

The Texas Commission on Environmental Quality (commission) adopts the repeal of §§325.16, 325.18, 325.20, and 325.100 *without changes* to the proposal as published in the August 27, 2004 issue of the *Texas Register* (29 TexReg 8254).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS

Chapter 325 provides for certificates of competency for public water supply operators and companies, including types of certificates, renewal provisions, and reciprocity with other states' certificates.

House Bill 3111, 77th Legislature, 2001, created new Texas Water Code, Chapter 37, to consolidate the administrative requirements for licensing and registration programs administered by the commission. In 2001, the commission repealed most of Chapter 325 and adopted new 30 TAC Chapter 30, Occupational Licenses and Registrations. Chapter 30 contains all the requirements for the occupational licensing and registration programs administered by the Compliance Support Division. Subchapters A and B are the remaining subchapters in Chapter 325 that need to be repealed. The rules review adoption, published in this issue, found that the reasons for the rules in Chapter 325 do not continue to exist.

SECTION BY SECTION DISCUSSION

Chapter 325, which includes Subchapter A, Certification of Public Water System Operators and Public Water System Operations Companies; and Subchapter B, Certification of Wastewater Operators and Wastewater Operations Companies, is repealed because the commission determined that the rules in Chapter 325 are no longer needed.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking action is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. A “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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking action does not meet the definition of a “major environmental rule” because as part of the 1998 regulatory reform process, the commissioners directed staff to eliminate requirements that are redundant to existing provisions in other rules. This rulemaking action eliminates redundant rules. This rulemaking action does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because this rulemaking action simply repeals rules that are currently addressed in other sections of the commission’s rules. This rulemaking action is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state.

In addition, this rulemaking action does not exceed the four applicability requirements of Texas Government Code, §2001.0025(a)(1) - (4) in that the rulemaking does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) adopt a rule solely under the general powers of the agency. In this case, the sections of Chapter 325 that are being repealed do not meet any of these requirements. First, there are no federal standards that the rulemaking action would exceed. Second, the rulemaking action does not

exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by the rulemaking action. Fourth, this rulemaking has been authorized by Texas Government Code, §2001.039, which requires state agencies to review and consider for re-adoption each of their rules every four years. Therefore, the commission does not adopt the repeal of these rules solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the repeals in accordance with Texas Government Code, §2007.043. The commission's assessment indicates that Texas Government Code, Chapter 2007 applies to the repeals and that these repeals do not constitute a statutory or constitutional taking.

The specific purpose of this rulemaking action is to eliminate redundant sections of commission rules. House Bill 3111, 77th Legislature, 2001, created new Texas Water Code, Chapter 37, to consolidate the administrative requirements for ten licensing and registration programs administered by the commission.

This rulemaking action does not place any burden on real property and it does not obtain any benefit to society from the proposed use of private real property because it does not directly apply to the ownership or use of a particular parcel of private real property.

This rulemaking action does not burden an owner of real property in a manner that would be a statutory or constitutional taking. Specifically, the 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, nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. This rulemaking action simply repeals redundant sections of commission rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

PUBLIC COMMENT

A public hearing was not held on the proposed repeals. The public comment period ended at 5:00 p.m. on September 27, 2004, and no comments were received.

**SUBCHAPTER A: CERTIFICATION OF PUBLIC WATER SYSTEM OPERATORS AND
PUBLIC WATER SYSTEM OPERATIONS COMPANIES**

§§325.16, 325.18, 325.20

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.102, which grants the commission the authority to carry out its powers under the Texas Water Code; §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; and Texas Government Code, §2001.039, which requires state agencies to review and consider for re adoption each of their rules every four years and either readopt, readopt with amendments, or repeal the rule.

§325.16. Reciprocity.

§325.18. Renewal of Certificates of Competency.

§325.20. Perpetual Certificates.

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

§325.100

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.102, which grants the commission the authority to carry out its powers under the Texas Water Code; §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; and Texas Government Code, §2001.039, which requires state agencies to review and consider for reoption each of their rules every four years and either readopt, readopt with amendments, or repeal the rule.

§325.100. Date for Compliance.