

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of §§335.226-335.229, 335.361-335.367, and 335.404 and the readoption of the remaining sections of Chapter 335. The commission also proposes the review of the rules in Chapter 335 under Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999. The proposed notice of review can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Chapter 335 is a recodification of rules which were initiated in 1970 with the adoption of regulations concerning industrial solid waste by the Texas Water Quality Board pursuant to the Texas Solid Waste Disposal Act, 61st Legislature, 1969. These initial rules established design criteria and permit requirements for commercial disposal operations, established the basic policy that waste generators are responsible for assuring that their waste is properly and safely disposed of, and established requirements for a certificate of registration whereby each noncommercial industrial solid waste facility's compliance status would be established and regularly reviewed.

Subsequent regulatory development came in 1975, when the Texas Water Quality Board revised its industrial solid waste regulations to establish uniform performance standards for all disposal operations. The 1975 amendments prohibited discharge of industrial solid waste to groundwater or surface water, prohibited the creation of any nuisance or public health problems, and prohibited disposal at unauthorized locations. Also, these amendments called for the development of technical guidelines

outlining recommended technical standards for various methods of industrial solid waste storage and disposal and established shipping control requirements for a certain category of industrial solid waste.

The 65th Legislature, 1977, amended the Texas Solid Waste Disposal Act to require permits for all waste storage, processing, and disposal facilities which would manage waste identified as hazardous waste by the Administrator of the United States Environmental Protection Agency (EPA). Then, after the identification of hazardous waste by EPA in 1980, the Texas Department of Water Resources (TDWR) adopted rules implementing this statutory permit requirement. These rules also set forth hazardous industrial solid waste management requirements patterned after the hazardous waste regulations promulgated by the EPA. Subsequently, the TDWR made application and was granted authorization by the EPA under the Resource Conservation and Recovery Act (RCRA) to implement hazardous waste program elements in lieu of the EPA. Successor agencies to the TDWR, the Texas Water Commission and the TNRCC, have amended Chapter 335 over the intervening years to maintain this authorization under RCRA, and to address state regulatory concerns.

The commission has conducted a preliminary review of the rules under Chapter 335 and has determined that the reasons for adopting these rules continues to exist, with the exception of §335.226, relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities; §335.227, relating to Testing Requirements for Commercial Hazardous Waste Combustion Facilities; §335.228, relating to Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities; §335.229, relating to Operating Requirements for Commercial Hazardous Waste Combustion Facilities; §335.361, relating to Definitions; §335.362, relating to Applicability; §335.363, relating to Permit

Conditions; §335.364, relating to Representations in Application for Permit; §335.365, relating to Responsibility for Review of Air Quality Impacts from Existing, New, and Modified Facilities; §335.366, relating to General Air Emissions Requirements for Hazardous or Solid Waste Management Facilities; §335.367, relating to Specific Air Emissions Requirements for Hazardous or Solid Waste Management Facilities; and §335.404, relating to Interagency Coordination. With the aforementioned exceptions, these rules are needed to accomplish the purposes of Texas Health and Safety Code (THSC), Chapter 361, in accordance with THSC, §361.017(b), which states “The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of industrial solid waste and hazardous municipal waste by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law;” and in accordance with THSC, §361.024(a), which states “The commission may adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of solid waste under this chapter.”

SECTION BY SECTION DISCUSSION

Sections 335.226-335.229 are proposed for repeal because the reason for these rules no longer exists. These sections were originally adopted in the year 1991 as part of a joint rulemaking between the Texas Water Commission (TWC) and the Texas Air Control Board (TACB), and they contain the same requirements as 30 TAC §§111.124-111.129. The TWC and the TACB were consolidated into the Texas Natural Resource Conservation Commission, effective September 1, 1993, thus eliminating the need for two separate sets of rules covering the same requirements. Thus, §§335.226-335.229 are no longer needed.

Sections 335.361-335.367, which make up Subchapter L, relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities, are also proposed for repeal because the reason for these rules no longer exists. These sections were adopted under THSC, §§361.070-361.077, which were repealed by Acts, 72nd Legislature, 1997, Chapter 3, §1.098(b), effective September 1, 1993. The sections proposed for repeal mandate that facilities obtain a single permit containing provisions regulating the solid waste aspects and the air emissions aspects of a hazardous waste facility. Subsequent to the repeal of the aforementioned THSC sections, an optional consolidated permit processing and hearing procedure was added to the Texas Water Code by the 75th Legislature, 1997, under Chapter 5, Subchapter J, relating to Consolidated Permit Processing, with an effective date of September 1, 1997. The commission has adopted rules under this statutory language in Chapter 33, relating to Consolidated Permit Processing. Therefore, Chapter 335, Subchapter L is no longer needed.

Finally, §335.404, relating to Interagency Coordination, is proposed for repeal because the reason for this rule no longer exists. This section is proposed for repeal because it is obsolete due to the fact that the commission and not the Texas Department of Health now regulates household hazardous waste, making the requirements of this section, regarding interagency coordination with the Texas Department of Health over household hazardous waste, no longer necessary or appropriate.

The commission's review of Chapter 335 has also revealed a number of inconsistencies and incorrect references and citations, which the commission intends to propose to correct in another rulemaking in the near future. For example, the statutory citations involving the Solid Waste Disposal Act are inconsistent throughout Chapter 335, which will be addressed in the future rulemaking. The

commission also intends to propose to correct or delete the out-of-date references to the Texas Water Commission and the Texas Department of Health, and to correct rule references, where appropriate. The commission invites comments on corrections that could be considered in the aforementioned future rulemaking. Today's proposal is limited to the repeals and review discussed earlier in this preamble.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period after the proposed repeal of certain portions of Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, there will be no significant adverse fiscal implications for the TNRCC and other units of state and local government as a result of the proposed repeals. The sections of Chapter 335 proposed for repeal are either redundant, no longer required, or no longer necessary.

The current sections of Chapter 335 relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities; Testing Requirements for Commercial Hazardous Waste Combustion Facilities; Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities; and Operating Requirements for Commercial Hazardous Waste Combustion Facilities were originally adopted as part of a joint rulemaking between the TWC and the TACB. These requirements are currently contained in Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, are no longer needed in Chapter 335, and are proposed for repeal from Chapter 335.

Current Subchapter L specify that facilities obtain a single permit containing provisions regulating the solid waste aspects and the air emissions aspects of a hazardous waste facility. These requirements

were repealed effective September 1, 1993 by the 72nd Legislature, 1991. Subsequent to the repeal of these requirements, an optional consolidated permit processing and hearing procedure was added to the Texas Water Code by the 75th Legislature, 1997, under Chapter 5, Subchapter J. The commission has adopted rules relating to this legislation in Chapter 33. The current Subchapter L of Chapter 335 is no longer needed and proposed for repeal.

The section of Chapter 335 relating to Interagency Coordination with the Texas Department of Health regarding the regulation of household hazardous waste was necessary when the Texas Department of Health regulated household hazardous waste. The TNRCC currently regulates household hazardous waste so interagency coordination with the Texas Department of Health on household hazardous waste is no longer necessary or appropriate. This portion of Chapter 335 is obsolete and proposed for repeal.

PUBLIC BENEFIT

Mr. Orozco has also determined for each year of the first five years after the repeals of the proposed sections to Chapter 335, the public benefit anticipated from the repeals will be the removal of redundant, outdated, or unnecessary rules promulgated under Chapter 335. No significant adverse fiscal implications are anticipated to any person or business as a result of repealing the proposed provisions of Chapter 335 of the rules. The proposed amendments do not add additional requirements to existing rules.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

No significant adverse fiscal implications are anticipated to any individuals, small businesses, or micro-businesses as a result of repealing the proposed provisions of Chapter 335 of the rules. The repeals will eliminate redundant, outdated, or unnecessary rules promulgated under Chapter 335.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government 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 that statute. “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. Because the specific intent of the proposed rulemaking is to repeal redundant, outdated, or unnecessary rules promulgated under Chapter 335, and does not add regulatory requirements to existing rules, the rulemaking is not anticipated to have an adverse material affect on 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. In addition, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 or; 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.” Specifically, the proposed repeals do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. The repeals to certain provisions of Chapter 335 and re-adoption of the remaining provisions are not proposed solely under the general powers of the agency but specifically under Texas Health and Safety Code, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under the Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rulemaking is to review the rules in Chapter 335 and repeal each rule for which a reason no longer exists. The proposed rules would substantially advance this stated purpose by performing a review of the entire Chapter 335 and proposing the repeal of each rule for which a reason no longer exists, which in this case are those rules which are outdated or redundant. Promulgation and enforcement of these proposed rules would not affect private real property which is the subject of the rules because the proposed rulemaking would not add any regulatory requirements to existing rules. Since the rules that would be repealed are outdated or redundant, the proposed rules would not create a burden on private real property that is the subject of the regulation. The subject proposed regulations do not affect a landowner’s rights in private real property because this rulemaking does not restrict or limit the owner’s right to property that would otherwise exist in the absence of the proposed repeals. In

other words, because these rules would merely repeal outdated or redundant requirements, they do not restrict the owner's right to property. Therefore, this action, which would not add any requirements, does not create a burden on private real property, and will not constitute a takings under the Texas Government Code, §2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the proposed rules are not subject to the CMP because these rules would merely repeal outdated or redundant requirements, and they would not add any requirements. The commission invites public comment on the commission's finding that the proposed rules are not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, 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 1999-076-335-WS. Comments must be received by 5:00 p.m., April 24, 2000. For further information or questions concerning this proposal, please contact Ray Henry Austin, Policy and Regulations Division, at (512) 239-6814.

STATUTORY AUTHORITY

The repeals and readoption are proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act. The review and consideration for readoption of the rules are authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

**SUBCHAPTER H : STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND
SPECIFIC TYPES OF FACILITIES**

§§335.226-335.229

- §335.226. Standards for Burning Hazardous Waste in Commercial Combustion Facilities.**
- §335.227. Testing Requirements for Commercial Hazardous Waste Combustion Facilities.**
- §335.228. Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities.**
- §335.229. Operating Requirements for Commercial Hazardous Waste Combustion Facilities.**

**SUBCHAPTER L : CONTROL OF AIR POLLUTION FROM HAZARDOUS WASTE OR
SOLID WASTE MANAGEMENT FACILITIES**

§§335.361-335.367

STATUTORY AUTHORITY

The repeals and readoption are proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act. The review and consideration for readoption of the rules are authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

- §335.361. Definitions.**
- §335.362. Applicability.**
- §335.363. Permit Conditions.**
- §335.364. Representations in Application for Permit.**
- §335.365. Responsibility for Review of Air Quality Impacts from Existing, New, and Modified Facilities.**

§335.366. General Air Emissions Requirements for Hazardous or Solid Waste Management

Facilities.

§335.367. Specific Air Emissions Requirements for Hazardous or Solid Waste Management

Facilities.

**SUBCHAPTER N : HOUSEHOLD MATERIALS WHICH COULD BE CLASSIFIED AS
HAZARDOUS WASTES**

§335.404

STATUTORY AUTHORITY

The repeals and readoption are proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act. The review and consideration for readoption of the rules are authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

§335.404. Interagency Coordination.