

<p>The Texas Natural Resource Conservation Commission (commission) adopts the repeal of <*> 120.1, 120.3, 120.11-120.13, 120.15, 120.21, and 120.31, concerning Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities, without changes to the proposed text as published in the January 29, 1999 issue of the <eti> *Texas Register* <et> (24 TexReg 503). This action repeals a set of rules which are duplicated in 30 TAC Chapter 335, Subchapters G and L.

<p>The commission also has conducted its review of the rules in Chapter 120 as required by the General Appropriations Act, Article IX, <*> 167, 75th Legislature, 1997. The adopted notice of review is published concurrently in the Rule Review section of this edition of the <eti> *Texas Register* <et> .

<p>EXPLANATION OF RULES

<p>Chapter 120 and Chapter 335, Subchapter L, were joint rules for the Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities which were first adopted by the Texas Air Control Board (TACB) and the Texas Water Commission (TWC) in 1986, under requirements of the Solid Waste Disposal Act (SWDA). The two sets of rules contained the same permitting requirements and were needed for issuance of “one-stop” permits until the two agencies merged September 1, 1993, creating the Texas Natural Resource Conservation Commission. Today, permittees holding existing “one-stop” permits for solid waste facilities may renew or amend those permits using the existing statutory authority of the SWDA and the rules of the commission in 30 TAC Chapter 335. New applicants whose projects require more than one permit from the commission may avail themselves of the commission’s new consolidated permitting rules, 30 TAC <*> 33.11-33.51. These rules allow applicants to seek multiple authorizations through consolidated processes, and receive a single consolidated permit or receive separate permits. In addition, 30 TAC Chapter 116 may be used by those seeking separate air authorization.

<p>The commission reviewed the joint rules under Chapter 120 and Chapter 335 and determined that the agency no longer needs two sets of rules containing the same requirements. Accordingly, the repeal of Chapter 120 is adopted.

<p>FINAL REGULATORY IMPACT ANALYSIS

<p>The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), <*>2001.0225, and has determined that the rulemaking is not subject to <*>2001.0225 because it does not meet the definition of “major environmental rule,” as defined in the Code. Specifically, the repeal of Chapter 120 will not cause any change in requirements which are found duplicated in Chapter 335, Subchapters G and L. This rulemaking is not an express requirement of state or federal law, but was developed as a result of the rules review of Chapter 120 in accordance with requirements of the General Appropriations Act, Article IX, <*>167. This rulemaking does not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and was not developed solely under the general powers of the agency.

<p>TAKINGS IMPACT ASSESSMENT

<p>The commission has prepared a takings impact assessment for this rulemaking under the Code, <*>2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to repeal Chapter 120, the provisions of which are duplicated in Chapter 335, Subchapters G and L. Prior to September 1, 1993, the SWDA required the former TWC and the former TACB to establish joint rules for “one-stop” permitting for the control of air pollution from hazardous and solid waste management facilities. Since the merger of the two former agencies into the Texas Natural Resource Conservation Commission, September 1, 1993, the SWDA no longer requires the joint rules for two agencies which no longer exist. With the repeal of Chapter 120, the “one-stop”

permitting provisions will remain effective in Chapter 335. Adoption of the repeals will not affect private real property which is the subject of the rules because this rulemaking action does not restrict or limit the owner's right to the property that otherwise would exist in the absence of the rulemaking. Further, this rulemaking is not the producing cause of the reduction in the market value of private real property. Therefore, this action, which involves no change in permitting requirements, does not create a burden on private real property.

<p>COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

<p>The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, <*>33.201 et seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas CMP. As required by 31 TAC <*>505.11(b)(2) and 30 TAC <*>281.45(a)(3), relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies.

<p>The CMP goal applicable to the repeals is 31 TAC <*>501.21, to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of Coastal Natural Resource Areas. The primary CMP policy applicable to this rulemaking action is the policy that the commission rules comply with federal regulations in Title 40, Code of Federal Regulations, in order to protect and enhance air quality in the coastal area. The repeals will cause no change in current requirements because the existing provisions of Chapter 120 will continue to be effective under Chapter 335. Therefore, in compliance with 31 TAC <*>505.22(e), the commission affirms that this rulemaking is

consistent with CMP goals and policies. During the public comment period, no interested persons submitted comments on the consistency of the proposed repeals with the CMP.

<p>PUBLIC HEARING AND COMMENTERS

<p>A public hearing on this proposal was held in Austin on March 1, 1999, and the comment period closed on March 1, 1999. No oral comments were received on the proposal. Written comments were received from Bracewell & Patterson, L.L.P.

<p>ANALYSIS OF TESTIMONY

<p>Bracewell & Patterson, L.L.P. recommended that references to Chapter 120 in 30 TAC Chapter 122 (<*>122.10) and in 30 TAC Chapter 281 (<*>281.48, Appendix E) be clarified or removed because they are obsolete.

<p>The commission supports this recommendation and will address these references in subsequent rulemaking involving these chapters.

<p>STATUTORY AUTHORITY

<p>The repeals are adopted under Texas Health and Safety Code, the Texas Clean Air Act (TCAA), <*>382.017, which provides the commission with the authority to adopt rules consistent with the policies and purposes of the TCAA. Also, the repeals are adopted in accordance with the requirements of the General Appropriations Act, Article IX, <*>167, under which agencies must periodically review rules and consider them for readoption.

<*> 120.1. Definitions.

<*> 120.3. Applicability.

<*> 120.11. Permit Conditions.

<*> 120.12. Prohibition on Permit Issuance.

<*> 120.13. Representations in Application for Permit.

<*> 120.15. Responsibility for Review of Air Quality Impacts from Existing, New, and Modified Facilities.

<*> 120.21. General Air Emissions Requirements for Hazardous or Solid Waste Management Facilities.

<*> 120.31. Specific Air Emissions Requirements for New, Modified, and Existing Hazardous or Solid Waste Management Facilities.