

The Texas Commission on Environmental Quality (commission) proposes the repeal of §§325.16, 325.18, 325.20, and 325.100.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 In 2001, the commission repealed most of Chapter 325 and adopted new 30 TAC Chapter 30, Occupational Licenses and Registrations.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 Subchapters A and B are the remaining subchapters in Chapter 325 that need to be repealed. A notice of intention to review Chapter 325, 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and Subchapter B, Certification of Wastewater Operators and Wastewater Operations Companies, is proposed to be repealed because commission staff have determined that the rules in Chapter 325 are no longer needed.

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

Jeff Horvath, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed repeals are in effect, no fiscal implications are anticipated for the agency or other units of state and local government as a result of the administration or enforcement of the proposed repeals.

The legislature created a new chapter in the Texas Water Code when it passed House Bill 3111, 77th Legislature, 2001. This new chapter consolidated administrative requirements for ten licensing and registration programs administered by the agency. To comply with this consolidation, the agency repealed most of Chapter 325 and created a new Chapter 30 in the Texas Administrative Code that contains all the licensing and registration requirements for ten occupational programs administered by the Compliance Support Division. The proposed rulemaking action repeals the remainder of Chapter 325, which is redundant and no longer needed. The proposed repeals are not expected to affect the agency or other units of state or local government.

#### 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 the implementation of the proposed rules will be clear and unambiguous requirements relating to occupational licenses and registrations.

No fiscal implications are anticipated for businesses or individuals from the proposed rulemaking. The proposed rulemaking action repeals provisions relating to occupational licenses and registrations that are no longer used or needed.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed repeals for small or micro-businesses. The proposed rulemaking action repeals provisions relating to occupational licenses and registrations that are no longer used or needed.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal 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 proposal 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 proposal 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 previously addressed in other sections of the commission’s rules. This proposal 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 proposal does not exceed the four applicability requirements of Texas Government Code, §2001.0025(a)(1) - (4) in that this proposal 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) propose to adopt a rule solely under the general powers of the agency. In this case, the proposed sections of Chapter 325 to be repealed do not meet any of these requirements. First, there are no federal standards that the proposed rulemaking action would exceed. Second, the proposed rulemaking action does not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by the proposed rulemaking action. Fourth, this rulemaking action has been authorized by House Bill 3111, 77th Legislature, 2001. Therefore, the commission does not propose the repeal of these rules solely under the commission’s general powers.

## TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the proposed repeals in accordance with Texas Government Code, §2007.043. The commission's assessment indicates that Texas Government Code, Chapter 2007 applies to the proposed repeals and that these proposed 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. House Bill 3111 required the commission to implement this consolidation by December 1, 2001.

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

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed repeals 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 proposed repeals are not subject to the Coastal Management Program

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Jennifer Delk, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-045-325-WT. Comments must be received by 5:00 p.m., September 27, 2004. For further information, please contact Michael Bame, Policy and Regulations Division, (512) 239-5658.

**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 proposed 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.

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

**§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 proposed 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.

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

**§325.100. Date for Compliance.**