

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the repeal of §§321.101 - 321.109, 321.131 - 321.138, 321.151 - 321.159, 321.181 - 321.198, 321.231 - 321.240, and 321.271 - 321.280 *without changes* to the proposed text as published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2824), and therefore, will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Chapter 321 authorizes the discharge of wastewater from certain activities into or adjacent to water in the state. In 1998, the commission entered into a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency (EPA) related to the Texas Pollutant Discharge Elimination System (TPDES) program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the United States under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. Certain subchapters of Chapter 321 are now obsolete and/or do not meet the federal requirements for discharges into waters of the United States as required by the TPDES program. This rulemaking repeals the subchapters that have been replaced by general permits and coverage is also available under a TPDES individual permit.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 50, Action on Applications and other Authorizations and 30 TAC Chapter 305, Consolidated Permits.

SECTION BY SECTION DISCUSSION

The adopted rulemaking would repeal Subchapter G, Subchapter H, Subchapter J, Subchapter K, Subchapter M, and Subchapter O in their entirety, in accordance with the directive indicated by the 1998

MOU between the TCEQ and EPA. These subchapters are no longer applicable and they have been replaced by the following TPDES general permits: Subchapter G is replaced by TPDES General Permit TXG670000; Subchapter H is replaced by TPDES General Permit TXG830000; Subchapter J is replaced by TPDES General Permit TXG110000; Subchapter K is replaced by TPDES General Permit TXG920000; Subchapter M is replaced by TPDES General Permit TXG340000; and Subchapter O is replaced by TPDES General Permit TXG130000.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to §2001.0225 because they do not meet the criteria for 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, 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.

Chapter 321, Subchapters G, H, J, K, M, and O are specified for repeal because they are inactive, obsolete, and have been replaced by TPDES general permits. Therefore, it is not anticipated that the adopted repeals will 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 commission concludes that these adopted repeals do not meet the definition of a "major environmental rule."

Furthermore, even if the adopted repeals did meet the definition of a major environmental rule, the adopted repeals are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted repeals of §§321.101 - 321.109, 321.131 - 321.138, 321.151 - 321.159, 321.181 - 321.198, 321.231 - 321.240, and 321.271 - 321.280 will not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeals do not constitute a major environmental rule, a regulatory impact analysis is not required. The commission solicited public comment regarding this draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted repeals and performed an assessment of whether the adopted repeals constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the action is to repeal inactive and obsolete subchapters that have been replaced by general permits. The adopted repeals would substantially advance this stated purpose. Promulgation and enforcement of these

adopted repeals would be neither a statutory nor a constitutional taking of private real property because the adopted repeals do not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted repeals would eliminate unnecessary and obsolete rules. Because the adopted repeals do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, these adopted repeals will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted 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 repeals, which are procedural mechanisms for removing subchapters no longer applicable, are 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. The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

PUBLIC COMMENT

The proposal was published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2824). The

comment period closed on June 25, 2007. The commission received no comments on the proposed rulemaking.

SUBCHAPTER G: HYDROSTATIC TEST DISCHARGES

§§321.101 - 321.109

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

**SUBCHAPTER H: DISCHARGE TO SURFACE WATERS FROM TREATMENT OF
PETROLEUM SUBSTANCE CONTAMINATED WATERS**

§§321.131 - 321.138

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

**SUBCHAPTER J: DISCHARGES TO SURFACE WATERS FROM
READY-MIXED CONCRETE PLANTS AND/OR CONCRETE
PRODUCTS PLANTS OR ASSOCIATED FACILITIES**

§§321.151 - 321.159

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

SUBCHAPTER K: CONCENTRATED ANIMAL FEEDING OPERATIONS

§§321.181 - 321.198

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

**SUBCHAPTER M: DISCHARGES TO SURFACE WATERS FROM PETROLEUM BULK
STATIONS AND TERMINALS**

§§321.231 - 321.240

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

SUBCHAPTER O: DISCHARGES FROM AQUACULTURE PRODUCTION FACILITIES

§§321.271 - 321.280

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.