

The Texas Commission on Environmental Quality (commission) adopts the repeal of §§317.1 - 317.13, and 317.15 without changes to the proposed text as published in the March 14, 2008 issue of the *Texas Register* (33 TexReg 2234) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted repeal of Chapter 317, along with the adoption of new Chapter 217, accomplishes three tasks: implementing the commission's goal of having all water related rules under the 200 series; allowing the design criteria to be updated with current technology and engineering practices; and allowing the rules to be written with current rule language guidelines and be more logically organized.

Chapter 317 is irretrievably out of date. The changes needed to bring the design criteria for domestic wastewater systems into conformity with current rule writing standards, logical organization, and technical advances are better served by repealing Chapter 317 and adopting the updated criteria in Chapter 217. The commission last comprehensively revised Chapter 317 in 1986. Minor revisions in 1988, 1990, and 1994 addressed specific concerns, but did not bring the rules in line with advances in wastewater technologies or current commission rule standards. Additionally, repealing Chapter 317 allows the commission to make needed revisions to address requirements in current wastewater permits in Chapter 217.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC new Chapter 217, Design Criteria for Domestic Wastewater Systems.

SECTION BY SECTION DISCUSSION

The adoption will repeal all sections of Chapter 317, §§317.1 - 317.13, and 317.15. The requirements in these sections will be edited, updated, and adopted in new Chapter 217.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this 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 criteria for a "major environmental rule" as identified in that statute. Major environmental rule is defined as 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. Repeal of the Chapter 317 rules will 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. The intent of this rulemaking is to repeal the outdated Chapter 317 design standards and issue new rules in Chapter 217 that update the design standards and criteria for wastewater treatment systems to current engineering practices and include recent advances in wastewater treatment technologies. The repeal of Chapter 317 does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Specifically, repealing the Chapter 317 rules does not exceed a federal standard because no applicable federal standard exists. Repeal of the Chapter 317 rules does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Finally, the repeal of the Chapter 317 rules was not developed solely under the general powers of the agency; but in conjunction with the specific authority of Texas Water Code, §26.034 to propose new design standards and criteria in Chapter 217.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of the rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to repeal the outdated design standards and criteria for wastewater treatment systems and issue a new set of rules in proposed Chapter 217 that updates those rules to meet current engineering practices and to include recent advances in wastewater treatment technologies. Also, the adopted Chapter 217 rules will allow increased flexibility to attain the design standards and criteria; update the standards and criteria reflecting the commission's domestic wastewater permitting practices; and amend and specify the commission's review and approval processes for proposed wastewater treatment facility projects. The repeal of the Chapter 317 rules will constitute neither a statutory nor a constitutional taking of private real property, impose no burdens on private real property because the repealed rules neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the repeal, which is a procedural mechanism for removing rules which are outdated, is consistent with CMP goals and policies and will not have a 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 of the repeals will not violate (exceed) any standards identified in

the applicable CMP goals and policies.

PUBLIC COMMENT

The commission held a public hearing on this proposal in Austin on April 10, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building B, Room 201A. The comment period closed on April 14, 2008. No comments were received at the hearing.

The commission received comments from the City of Garland (Garland), Process Engineered Equipment Company (PEECO), Trojan Technologies (Trojan), UltraTech Systems, Inc. (UltraTech), Water Environment Association of Texas (WEAT), and seven individuals. None of the comments received applied to the repeal of Chapter 317.

CHAPTER 317: DESIGN CRITERIA FOR SEWERAGE SYSTEMS
§§317.1-317.13, §317.15

STATUTORY AUTHORITY

The repeals are adopted under the authority of Texas Water Code, §5.013, which provides the commission's general jurisdiction; §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; §5.105, which provides the commission's authority to, by rule, establish and approve general policy of the commission; §5.120, which provides the commission's authority to administer the law to promote conservation and protection of the quality of the environment; §12.081, which provides the commission's continuing right of supervision over certain districts and authorities; §12.082, which provides the commission's duty to investigate fresh water supply district projects; §26.027, which authorizes the commission to issue permits; §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and §26.121, which provides the commission's authority to prohibit unauthorized discharges.

The adopted repeals implement TWC, §§5.013, 5.103, 5.105, 5.120, 12.081, 12.082, 26.027, 26.034, and 26.121.

§317.1. General Provisions.

§317.2. Sewage Collection System.

§317.3. Lift Stations.

§317.4. Wastewater Treatment Facilities.

§317.5. Sludge Processing.

§317.6. Disinfection.

§317.7. Safety.

§317.8. Design and Operation Features.

§317.9. Appendix A.

§317.10. Appendix B--Overland Flow Process.

§317.11. Appendix C--Hyacinth Basins.

§317.12. Appendix D.

§317.13. Appendix E--Separation Distances.

§317.15. Appendix G--General Guidelines for the Design of Constructed Wetlands Units for Use in Municipal Wastewater Treatment.