

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§323.21-323.23, concerning Waste Disposal Approvals.

EXPLANATION OF PROPOSED RULES

The repeal of Chapter 323 is proposed following a staff review of Chapter 323 in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed notice of review for this chapter is concurrently published in the Rules Review section of this edition of the *Texas Register*. Staff's review found that the requirements of the rules had not been developed or implemented by the commission or its predecessors since the rule's adoption in 1978. Furthermore, staff determined that the rules were adopted to support a now defunct construction grants program.

The repeal of this chapter will eliminate regulatory requirements that have never been implemented by the commission or required of any waste disposal facility. The repeal will not place any burden on the commission or municipalities that own waste disposal facilities.

Chapter 323 required the executive director to develop a rating system to evaluate waste disposal facilities to determine if the design and operation merited state approval. An approval rating by the executive director allowed municipalities to erect a sign at an appropriate location that informed the public that the executive director had approved the waste disposal facility. The rules also required the executive director to evaluate all waste disposal facilities as soon as the rating system was in place and allowed for the reevaluation of the each facility on a yearly basis.

The commission presently handles the evaluation and approval of the design of waste disposal facilities through the requirements found in 30 TAC Chapter 317, concerning Design Criteria for Sewerage Systems. Reevaluations occur during scheduled inspections of the facility.

FISCAL NOTE

Matthew Johnson, Budget and Planning Division, has determined that for the first five-year period the repeals are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the proposed repeals. If the requirements of the rules had been implemented, the repeals would save the municipality \$75 to \$125 per erected sign.

PUBLIC BENEFIT

Mr. Johnson has also determined that for each year of the first five years the repeals are in effect the anticipated public benefit will be a decrease in the regulatory requirements that municipalities that own waste disposal facilities must meet. The potential for confusion regarding executive director approval of waste disposal facility designs will also be eliminated with the repeal of these rules.

SMALL BUSINESS ANALYSIS

The repeal of these rules will not affect any person or small business owning or operating a waste disposal facility due to the rules never having been implemented. Had the rules been implemented, persons or small business owners of waste disposal facilities would be realizing a cost savings of \$75 to \$125 per erected sign due to the provisions of the rules.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 a “major environmental rule” as defined in the Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The repeal of Chapter 323 is not a major environmental rule, and is being proposed as a result of a rule review done in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of the assessment. The specific purpose of the proposed repeals is to eliminate Chapter 323, concerning Waste Disposal Approvals, which has never been implemented or used by the commission. The proposed repeal of these rules will not affect private real property which is the subject of the rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the proposed repeals and found that the repeals or the rules do not govern air pollution emissions, on-site sewage disposal systems, or underground storage tanks or other related actions expressly identified under the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor does it govern or authorize actions listed in §505.11(a)(6). Therefore, the proposed rules are not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98048-323-WT. Comments must be received by 5:00 p.m., **May 24, 1999**.

For further information, please contact Santos Olivarez, Policy and Regulations Division, at (512) 239-4718.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBCHAPTER B : APPROVED RATINGS FOR WASTE DISPOSAL SYSTEMS

STATUTORY AUTHORITY

The repeals are proposed under the Texas Water Code, §5.102, which provides the commission with the general powers to carry out duties under the Texas Water Code, and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of the Texas Water Code and other laws of this state. The repeals are proposed as a result of a rule review done in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

No other codes, rules, or statutes will be affected by this proposal.

§323.21. Rating Systems.

§323.22. Approved Ratings.

§323.23. Rating Procedures.