

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of 30 Texas Administrative Code (TAC) §§238.1, 238.2, 238.31, 238.32, 238.41-238.51, 238.60, 238.61, 238.70, and 238.80-238.83, concerning Water Well Drillers Rules. This repeal is adopted without changes to the proposed text as published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11077) and will not be republished.

This action also constitutes the commission's adoption of the review of the rules contained in 30 TAC Chapter 238. This review was in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The adopted rule review can be found in the Review of Agency Rules section in this edition of the *Texas Register*.

#### EXPLANATION OF ADOPTED RULES

This repeal will remove current Chapter 238, as part of the commission's implementation of Senate Bill (SB) 1955, 75th Legislature, 1997. Legislative action amended Chapters 32 and 33, Texas Water Code (TWC), requiring the transfer of the water well drillers programs previously administered by the commission to the Texas Department of Licensing and Regulation (TDLR). TDLR is authorized to adopt rules under Chapters 32 and 33, and the commission adopts the repeal of this chapter in response to the TDLR's adoption of 16 TAC Chapter 76, regarding Water Well Drillers and Water Well Pump Installers.

## FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the repeal in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225, which applies only to certain major environmental rules that have at least one of four results. "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. The intent of this rulemaking is to repeal the licensing program for water well drillers and pump installer requirements under Chapter 238. These responsibilities have been transferred to TDLR as a result of legislative action. This repeal will result in only minimal changes to the regulations as they currently exist. This rule does not meet the definition of a "major environmental rule" and does not meet any of the four results that would trigger applicability of §2001.0225.

First, the proposal does not exceed a standard set by federal law. There are no specific federal laws that require or provide for the licensing of water well drillers or for the establishment of water well construction standards for wells which are not used for public drinking water supply. Therefore, the proposal does not exceed a standard set by federal law. Moreover, even if the rule did exceed a standard set by federal law, this proposal is specifically required by state law, which required the commission, and now requires TDLR to license drillers and establish standards for the drilling of water wells (Chapter 32 of the TWC) and is exempt from §2001.0025's applicability.

Second, this proposal does not exceed an express requirement of state law. The proposal is designed to carry out the commission's statutory responsibility to control the quality of water in the state, including groundwater, pursuant to §§26.011, and 26.046, and 28.011 of the TWC. The proposal is intended to comply with the stated requirements of state law and not exceed them in any way.

Third, this proposal does not 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. This proposal is not covered by any delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program.

Finally, this proposal does not adopt a rule solely under the general powers of the agency instead of under a specific state law. While this proposal repeals a rule under general powers of the agency, it was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers under Chapter 32 and §28.011 of the TWC.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that assessment. Promulgation of the repeal of Chapter 238 will not burden private real property which is the subject of the rules. The specific purpose of the rule is to repeal Chapter 238 of the commission's rules to implement the transfer of the licensing requirements for water well drillers and pump installers program to the TDLR. The commission's repeal of Chapter 238 is in response to TDLR's adoption of 16 TAC Chapter 76. The

TDLR's rules will take the place of Chapters 238 and 340 and will provide for well standards and well driller and pump installer licensing pursuant to Chapters 32 and 33 of the Texas Water Code as amended by SB 1955, 75th Legislature, 1997. Chapter 238 defines well completion, plugging, and capping standards. Because these rules will no longer be effective, the repeal of these rules does not impose a burden on private real property, and does not cause any takings to occur.

#### COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the repeal and found that the rulemaking is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

#### PUBLIC HEARING AND COMMENTS

A public hearing on the proposal was held on November 23, 1998. No one presented testimony at the public hearing and no comments were submitted in writing on this proposal. The comment period ended November 30, 1998.

#### STATUTORY AUTHORITY

These sections are repealed under TWC, §5.103 which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas, and §5.105 which provides the commission to establish and approve all general

policy of the commission by rule. Section 26.011 of the TWC provides that the commission will administer the provisions of Chapter 26 of the TWC and establish the level of quality to be maintained in and control the quality of the water in the state. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers under Chapter 32 TWC.

**SUBCHAPTER A : GENERAL PROVISIONS**

**§238.1 and §238.2**

**§238.1. Purpose of Rules.**

**§238.2. Definitions.**

**SUBCHAPTER B : STATE WELL REPORTS AND  
REPORTING UNDESIRABLE WATER**

**§238.31 and §238.32**

**STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§238.31. State Well Reports.**

**§238.32. Reporting Undesirable Water of Constituents.**

**SUBCHAPTER C : WELL DRILLING, COMPLETIONS,  
CAPPING, AND PLUGGING**

**§§238.41 - 238.51**

**STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§238.41. Responsibility.**

**§238.42. Standards of Completion for Public Water System Wells.**

**§238.43. Location of New Wells.**

**§238.44. Standards of Completion for Wells.**

**§238.45. Standards of Completion for Water Wells Encountering Undesirable Water or  
Constituents.**

**§238.46. Standards for Wells Producing Undesirable Water or Constituents.**

**§238.47. Recompletions.**

**§238.48. Well Plugging and Capping.**

**§238.49. Standards for Plugging Wells.**

**§238.50. Standards for Plugging Wells That Penetrate Undesirable Water of Constituent Zones.**

**§238.51. Standards for All Water Wells (drilled before June 1, 1983).**

**SUBCHAPTER D : WATER DISTRIBUTION AND DELIVERY SYSTEMS AND CHEMICAL  
INJECTION, CHEMIGATION, AND FOREIGN SUBSTANCE SYSTEM**

**§238.60 and §238.61**

**STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§238.60. Water Distribution and Delivery Systems.**

**§238.61. Chemical Injection, Chemigation, and Foreign Substance Systems.**

**SUBCHAPTER E : PUMP INSTALLATION AND  
TEMPORARY WELL PROTECTION**

**§238.70**

**STATUTORY AUTHORITY**

The section is repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§238.70. Pump Installation.**

**SUBCHAPTER F : MISCELLANEOUS PROVISIONS**

**§§238.80 - 238.83**

**STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§238.80. Minimum Standards.**

**§238.81. Field Inspection.**

**§238.82. Plugging Responsibility.**

**§238.83. Complaints.**

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of 30 Texas Administrative Code (TAC) §§340.1-340.3, 340.31, 340.33, 340.35, 340.37, 340.39, 340.41, 340.43, 340.45, 340.49, 340.51, 340.53, 340.71, 340.73, 340.75, 340.77, 340.81-340.86, 340.88-340.93, 340.101, 340.103, 340.105, 340.107, 340.109, 340.111, 340.131, 340.133, 340.135, and 340.137, concerning Licensing Requirements and Complaint Procedures for Water Well Drillers and Pump Installers. These repeals are adopted without changes to the proposed text as published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11080) and will not be republished.

This action also constitutes the commission's adoption of the review of the rules contained in 30 TAC Chapter 340. This review was in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The adopted rule review can be found in the Review of Agency Rules section in this edition of the *Texas Register*.

#### EXPLANATION OF ADOPTED RULES

This repeal removes current Chapter 340 as part of the commission's implementation of Senate Bill (SB) 1955, 75th Legislature, 1997. Legislative action amended Chapters 32 and 33, Texas Water Code (TWC), requiring the transfer of the water well drillers and pump installers certification and licensing programs previously administered by the commission to the Texas Department of Licensing and Regulation (TDLR). TDLR is authorized to adopt rules under TWC Chapters 32 and 33, and the commission repeals this chapter in response to the TDLR's adoption of 16 TAC Chapter 76, related to Water Well Drillers and Water Well Pump Installers.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the repeal in light of the regulatory impact analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225, which applies only to certain major environmental rules that have at least one of four results. "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. The intent of this rulemaking is to repeal the licensing program for water well drillers and pump installer requirements under Chapter 340. These responsibilities have been transferred to TDLR as a result of legislative action. This repeal will result in only minimal changes to the regulations as they currently exist. This rule does not meet the definition of a "major environmental rule" and does not meet any of the four results that would trigger applicability of §2001.0225.

First, the proposal does not exceed a standard set by federal law. There are no specific federal laws that require or provide for the licensing of water well drillers or for the establishment of water well construction standards for wells which are not used for public drinking water supply. Therefore, the proposal does not exceed a standard set by federal law. Moreover, even if the rule did exceed a standard set by federal law, this proposal is specifically required by state law which required the commission and now requires TDLR to license drillers and pump installers (Chapter 32 of the TWC) and is exempt from §2001.0025's applicability.

Second, this adoption does not exceed an express requirement of state law. The adoption is designed to carry out the commission's statutory responsibility to control the quality of water in the state, including groundwater, pursuant to §§26.011, and 26.046, and 28.011 of the TWC. The adoption is intended to comply with the stated requirements of state law and not exceed them in any way.

Third, this adoption does not 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. This adoption is not covered by any delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program.

Finally, this proposal does not adopt a rule solely under the general powers of the agency instead of under a specific state law. While this adoption repeals a rule under general powers of the agency, it was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 and §28.011 of the TWC.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that assessment. Promulgation of the repeal of Chapter 340 will not burden private real property which is the subject of the rules. The specific purpose of the rule is to repeal Chapter 340 of the commission's rules to implement the transfer of the

licensing requirements for water well drillers and pump installers program to the TDLR. The commission proposes the repeal of Chapter 340 in response to a TDLR proposal to adopt 16 TAC Chapter 76. The TDLR's proposed rules will take the place of Chapters 238 and 340 to provide for well standards and well driller and pump installer licensing pursuant to Chapters 32 and 33 of the Texas Water Code as amended by SB 1955, 75th Legislature, 1997. Chapter 340 defines licensing requirements and duties of licensed water well drillers and pump installers. Because these rules will no longer be effective, the repeal of these rules does not impose a burden on private real property, and does not cause any takings to occur.

#### COASTAL MANAGEMENT PROGRAM

The executive director has reviewed this repeal and found that the rulemaking is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

#### PUBLIC HEARING AND COMMENTS

A public hearing on the proposal was held on November 23, 1998. No one presented testimony at the public hearing and no comments were submitted in writing on this proposal. The comment period ended November 30, 1998.

#### STATUTORY AUTHORITY

These sections are repealed under TWC, §5.103 which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas, and §5.105 which provides the commission to establish and approve all general policy of the commission by rule. Section 26.011 of the TWC provides that the commission will administer the provisions of Chapter 26 of the TWC and establish the level of quality to be maintained in and control the quality of the water in the state. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC.

**SUBCHAPTER A : INTRODUCTORY PROVISIONS**

**§§340.1 - 340.3**

**§340.1. Purpose of Rules.**

**§340.2. Definitions.**

**§340.3. Council Meetings.**

**SUBCHAPTER B : LICENSING PROCEDURES**

**§§340.31, 340.33, 340.35, 340.37, 340.39,  
340.41, 340.43, 340.45, 340.49, 340.51, and 340.53**

**STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§340.31. License Required.**

**§340.33. Exceptions.**

**§340.35. Requirements for Issuance of a License.**

**§340.37. Applications for Licenses and Renewals.**

**§340.39. Establishing Texas Residency.**

**§340.41. Examination Fee.**

**§340.43. Certification by the Executive Director.**

**§340.45. Disposition of Application.**

**§340.49. Examinations.**

**§340.51. Licenses.**

**§340.53. License Renewal.**

**SUBCHAPTER C : DUTIES OF LICENSED WATER WELL DRILLERS  
AND PUMP INSTALLERS**

**§§340.71, 340.73, 340.75, and 340.77**

**STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC .Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§340.71. Marking Vehicles and Equipment.**

**§340.73. Well Logs.**

**§340.75. Plugging and Completion of Water Wells.**

**§340.77. Supervising Drillers or Pump Installers.**

## **SUBCHAPTER D : DRILLER TRAINEE REGISTRATION**

### **§§340.81 - 340.86**

#### **STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§340.81. Registration for Driller Trainees.**

**§340.82. Registration Forms.**

**§340.83. Commencement of Registration.**

**§340.84. Termination of Driller Trainee Status.**

**§340.85. Required Activities of Driller Trainees.**

**§340.86. Prohibited Activities of Driller Trainees.**

**SUBCHAPTER E : PUMP INSTALLER APPRENTICES**

**§340.88 - 340.93**

**STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§340.88. Training Program.**

**§340.89. Requirements for Obtaining Pump Installer Apprentice Status.**

**§340.90. Commencement of Registration.**

**§340.91. Termination of Pump Installer Apprentice Status.**

**§340.92. Required Activities of Pump Installer Apprentices.**

**§340.93. Prohibited Activities of Pump Installer Apprentices.**

**SUBCHAPTER F : STANDARDS OF CONDUCT**

**§§340.01, 340.03, 340.05, 340.07, 340.09, 340.11**

**STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code, (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§340.101. Ethical Standards.**

**§340.103. Intent.**

**§340.105. Offer to Perform Services.**

**§340.107. Representations.**

**§340.109. Unauthorized Practice.**

**§340.111. Adherence to Statutes and Codes.**

**SUBCHAPTER G : DISPOSITION OF VIOLATIONS**

**§§340.131, 340.133, 340.135, 340.137**

**STATUTORY AUTHORITY**

These sections are repealed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now repealed under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

**§340.131. Disciplinary Actions.**

**§340.133. Commission Investigations.**

**§340.135. Notice of Agency Proceedings.**

**§341.137. Reinstatement After Disciplinary Action.**