

The Texas Commission on Environmental Quality (commission) proposes the repeal of Chapter 450, Planning and Implementation Fees, §§450.1 - 450.4 and 450.11 - 450.19.

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

Chapter 450 was initially adopted by the Texas Low-Level Radioactive Waste Disposal Authority (“Authority”) to implement provisions of the Texas Low-Level Radioactive Waste Disposal Authority Act (1989 Texas General Laws, Chapter 678, §1, 71st Legislature), codified in Texas Health and Safety Code, Chapter 402. House Bill (HB) 2954 (76th Legislature, 1999) created new Texas Health and Safety Code, §402.004 (1999 Texas General Laws, Chapter 1449, §4.01, 76th Legislature) which abolished the “Authority,” and stated that any reference in Texas Health and Safety Code, Chapter 402, or another law to the “Authority,” or board of directors of the “Authority,” meant the Texas Natural Resource Conservation Commission (later renamed as the Texas Commission on Environmental Quality). HB 2954 (1999 Texas General Laws, Chapter 1449, §4.02, 76th Legislature) also provided that all rules of the “Authority” were to be continued in effect as the rules of the commission until superseded by a rule of the commission.

Chapter 450 provided requirements for the expenditure, by the host county commissioners court or its contractors, of funds generated by planning and implementation fee surcharges and waste disposal fees for low-level radioactive waste (LLRW) disposal. The chapter includes provisions relating to administration of the rules and expenditures for local public projects.

HB 1567, 78th Legislature, 2003, and its amendments to Texas Health and Safety Code, Chapter 401 (also known as the Texas Radiation Control Act), provides for the licensing of an LLRW disposal facility and establishes procedures for the commission to accept and evaluate license applications from private entities to dispose of LLRW. HB 1567 also repealed Texas Health and Safety Code, Chapter

402 in its entirety, which eliminated most of the duties and responsibilities that were transferred from the “Authority” to the commission in 1999. HB 1567 retained authority with the commission for specific support and liaison responsibilities related to LLRW that were part of the duties of the abolished “Authority.” HB 1567 also repealed Texas Health and Safety Code, §401.203 (License Restricted to Public Entity), which provided that an LLRW disposal license be issued only to a public entity specifically authorized for LLRW disposal. Under a separate rulemaking action, Rule Log Number 2003-037-336-WS, the commission is amending 30 TAC Chapters 37, 39, 305, and 336 to incorporate those specific support and liaison responsibilities identified in HB 1567 and to receive and evaluate license applications for the disposal of LLRW by a private entity. Therefore, Chapter 450 is being repealed in its entirety because the reasons for the rules no longer exist and the rules are being superseded by other rules of the commission.

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

Jeffrey Horvath, Analyst, Strategic Planning and Appropriations Section, determined that for the first five-year period the proposed repeals are in effect, there will not be fiscal implications for the commission or other units of state and local government as a result of the proposed repeals.

The proposed rulemaking action repeals Chapter 450 in its entirety because the rules are being superseded by other rules of the commission. Chapter 450 was initially adopted by the Texas Low-Level Radioactive Waste Disposal Authority to implement provisions of the Texas Low-Level Radioactive Waste Disposal Authority Act. The “Authority” was abolished by HB 2954 (76th Legislature, 1999) and all powers and interests of the “Authority” were transferred to the commission. HB 2954 further provided that all rules of the “Authority” were to be continued in effect as rules of the commission until superseded by a rule of the commission. HB 1567 (78th Legislature, 2003) provides for the licensing of an LLRW disposal facility in Texas. The commission is incorporating those

responsibilities identified in HB 1567 to receive and evaluate license applications for the disposal of LLRW under a separate rulemaking action. There are fiscal implications for the other rulemaking action, but not for the repeal of Chapter 450 as it is no longer necessary.

The purpose of Chapter 450 was to adopt planning and implementation fees to fund the “Authority” and to adopt guidelines for the host county commissioners court on the expenditure of funds generated by planning and implementation fee surcharges and waste disposal fees. Planning and implementation fees were assessed to waste generators in the state to fund the activities of the “Authority.” Since the “Authority” responsibilities were transferred to the commission, no planning and implementation fees have been assessed. Because there has not been a commercial LLRW disposal facility licensed in the state, there have been no waste disposal fees collected. Under a separate rulemaking action for which there are fiscal implications, the commission is incorporating responsibilities identified in HB 1567 to receive and evaluate license applications for LLRW disposal. HB 1567 changed the amount of LLRW disposal fee funding received by a host county from 10% of the gross receipts to 5%, with the other 5% going to the state’s general revenue fund. Funding for the commission to license and regulate a future LLRW disposal site will be generated from fees assessed to the license applicant as opposed to fees assessed to waste generators. Waste generators will still pay waste disposal fees, and future rulemaking by the commission is expected to address LLRW waste disposal fees once a site has been licensed.

No fiscal implications are anticipated for the commission or other units of state or local government resulting from the repeal of Chapter 450, as there have been no recent planning and implementation fees or LLRW disposal fees assessed or collected by any entity.

#### PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed repeals are in effect, the anticipated public benefit will be clear rules for the commission to regulate and license an LLRW disposal site to ensure protection of public health, public safety, and the environment. No fiscal implications are anticipated for businesses or individuals resulting from the repeal of Chapter 450. The purpose of Chapter 450 was to adopt planning and implementation fees to fund the budget of the “Authority” and to adopt guidelines for the host county commissioners court on the expenditure of funds generated by planning and implementation fee surcharges and waste disposal fees. Planning and implementation fees were assessed to waste generators in the state to fund the activities of the “Authority.” Since the “Authority” responsibilities were transferred to the commission, no planning and implementation fees have been assessed. There has not been a host county since the Sierra Blanca site was rejected, and because there has not been an LLRW disposal site in the state, there have been no waste disposal fees collected. Under a separate rulemaking action for which there are fiscal implications, the commission is incorporating responsibilities identified in HB 1567 to receive and evaluate license applications for the disposal of LLRW. HB 1567 changed the amount of LLRW disposal fee funding received by a host county from 10% of the gross receipts to 5%, with the other 5% going to the state’s general revenue fund. Funding for the commission to license and regulate a future LLRW disposal site will be generated from fees assessed to the license applicant as opposed to fees assessed to waste generators. Waste generators will still pay waste disposal fees, and future rulemaking by the commission is expected to address LLRW waste disposal fees once a site has been licensed.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-businesses as a result of the proposed repeals because there are no known small or micro-businesses that own or operate, or are likely to own or operate, an LLRW disposal site.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking action 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 rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action 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 action is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking action is intended to repeal Chapter 450, which consists of obsolete and unused rules which are superseded by other rules of the commission.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The proposed action implements legislative requirements in HB 1567, which repealed Texas Health and Safety Code, Chapter 402. The proposed repeal of 30 TAC Chapter 450 implements the repeal of Texas Health and Safety Code, Chapter 402.

The repeal of these rules would be neither a statutory nor a constitutional taking of private real property. The subject proposed repeals do not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this proposed rulemaking action and determined that the rules are neither identified in, nor will their repeal affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program. Therefore, the proposed rulemaking action is not subject to the Texas Coastal Management Program.

#### 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 2003-016-450-WS. Comments must be received by 5:00 p.m., October 10, 2003. For further information or questions concerning this proposal, please contact Alan J. Henderson, Policy and Regulations Division, at (512) 239-1510.

**SUBCHAPTER A: ASSESSMENT OF FEES**

**§§450.1 - 450.4**

**STATUTORY AUTHORITY**

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the Texas Water Code; and §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state.

The proposed repeals implement HB 1567, 78th Legislature, 2003.

**§450.1. Purpose.**

**§450.2. Applicability.**

**§450.3. Assessed Fees.**

**§450.4. Collection of Fees.**

**SUBCHAPTER B: EXPENDITURES FOR LOCAL PUBLIC PROJECTS**

**§450.11 - §450.19**

**STATUTORY AUTHORITY**

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the Texas Water Code; and §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state.

The proposed repeals implement HB 1567, 78th Legislature, 2003.

**§450.11. Purpose.**

**§450.12. Definitions.**

**§450.13. Restriction on Surcharge Use.**

**§450.14. Plan for Local Public Projects.**

**§450.15. Scope and Content of Local Public Project Proposals.**

**§450.16. Contracts for Local Public Projects.**

**§450.17. Transfer of Funds.**

**§450.18. Audit.**

**§450.19. Withholding of Funds.**