

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§277.1, 277.2, 277.4, 277.6, 277.10, 277.12, and 277.20, concerning Tax Exemptions For Pollution Control Property. In concurrent action, the commission is proposing a new 30 TAC Chapter 17, concerning Tax Relief for Property Used for Environmental Protection, to replace existing Chapter 277 with minor revisions. The proposed 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, proposed in concurrent action in this edition of the *Texas Register*) are rewritten for clarity, readability, and improved organization.

#### EXPLANATION OF PROPOSED RULES

The commission proposes to move the regulations currently located in Chapter 277 to new Chapter 17 to be consistent with the commission's policy to place general or multimedia rules within the Chapter 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 multimedia, 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.

#### FISCAL NOTE

Jeff Grymkoski, Strategic Planning and Appropriations Section, 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 repeals. There are no fiscal implications caused by repealing the provisions of Chapter 277 and readopting them in the new Chapter 17.

#### PUBLIC BENEFIT

Mr. Grymkoski also has determined that for each year of the first five years the repeals are in effect, the anticipated public benefit will be a better understanding of the rules, resulting in more efficient operation of the program. The proposed concurrent repeal of Chapter 277 and adoption of new Chapter 17 will clarify for the regulated community and small business owners the specific intent of these rules, which were established to provide the procedure and mechanism for an owner, including political subdivisions, of pollution control property, to apply to the commission for tax relief for capital investments in pollution control property. Recodification of the rules from Chapter 277 to Chapter 17 will comply better with the commission's policy regarding general or multimedia rules. There are no changes to the fundamental procedures of this voluntary program nor are there adverse economic impacts to small businesses.

#### SMALL BUSINESS ANALYSIS

The proposed concurrent repeal of Chapter 277 and adoption of new Chapter 17 clarifies the specific intent of these rules, which were established to provide the procedure and mechanism for an owner, including political subdivisions, of pollution control property, to apply to the commission for a finding, either negative or positive, that the property is used wholly or partly for the prevention, monitoring, control, or reduction of air, water, or land pollution. A person is entitled to a property tax exemption for all or part of real and personal property that the person owns that is used wholly or partly as a

facility, device, or method for the control of air, water, and land pollution. The rules provide ad valorem property tax relief through tax exemptions for capital expenditures for pollution control. Small businesses are not required to participate in the program. There are no changes to the fundamental procedures of this voluntary program nor are there adverse economic impacts to small businesses.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code (the 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 proposal does not meet any of the four applicability requirements listed in §2001.0225(a).

The proposed 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.

This proposal does not exceed an express requirement of state law and is not specifically required by federal law. The proposed rules are required to implement Tax Code, §11.31 and §26.045. The proposed 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.

This proposal does 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 proposed solely under the general powers of the commission aside from a specific state law. Rather, the repeals are proposed under Texas Water Code, §5.102 and §5.103, and Tax Code, §11.31 and §26.045.

#### TAKINGS IMPACT ANALYSIS

The staff has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. Chapter 277 implements the provisions of Texas Constitution, Article VIII, §1-1, and 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 proposed repeals because the rules will be readopted as a new chapter. The proposed repeals will not create a burden on private real property, nor will they make any rules less stringent.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the proposed 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. The 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, the repeals are not subject to the CMP.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98050-277-AD. Comments must be received by 5:00 p.m., March 15, 1999. For further information, please contact Gary McArthur, Office of the Chief Engineer, (512) 239-1917, or Forrest Brooks, Office of Policy and Regulatory Development, (512) 239-0578.

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102 and §5.103, which provide 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.

The proposed repeals implement Texas Water Code, §5.102 and §5.103 and Tax Code, §11.31 and §26.045.

**CHAPTER 277**

**USE DETERMINATIONS FOR TAX EXEMPTIONS FOR POLLUTION CONTROL  
PROPERTY**

**§§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.**