - 325.106, 325.108, 325.110, 325.112, 325.114, 325.116, 325.118, 325.120, 325.122, 325.124, 325.126, 325.128, 325.301, 325.302, 325.304, 325.306, 325.308, 325.310, 325.312, 325.314, 325.316, 325.318, 325.320, 325.322, 325.401, 325.402, 325.404, 325.406, 325.408, 325.410, 325.412, 325.414, 325.416, 325.418, 325.420, 325.422, 325.424, 325.426, 325.428, 325.430, 325.432, and 325.434.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed repeals are part of the commission's implementation of House Bill (HB) 3111 and HB 2912 of the 77th Legislature, 2001, as well as Sunset Commission recommendations to consolidate commission programs for occupational licenses and registrations. House Bill 3111 created new Texas Water Code (TWC), Chapter 37, to consolidate the administrative requirements for ten licensing and registration programs administered by the commission. House Bill 3111 requires the commission to implement this consolidation by December 1, 2001. As part of this consolidation, the commission is repealing Chapter 325 and proposing new Chapter 30, Occupational Licenses and Registrations. This new chapter will contain all the licensing and registration requirements for the ten occupational programs administered by the Compliance Support Division, and is proposed concurrently in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Chapter 325, Certificates of Competency, is proposed for repeal and will be moved into new Chapter

30. Changes to the rules are discussed in the preamble of the rulemaking for Chapter 30, and published in this issue of the *Texas Register*.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed repeals are in effect, no significant fiscal implications are anticipated to units of state government and local government. The proposed repeals of the certification requirements and procedures for public water system operators and public water system operations companies, wastewater operators and wastewater operation companies, and public waterworks personnel could result in cost savings for units of state and local government that pay these wastewater and water operator licensing fees. There will be no fiscal implications for units of state and local government that do not pay these wastewater or water operator license renewal fees.

The proposed repeals implement certain provisions in HB 3111, 77th Legislature, 2001. The bill creates a new chapter of TWC, which consolidates the administrative requirements for several commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed repeals would delete the certification requirements and procedures for public water system operators and public water system operations companies, wastewater operators and wastewater operation companies, and public waterworks personnel contained in this chapter.

Based upon the current year number of certifications and revenue, adoption of the proposed repeals would affect approximately 150 water and wastewater companies, 9,820 wastewater operators, and 13,500 water operators, and resulting in the loss of fee revenue to the commission of an estimated \$441,852 each year in certification and renewal fees.

However, in concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing certifications to public water and wastewater companies and personnel are established in a new chapter. Those provisions establish new license and registration fee rates, renewal cycles and qualifications for wastewater operators, wastewater operations companies, public water systems operators, and public water system operations companies. There are no proposed changes to the fee rates for water and wastewater companies, however, wastewater and water operators will see a fee increase of \$30 over a two-year period from current fee rates.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from enforcement of and compliance with the proposed repeals will be the implementation of certain provisions in HB 3111 and increased compliance through the consolidation and standardization of the commission occupational licensing programs.

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and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed repeals would delete the certification requirements and procedures for public water system operators and public water system operations companies, wastewater operators and wastewater operation companies, and public waterworks personnel contained in this chapter.

If amendments in concurrent rulemaking are not adopted, the adoption of these repeals would result in cost savings for the affected 150 water and wastewater companies, 9,820 wastewater operators, and 13,500 water operators, though these cost savings are not considered significant. There will be no fiscal implications for individuals and businesses that do not pay wastewater and water operator license renewal fees.

However, in concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing certifications to public water and wastewater companies and personnel are established in a new chapter. Those provisions establish new license and registration fee rates, renewal cycles and qualifications for wastewater operators, wastewater operations companies, public water systems operators, and public water system operations companies. There are no proposed changes to the fee rates for water and wastewater companies, however, wastewater and water operators will see a fee increase of \$30 over a two-year period from current fee rates.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts for small or micro-business as a result of the proposed repeals, which is intended to implement provisions of HB 3111. Adoption of the proposed repeals could result in a cost savings, which is not anticipated to be significant, for small or micro-businesses that pay for renewal of wastewater and water operator licenses. If amendments in concurrent rulemaking are not adopted, the adoption of these repeals would delete the licensing requirements for the affected 150 water and wastewater companies, 9,820 wastewater operators, and 13,500 water operators, many of which are employed by or are small and micro-businesses. There will be no fiscal implications for small and micro-businesses that do not pay wastewater or water operator license renewal fees.

However, in concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing certifications to public water and wastewater companies and personnel are established in a new chapter. Those provisions establish new license and registration fee rates, renewal cycles and qualifications for wastewater operators, wastewater operations companies, public water systems operators, and public water system operations companies. There are no proposed changes to the fee rates for water and wastewater companies, however, wastewater and water operators will see a fee increase of \$30 over a two-year period from current fee rates.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a

material way for the first five years that the proposed repeals are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the repeals is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed repeals, but it is not the specific intent of the proposed repeals. Furthermore, the proposed repeals would not adversely affect, in a material way, the economy, a section 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 repeals would simply consolidate existing rule language into one chapter. Thus, the proposed repeals do not meet the definition of a “major environmental rule” as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these repeals under Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the repeals is to consolidate the requirements for the various occupations, licensed or registered by the commission,

into one chapter. The proposed repeals would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational license or registration including procedures for: the initial application; examinations; and renewal applications. The proposed repeals do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposed repeals are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed repeals are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made

as far in advance as possible.

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 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission in TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for Wastewater Operators and Operations Companies (TWC, §26.0301), and Public Water System Operators and Operations Companies (Texas Health and Safety Code (THSC0, §341.033 and §341.034).

The proposed repeals are implemented under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

**SUBCHAPTER A: CERTIFICATION OF PUBLIC WATER SYSTEM OPERATORS
AND PUBLIC WATER SYSTEM OPERATIONS COMPANIES**
**§§325.1, 325.2, 325.4, 325.6 - 325.8, 325.10, 325.12, 325.14,
325.22, 325.24, 325.26, 325.28, 325.30**

§325.1. Date of Compliance.

§325.2. Applicability and General Provisions.

§325.4. Definitions.

§325.6. Administration.

§325.7. Processing Applications.

§325.8. Classification of Public Water Systems and Certificates Required.

§325.10. Qualifications for Public Water System Operators.

§325.12. Applications and Examinations.

§325.14. Certificates of Competency, Terms, and Fees.

§325.22. Certificate of Competency Affected by the Texas Education Code, Chapter 57.

§325.24. Certificate of Competency Affected by the Texas Family Code, Chapter 232.

§325.26. Training Approvals.

§325.28. Certification of Public Water System Operations Companies.

§325.30. Enforcement.

**SUBCHAPTER B: CERTIFICATION OF WASTEWATER OPERATORS AND
WASTEWATER OPERATIONS COMPANIES**

**§§325.101, 325.102, 325.104 - 325.106, 325.108, 325.110, 325.112, 325.114,
325.116, 325.118, 325.120, 325.122, 325.124, 325.126, 325.128**

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission in TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for wastewater operators and operations companies (TWC, §26.0301).

The proposed repeals are implemented under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§325.101. Applicability and General Provisions.

§325.102. Definitions.

§325.104. Administration.

§325.105. Processing Applications.

§325.106. Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Certificates Required.

§325.108. Qualifications for Wastewater Treatment Facility and Collection System Operators.

§325.110. Applications and Examinations.

§325.112. Certificates of Competency, Terms, and Fees.

§325.114. Reciprocity.

§325.116. Renewal of Certificates of Competency.

§325.118. Perpetual Certificates.

§325.120. Certificate of Competency Affected by the Texas Education Code, Chapter 57.

§325.122. Certificate of Competency Affected by the Texas Family Code, Chapter 232.

§325.124. Training Approvals.

§325.126. Certification of Wastewater System Operations Companies.

§325.128. Enforcement.

SUBCHAPTER D: CERTIFICATION OF WATERWORKS PERSONNEL
§§325.301, 325.302, 325.304, 325.306, 325.308, 325.310,
325.312, 325.314, 325.316, 325.318, 325.320, 325.322

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission in TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for public water system operators and operations companies (THSC, §341.033 and §341.034).

The proposed repeals are implemented under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§325.301. Applicability.

§325.302. General.

§325.304. Definitions.

§325.306. Administration.

§325.308. Processing Applications.

§325.310. Qualifications.

§325.312. Applications.

§325.314. Examinations.

§325.316. Certificates.

§325.318. Training Approval.

§325.320. Reciprocity.

§325.322. Fees.

SUBCHAPTER E: CERTIFICATES OF COMPETENCY

§§325.401, 325.402, 325.404, 325.406, 325.408, 325.410, 325.412, 325.414, 325.416, 325.418, 325.420, 325.422, 325.424, 325.426, 325.428, 325.430, 325.432, 325.434

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission in TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for wastewater operators and operations companies (TWC, §26.0301), and public water system operators and operations companies (THSC, §341.033 and §341.034).

The proposed repeals are implemented under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§325.401. Applicability.

§325.402. Definitions.

§325.404. Processing Applications.

§325.406. Certificates for Wastewater Treatment Plant Operators.

§325.408. Certificates for Collection System Operators.

§325.410. (Effective Beginning September 1, 1991) - Classification of Wastewater Treatment Facilities.

§325.412. Applications and Fees.

§325.414. Renewal of Operator Certificates.

§325.416. Certificates for Wastewater Treatment Facility Operations Companies.

§325.418. Terms of Certificates for Wastewater Treatment Facility Operations Companies.

§325.420. Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies.

§325.422. Public Hearing on Applications for Renewal of Certificates for Wastewater Treatment Facility Operations Companies.

§325.424. Sanctions.

§325.426. Notice of Hearings.

§325.428. Enforcement Hearings.

§325.430. Reciprocity.

§325.432. Perpetual Certificates of Competency.

§325.434. Nonrenewal of Certificate of Competency Due to Loan Default.