

The Texas Natural Resource Conservation Commission (commission) proposes to repeal Subchapter M, Waste Treatment Inspection Fee Program, §§305.501 - 305.507.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2912, §§3.04 - 3.06, 77th Legislature, 2001 mandates the commission to consolidate the water quality assessment fee (WQAF) and the waste treatment inspection fee (WTF). The proposed rulemaking is intended to repeal the existing WTF program provisions. These provisions with changes will be moved to and proposed concurrently in this issue of the *Texas Register* in new 30 TAC Chapter 21, Water Quality Fees.

#### SECTION BY SECTION DISCUSSION

Sections 305.501 - 305.507 are proposed for repeal because the WTF program has been revised as a result of HB 2912, §§3.04 - 3.06. The fees for this program will be proposed in new Chapter 21.

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

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed repeals are in effect, there will be no fiscal implications for the agency or any other unit of state or local government due to administration and enforcement of the proposed repeals.

The proposed repeals are intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF into one chapter. This

rulemaking is intended to repeal obsolete existing WTF program language from Chapter 305, and move the remaining pertinent language to new Chapter 21, that is proposed to be created in concurrent rulemaking. Units of state and local government will be required to comply with new fee provisions to be implemented by the Chapter 21 rulemaking. The proposed repeals are procedural in nature and are not anticipated to result in fiscal implications for units of state and local government.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each of the first five years the proposed repeals are in effect, the public benefit anticipated as a result on implementing the repeals will be compliance with legislative requirements to consolidate the WQAF and the WTF into one chapter.

The proposed repeals are intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF into one chapter. This rulemaking is intended to repeal obsolete existing WTF program language from Chapter 305, and move the remaining pertinent language to new Chapter 21, that is proposed to be created in concurrent rulemaking. Individuals and businesses will be required to comply with new fee provisions to be implemented by the Chapter 21 rulemaking. The proposed repeals are procedural in nature and are not anticipated to result in fiscal implications for individuals or businesses.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed repeals, which are intended to implement certain provisions of HB

2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF into one chapter. This rulemaking is intended to repeal obsolete existing WTF program language from Chapter 305, and move the remaining pertinent language to new Chapter 21, that is proposed to be created in concurrent rulemaking. Small and micro-businesses will be required to comply with new fee provisions to be implemented by the Chapter 21 rulemaking. The proposed repeals are procedural in nature and are not anticipated to result in fiscal implications for small and micro-businesses.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does 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 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 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 it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking is

intended to repeal rules which must be revised as a result of HB 2912, §§3.04 - 3.06 because the WTF is now part of the water quality fee which will be in new Chapter 21.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed repeals pursuant to Texas Government Code, §2007.043. The specific purpose of this rulemaking is to repeal rules which were contained in Chapter 305 that became obsolete as a result of HB 2912, §§3.04 - 3.06. The repeal of these rules will not burden private real property because these rules will no longer be used. The rules did not affect private real property, nor does the repeal of these rules affect private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the repeals and found they are identified in the Coastal Coordination Act (CCA) Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action/authorization identified in §505.11(a)(6), and will, therefore, require that goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the repeals are consistent with CMP goals and policies; will not have direct or significant adverse effect on any Coastal

Natural Resource Areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the repeals will not violate (exceed) and standards identified in the applicable CMP goals and policies. The rulemaking repeals fee rules which are procedural mechanisms for paying for commission programs.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 21, 2002 at 10:00 a.m. in Building C, Room 131E, at the commission's central office located at 12100 Park 35 Circle. 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 be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, 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 2001-098-220-WT. Comments must be received by 5:00 p.m., May 28, 2002. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

**SUBCHAPTER M: WASTE TREATMENT INSPECTION FEE PROGRAM**

**§§305.501 - 305.507**

**STATUTORY AUTHORITY**

The repeals are proposed under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §26.0291, which establishes an annual water quality fee on wastewater permit holders and water right holders.

The proposed repeals implement HB 2912, §§3.04 - 3.06, 77th Legislature, 2001, which mandates the commission to consolidate the WQAF and the WTF.

**§305.501. Purpose.**

**§305.502. Definitions and Abbreviations.**

**§305.503. Fee Assessment.**

**§305.504. Fee Payment.**

**§305.505. Fund.**

**§305.506. Cancellation, Revocation, and Transfer.**

**§305.507. Failure to Make Payment.**