The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§321.97, 321.212, and 321.253.

**Background and Summary of the Factual Basis for the Proposed Rules**

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A – E; Chapter 50, Subchapters A – C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is
proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. The commission proposes to update cross-references in §§321.97, 321.212, and 321.253.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.
Section by Section Discussion
The commission proposes to make various stylistic, non-substantive changes, such as grammatical corrections. These changes are non-substantive and generally are not specifically discussed in this preamble.

§321.97, Motion for Reconsideration
The commission proposes to amend §321.97 by updating the title of the section and the cross-reference from §50.39(b) – (f), which is concurrently proposed for repeal, to §50.139.

§321.212, Purpose and Applicability
The commission proposes to amend §321.212(a) by updating the cross-reference to Chapter 50, Subchapter C, which is concurrently proposed for repeal, to Chapter 50, Subchapter G.

§321.253, Purpose and Applicability
The commission proposes to amend §321.253(a) by updating the cross-reference to Chapter 50, Subchapter C, which is concurrently proposed for repeal, to Chapter 50, Subchapter G.

Fiscal Note: Costs to State and Local Government
Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first
five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update cross-references.

**Public Benefits and Costs**

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

**Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

**Rural Community Impact Statement**
The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

**Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect. This rulemaking addresses the update to obsolete cross-references.

**Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rulemaking is in effect.

**Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a
government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rules do not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state’s economy.

**Draft Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is 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. The proposed amendments are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking updates cross-
references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general authority of the commission. The proposed amendments do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

**Takings Impact Assessment**

The commission evaluated the proposed rulemaking and performed an analysis of
whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments do not affect private property in a manner that restricts or limits an owner’s right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

**Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.
Written comments on the consistency of this rulemaking with CMP goals and policies may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

**Effect on Sites Subject to the Federal Operating Permits Program**

Sections §§321.97, 321.212, and 321.253 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

**Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission’s central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance
as possible.

**Submittal of Comments**

Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.
SUBCHAPTER F: SHRIMP INDUSTRY

§321.97

Statutory Authority
The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; and TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011.

§321.97. Motion to Overturn [for Reconsideration].

Any person aggrieved by a decision of the executive director under this subchapter may file with the chief clerk a motion to overturn [for reconsideration] under §50.139.
[§50.39(b)-(f)] of this title (relating to Motion to Overturn Executive Director's Decision [for Reconsideration]).
§321.212. Purpose and Applicability.

(a) The purpose of this subchapter is to regulate by rule the surface discharge to water in the state of facility wastewater from motor vehicles cleaning facilities in
accordance with the effluent limitations, monitoring requirements, and other conditions set forth herein. Certificates of registration issued under this subchapter are subject to Chapter 50, Subchapter G [C] of this title (relating to Action by the Executive Director). Except as provided by §321.219 of this title (relating to Enforcement and Revocation) and except as provided by subsection (e) of this section, this rule regulates the following type of facilities which in a given month discharge, on average, more than 5,000 gallons per day of operation:

(1) Establishments primarily engaged in washing, waxing, and polishing motor vehicles. These type of facilities are classified as Standard Industrial Classification code 7542.

(2) Companies, governmental entities, taxi companies, parcel delivery companies, or similar entities that have their own motor vehicle cleaning facilities.

(3) This subchapter only applies to the discharge of wastewater generated from washing the exterior of vehicles.

(4) This subchapter does not apply to establishments, companies, or entities engaged in motor vehicle washing when the vehicles being washed are used for any of the following:
(A) transportation of municipal or industrial solid waste, including hazardous waste;

(B) transportation of hazardous materials or vehicles subject to placarding or labeling because of such transportation;

(C) exploration, production, or development of oil, natural gas, or geothermal resources.

(5) This subchapter does not apply to establishments, companies, or entities engaged in motor vehicle washing when the vehicles being washed consist of the following types:

(A) semi-tractor trailer vehicles or similar carriers involved in transportation activities described in paragraph (4)(A) and (B) of this subsection.

(B) vehicles, trucks, or other equipment involved in transportation which, in the judgement of the executive director, has the potential to release toxic substances when the equipment's exterior is washed.

(b) Discharges are allowable under this subchapter only by those registrants of facilities which have a certificate of registration issued by the executive director under
§321.213 of this title (relating to Certificate of Registration), §321.215 of this title (relating to General Requirements for Discharge) and §321.216 of this title (relating to Specific Requirements for Discharge). For new facilities, a certificate of registration issued by the executive director under §§321.213, 321.215, and 321.216 of this title shall be obtained prior to discharge of wastewater from the subject facility.

(c) Facilities which do not meet the requirements of §321.215 and §321.216 of this title and do not discharge or transport facility wastewater to a publicly owned treatment works (POTW) which has a wastewater discharge permit issued by the agency must apply for an emergency order, temporary order, or permit as provided by Chapter 305, Subchapter B of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to water in the state.

(d) If the executive director denies a registration application under this subchapter, the facility must obtain a permit pursuant to the Texas Water Code, Chapter 26.

(e) No motor vehicle cleaning facility may obtain registration under this subchapter, if it is located within the service area of a POTW or within a similar service area which provides for the collection and disposal of wastewater. No self-service or coin-operated motor vehicle cleaning facility may obtain registration under this chapter. Such facilities must either discharge facility wastewater into the POTW, obtain
authorization by individual permit issued pursuant to Chapter 305 of this title (relating to Consolidated Permits), or otherwise dispose of wastewater in a manner which complies with commission regulations.
SUBCHAPTER N: HANDLING OF WASTES FROM COMMERCIAL FACILITIES ENGAGED IN LIVESTOCK TRAILER CLEANING

§321.253

Statutory Authority
The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; and TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011.

§321.253. Purpose and Applicability.

(a) The purpose of this subchapter is to regulate by rule the removal, containment, treatment and disposal of wastes occurring at commercial livestock
trailer cleaning facilities. Certificates of registration issued under this chapter are subject to Chapter 50, Subchapter G [C] of this title (relating to Action by the Executive Director). The requirements of this subchapter apply to only those livestock trailer cleaning facilities that are described in both paragraphs (1) and (2) of this subsection:

1. The facility is commercial. A facility is "commercial" if the owner or operator provides trailer cleaning services to other persons for profit, or provides such service in conjunction with other services.

2. The facility utilizes evaporation ponds, storage pond(s) or other pond(s) with land application as a means of treatment and disposal.

(b) The requirements of this subchapter do not apply to other livestock trailer cleaning facilities.

(c) A livestock trailer cleaning facility that is subject to the requirements of this subchapter must also comply with other commission rules, if applicable.

(d) Executive director authorization by a registration issued pursuant to this subchapter is not required if untreated facility wastewater is either discharged or transported to a POTW which has a wastewater permit issued by the agency.
(e) Regardless of the applicability of [Notwithstanding] subsection (a) of this section, a livestock trailer cleaning facility that is otherwise subject to the requirements of this subchapter, but which is a component of a feedlot or concentrated animal feeding operation regulated under the requirements of this chapter or regulated by permit as provided by Chapter 305 of this title (relating to Consolidated Permits), is not subject to the requirements of this subchapter.

(f) If the executive director denies a registration application under this subchapter, the facility must obtain a permit pursuant to the Texas Water Code, Chapter 26.

(g) New livestock trailer cleaning operations are prohibited from being registered under this rule when located on the Edwards Aquifer Recharge Zone. New livestock trailer cleaning operations located on the Edwards Aquifer Recharge Zone are required to submit an application for permit to the agency’s Wastewater Permits Section (MC 148).