

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §305.71 *without change*, as published in the November 17, 2017, issue of the *Texas Register* (42 TexReg 6477) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

House Bill 3618 (HB 3618 or bill), 85th Texas Legislature (2017), repealed Texas Water Code (TWC), §26.0285 which required, to the greatest extent practicable, that all Texas Pollutant Discharge Elimination System (TPDES) permits within a single watershed contain the same expiration date (known as basin permitting). The bill also amended TWC, §26.0135(d) to remove language that coordinated submittal of summary reports by river authorities with the existing "basin permitting rules" previously required under TWC, §26.0285.

TWC, §26.0135 was created by the 72nd Texas Legislature (1991). Also known as "the Texas Clean Rivers Act," the legislation provided a framework for river authorities and TCEQ's predecessor agency to establish a public input process, strategic monitoring, and the periodic assessment of water quality within each river basin of the state. Since 1991, river authorities and other partners in TCEQ's Clean Rivers Program have continued to provide surface water quality monitoring and assessments of waterbodies in Texas' river basins. TCEQ uses this information in water quality management programs such as the Texas Integrated Report of Surface Water Quality, the Texas Surface Water Quality Standards, total maximum daily loads, wastewater permitting, and watershed protection plans.

TWC, §26.0285 was created by the 75th Texas Legislature (1997) to create the basin

permitting program. State and federal rules allow permits to be issued for five-year terms. In order to comply with basin permitting rules, a substantial number of TPDES permits were required to be issued for terms between two and four years.

This rulemaking implements HB 3618 changes related to TWC, §26.0285. In a corresponding rulemaking, published in this issue of the *Texas Register*, the commission also adopts amendments to §220.4, Responsibilities of River Authorities and Designated Local Governments, and §220.6, Reporting Requirements, to implement HB 3618 changes to TWC, §26.0135(d).

Section Discussion

§305.71, Basin Permitting

The adopted rulemaking implements HB 3618 by repealing §305.71 which requires basin permitting for wastewater discharges. Repealing §305.71 allows TPDES permits to be issued for five-year terms, as authorized by §305.127(1)(C)(i).

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined 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. This rulemaking does 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.

This rulemaking repeals a rule that required wastewater discharge permits be issued on its respective river basin cycle. This rulemaking resulted in TPDES permits often being issued for less than a five-year duration, which is the maximum permit term allowed under the TPDES program. This change is adopted because the 85th Texas Legislature repealed TWC, §26.0285, which required wastewater discharge permit terms, to the greatest extent practicable, to correspond with their respective river basin cycle. Repeal of this rule allows TCEQ to issue TPDES wastewater discharge permits for full five-year terms, which results in overall less processing time for these types of permits by TCEQ and less frequent renewals by permittees. The rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds

an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking does not exceed federal standards because no applicable federal standards exist regarding river basin permitting. Also, the rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The memorandum of agreement between the United States Environmental Protection Agency and TCEQ regarding delegation of the National Pollutant Discharge Elimination System program allows wastewater discharge permits to be issued in accordance with the river basin cycle or a five-year renewal cycle. Finally, the rulemaking was not developed solely under the general powers of the agency; but as a result of the repeal of TWC, §26.0285. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted rule does not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to repeal the rule that requires wastewater discharge permits to be issued in conjunction with their respective basin cycle. Repeal of this rule constitutes neither a statutory nor a constitutional taking of private real property. This rulemaking imposes no burdens on private real property because the adopted rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §33.201 *et. seq.*, and therefore, it must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rulemaking in accordance with Coastal Coordination Act Implementation Rules at 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rulemaking include: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

Promulgation and enforcement of this rulemaking does not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rulemaking is consistent with these CMP goals and policies, and because this rulemaking does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on December 12, 2017. The comment period closed on December 18, 2017. The commission received a comment from Phone2Action.

Response to Comments

Comment

Phone2Action requested that the commission consider this action with the citizens in mind.

Response

The adopted rulemaking is not expected to have a significant effect on the public. Repeal of §305.71 allows wastewater discharge permits to be issued for five-year terms.

Additionally, this rulemaking implements HB 3618, which was passed by the 85th Texas Legislature and Texas legislators are elected by the citizens of Texas to represent the interests of their constituents.

**SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION,
AND SUSPENSION OF PERMITS**

§305.71

Statutory Authority

This repeal is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt rules necessary to carry out the powers and duties under the TWC and other laws of the state.

The adopted repeal implements House Bill 3618, 85th Texas Legislature, 2017, which repealed TWC, §26.0285.