

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§277.1, 277.2, 277.4, 277.6, 277.10, 277.12, and 277.20, concerning Use Determinations For Tax Exemptions For Pollution Control Property. The repeals are adopted without changes to the proposed text as published in the February 12, 1999 issue of the *Texas Register* (24 TexReg 924) and will not be republished. In concurrent action, the commission is adopting a new 30 TAC Chapter 17, concerning Tax Relief for Property Used for Environmental Protection, to replace existing Chapter 277 with minor revisions. The changes to Chapter 17 primarily clarify the procedures for reviewing applications for use determinations when the applicant does not adequately respond to a deficiency notice. As part of the commission's regulatory reform initiative, the former provisions of Chapter 277 (new §§17.1, 17.2, 17.4, 17.6, 17.10, 17.12, and 17.20 adopted in concurrent action in this edition of the *Texas Register*) are rewritten for clarity, readability, and improved organization.

#### EXPLANATION OF ADOPTED RULES

The commission is moving the regulations currently located in Chapter 277 to new Chapter 17 to be consistent with the commission's policy to place general or multi-media rules within the Chapters 1-99 series of the commission's rules in Title 30 of the Texas Administrative Code. The 200 number range is intended for water related rules. Since the tax exemption program is multi-media, covering air, water, and waste, it should be located with the rules of general applicability, which is in the 1-99 range. This chapter redesignation will require the repeal of Chapter 277 in concurrent action with the adoption of the new Chapter 17. These changes are for purposes of simplification and clarification only and do not involve substantive changes in the requirements of this chapter. In general, these changes involve

using shorter sentences, limiting each citation to one main concept, reordering requirements into a more logical sequence, and using more commonplace terminology.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the repeals are not subject to §2001.0225 because they will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety. The rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

The repeals do not exceed a standard set by federal law and are specifically required by state law. Federal law does not require states to allow tax abatements for the installation of pollution control property.

These repeals do not exceed an express requirement of state law and are not specifically required by federal law. The adopted rules are required to implement Tax Code, §11.31 and §26.045. The repeals do not affect any of the requirements of the Texas Constitution, Article VIII, §1-1, or of Tax Code, §11.31, concerning Pollution Control Property, and §26.045, concerning Rollback Relief for Pollution Control Requirements, because the rules are being readopted in a new chapter.

These repeals do not exceed the requirements of a delegation agreement or contract between the state and federal government as there is no agreement or contract between the commission and the federal government concerning tax abatements for pollution control property.

The repeals are not adopted solely under the general powers of the commission aside from a specific state law. Rather, the repeals are adopted under of the Texas Water Code, §5.102 and §5.103, and the Tax Code, §11.31 and §26.045.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these repeals under the Texas Government Code, §2007.043. The following is a summary of that assessment. Chapter 277 implements the provisions of the Texas Constitution, Article VIII, §1-1, and the Tax Code, §11.31 and §26.045, which provide ad valorem property tax relief through tax exemptions for capital expenditures for pollution control property. There is an economic benefit to businesses and industries that participate in the program in the form of a tax exemption for capital expenditures for pollution control property. This benefit will not be altered by the adopted repeals because the rules will be readopted as a new Chapter 17. The adopted repeals will not create a burden on private real property, nor will it make any rules less stringent.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the adopted repeals do not meet the criteria for an action or actions 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.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and §505.22(a) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions, on-site sewage disposal systems, or underground storage tanks must be consistent with applicable CMP goals and policies. These rules are not agency rules governing air pollutant emissions, on-site sewage disposal systems, or underground storage tanks. The purpose of the rules is to encourage the installation of pollution control property by ensuring that the capital investment used to comply with environmental mandates does not result in an increase in a facility's property taxes. Therefore, these repeals are not subject to the CMP.

#### HEARING AND COMMENTERS

There was no request for a public hearing and no written comments were received during the public comment period. Therefore, the repeals will be adopted as proposed without changes.

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.102 and §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties, and policies, and Tax Code, §11.31 and §26.045, which designate the commission as the reviewing authority to make pollution control property use determinations.

**CHAPTER 277 : USE DETERMINATIONS FOR TAX EXEMPTIONS  
FOR POLLUTION CONTROL EQUIPMENT**

**§§277.1, 277.2, 277.4, 277.6, 277.10, 277.12, 277.20**

**§277.1. Scope and Purpose.**

**§277.2. Definitions.**

**§277.4. Applicability.**

**§277.6. Exceptions**

**§277.10. Application for Use Determination.**

**§277.12. Application Review Schedule.**

**§277.20. Application Fees.**