

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: March 30, 2022

DATE OF REQUEST: March 11, 2022

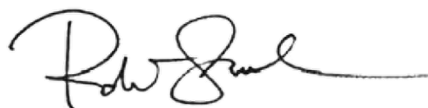
INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Cecilia Mena, Rule/Agenda Coordinator, (512) 239-6098

CAPTION: Docket No. 2021-0681-RUL. Consideration of the adoption of repealed Sections 321.71 - 321.81, 321.91 - 321.97, and 321.211 - 321.220 of 30 TAC Chapter 321, Control of Certain Activities by Rule, and Sections 351.41 - 351.45 of 30 TAC Chapter 351, Regionalization.

The adopted rulemaking will repeal rules determined to be obsolete as a result of the Quadrennial Reviews of Chapters 321 and 351. The proposed repeals were published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6898). (Laurie Fleet, Hollis Henley; Rule Project No. 2021-022-321-OW)



Director



Division Deputy Director

Cecilia Mena
Agenda Coordinator

Copy to CCC Secretary? NO YES Chapter 321 only

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 11, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From:  Earl Lott, Director
Office of Water

Docket No.: 2021-0681-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 321, Control of Certain Activities by Rule
Chapter 351, Regionalization
Repeal of Chapter 321 Subchapters E, F, and L and Chapter 351 Subchapter D
Rule Project No. 2021-022-321-OW

Background and reason(s) for the adopted rulemaking:

This rulemaking was proposed in response to quadrennial rule reviews wherein the Texas Commission on Environmental Quality (TCEQ, agency, or commission) determined that Chapter 321 Subchapters E, F, and L and Chapter 351 Subchapter D were obsolete (Non-Rule Project Numbers 2019-029-351-OW and 2019-033-321-OW).

Chapter 321, Subchapter E regulated discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulates discharges from the shrimp industry; and Subchapter L regulated discharges from motor vehicles cleaning facilities. These subchapters were obsolete because the Memorandum of Agreement (MOA) between TCEQ and the United States Environmental Protection Agency (EPA) concerning the National Pollutant Discharge Elimination System (NPDES) prohibits TCEQ from issuing authorizations under these subchapters. TCEQ authorizes these discharges under either an individual permit or general permit which comply with all necessary NPDES requirements.

Chapter 351, Subchapter D designated the Rio Grande Valley Pollution Control Authority as a regional wastewater service provider for the Lower Rio Grande Valley Regional Area. This subchapter was obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking will repeal Chapter 321, Subchapters E, F, and L and Chapter 351, Subchapter D which were determined to be obsolete during the 2019 Quadrennial Rule Reviews.

B.) Scope required by federal regulations or state statutes:

None.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;

Re: Docket No. 2021-0681-RUL

- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state;
- TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and
- TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

Effect on the:

A.) Regulated community:

This rulemaking is not expected to affect the regulated community. The TCEQ has not authorized discharges under Chapter 321, Subchapters E, F, or L since EPA delegation of the NPDES program in 1998. Entities that operate these types of facilities are currently required to obtain either an individual permit or general permit to discharge wastewater or obtain a beneficial reuse authorization. The Rio Grande Valley Pollution Control Authority, which was designated as a regional wastewater service provider for the Lower Rio Grande Valley Regional Area, no longer exists. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

B.) Public:

This rulemaking is not expected to affect the public.

C.) Agency programs:

This rulemaking is not expected to affect agency programs.

Stakeholder meetings:

This rulemaking was discussed at the quarterly Water Quality Advisory Workgroup meetings.

Public comment:

The commission held a virtual public hearing on November 9, 2021. The comment period closed on Tuesday, November 9, 2021. No public comments were received.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

There are no known controversial concerns or legislative interest at this time.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If Chapter 321, Subchapters E, F, and L are not repealed, regulated entities may attempt to obtain authorization under these subchapters. As allowed by the MOA with EPA, TCEQ could amend these

Commissioners
Page 3
March 11, 2022

Re: Docket No. 2021-0681-RUL

subchapters to require all NPDES requirements. Amending these subchapters to add all NPDES requirements would result in duplication of 30 Texas Administrative Code Chapters 39, 50, 55, 80, 281, and 305 which already include NPDES requirements. If Chapter 351, Subchapter D is not repealed, this obsolete rule would remain in effect.

Key points in the adoption rulemaking schedule:

Anticipated proposal date: September 22, 2021

Texas Register proposal publication date: October 8, 2021

Anticipated Texas Register adoption publication date: April 15, 2022

Anticipated effective date: April 21, 2022

Six-month Texas Register filing deadline: April 8, 2021

Agency contacts:

Laurie Fleet, Rule Project Manager, Office of Water, (512) 239-5445

Hollis Henley, Staff Attorney, (512) 239-2253

Lee Bellware, Texas Register Rule/Agenda Coordinator, (512) 239-6095

Attachments: None

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Brody Burks
Office of General Counsel
Laurie Fleet
Hollis Henley
Cecilia Mena

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§321.71 - 321.81, 321.91 - 321.97, and 321.211 - 321.220. Repealed §§321.71 - 321.81, 321.91 - 321.97, and 321.211 - 321.220 are adopted without changes to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6898) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is being adopted in response to a quadrennial rule review (Non-Rule Project Number 2019-033-321-OW) wherein the commission determined that Chapter 321, Subchapters E, F, and L were obsolete (December 13, 2019, issue of the *Texas Register* (44 TexReg 7719)).

Chapter 321, Subchapter E regulated wastewater discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulated wastewater discharges from the shrimp industry; and Subchapter L regulated wastewater discharges from motor vehicles cleaning facilities. These subchapters are obsolete because the Memorandum of Agreement (MOA) between the TCEQ and the United States Environmental Protection Agency (EPA) concerning the National Pollutant Discharge Elimination System (NPDES) program prohibits the TCEQ from issuing wastewater discharge authorizations under these subchapters. The TCEQ authorizes these discharges under either an individual permit or general permit which comply with all necessary NPDES requirements.

Section by Section Discussion

Subchapter E: Surface Coal Mining, Preparation and Reclamation Activities

The commission adopts the repeal of §§321.71 - 321.81. The MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing wastewater discharge authorizations under this subchapter. The TCEQ authorizes discharges from surface coal mining, preparation and reclamation activities under an individual permit which comply with all necessary NPDES requirements.

Subchapter F: Shrimp Industry

The commission adopts the repeal of §§321.91 - 321.97. The MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing wastewater discharge authorizations under this subchapter. The TCEQ authorizes discharges from shrimp facilities under either an individual permit or general permit which comply with all necessary NPDES requirements.

Subchapter L: Discharges to Surface Waters from Motor Vehicles Cleaning Facilities

The commission adopts the repeal of §§321.211 - 321.220. The MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing wastewater discharge authorizations under this subchapter. The TCEQ authorizes discharges from motor vehicles cleaning facilities under an individual permit which comply with all necessary NPDES requirements.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking actions are not subject to that statute because the adopted rules do not meet the criteria for "Major environmental rules" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225 applies only to rules that are specifically intended 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 specific purpose of this rulemaking adoption is to repeal Chapter 321, Subchapters E, F, and L. Chapter 321, Subchapter E regulated discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulated discharges from the shrimp industry; and Subchapter L regulated discharges from motor vehicles cleaning facilities. The adopted rulemaking repeals these subchapters pursuant to the MOA between the TCEQ and the EPA concerning the NPDES program. The MOA prohibits the TCEQ from issuing authorizations under these subchapters because they do not entail all NPDES requirements. The TCEQ authorizes the discharges described in Subchapters E, F, and L under an individual permit or general permit which comply with all necessary NPDES requirements. The adopted rulemaking action will promote consistency between federal and state rules.

Furthermore, even if the rulemaking adoption did meet the definition of a “Major environmental rule,” it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency’s adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless state law specifically requires the rule; (2) exceeds an express requirement of state law, unless federal law specifically requires the rule; (3) exceeds 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) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the rulemaking adoption does not meet any of these requirements. First, this rulemaking adoption does not exceed a standard set by federal law, because it promotes consistency with federal law and repeals rules that do exceed federal standards. Second, the rulemaking adoption does not exceed an express requirement of state law, but rather, it expands the scope of an existing state law. Third, the rulemaking adoption does not 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. Finally, the commission adopts the rulemaking action under Texas Water Code, §§5.013, 5.102, 5.105, 5.120, 26.011, and 26.027. Therefore, the commission does not adopt this rulemaking action solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for the adopted rulemaking action pursuant to Texas Government Code, §2007.043. The specific purpose of this adopted rulemaking is to repeal Chapter 321, Subchapters E, F, and L. Chapter 321, Subchapter E regulated discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulated discharges from the shrimp industry; and Subchapter L regulated discharges from motor vehicles cleaning facilities. These subchapters are obsolete because the MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing authorizations under these subchapters. The TCEQ authorizes these discharges under an individual permit or general permit which comply with all necessary NPDES requirements.

The rulemaking adoption does not affect a landowner's rights in private real property because this adopted rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which will otherwise exist in the absence of the regulations. The rulemaking adoption does not constitute a taking because it does not burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found the adoption was a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) (Actions and Rules Subject to the Coastal Management Program), and therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this adopted rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the adopted rulemaking does not affect any coastal natural resource areas because discharges from the activities regulated by the sections adopted for repeal are being authorized under either an individual permit or general permit which comply with NPDES requirements. Repealing these subchapters removes the ability of these activities to be authorized under a registration.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a virtual public hearing on November 9, 2021. The comment period closed on November 9, 2021. No public comments were received.

**SUBCHAPTER E: SURFACE COAL MINING, PREPARATION, AND RECLAMATION
ACTIVITIES**

§§321.71 - §§321.81

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The rulemaking adoption implements the Memorandum of Agreement between the TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits the TCEQ from issuing authorizations under this subchapter.

[§321.71. Introduction and Purpose.]

[The purpose of this subchapter is to promulgate a set of minimum effluent quality standards applicable to point source discharges from any surface coal mining, preparation, and reclamation activity (SCMPRA) without a waste discharge permit. If the surface coal mining, preparation and reclamation operator (SCMPRO) elects to obtain a waste discharge permit, the requirements of such permit shall supersede the effluent quality standards of this subchapter except as provided by §321.74 of this title (relating to Permit Required).]

[§321.72. Definitions.]

[The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Acid or ferruginous mine drainage--Mine drainage that, before any treatment, either has a pH of less than 6.0 standard units or a total iron concentration equal to or more than 10 mg/l.]

[(2) Active mining area--The areas, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas, and reclamation areas.]

[(3) Alkaline mine drainage--Mine drainage that, before any treatment, has a pH equal to or more than 6.0 standard units and a total iron concentration of less than 10 mg/l.]

[(4) Bond release--The time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work has been satisfactorily completed.]

[(5) Coal preparation plant--A facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities, and then is loaded for transit to a consuming facility.]

[(6) Coal preparation plant associated area--The coal preparation plant yards, immediate access road, coal refuse piles, and coal storage piles and facilities.]

[(7) Coal preparation plant water circuit--All pipes, channels, basins, tanks, and all other structures and equipment that convey, contain, treat, or process any water that is used in coal preparation processes within a coal preparation plant.]

[(8) Coal spoil--Discarded or accumulated coal or overburden containing coal, including, but not limited to, coal storage piles, waste piles, and significant quantities of coal spilled near haul roads, loading areas, and equipment wash-down areas.]

[(9) Commission--The Texas Water Commission.]

[(10) Grab sample--A sample of effluent collected in less than 15 minutes.]

[(11) mg/l--Milligrams per liter.]

[(12) Mine drainage--Any drainage and any water pumped or siphoned, from an active mining area or a reclamation area.]

[(13) ml/l--Milliliters per liter.]

[(14) Reclamation area--The surface area of a coal mine that has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.]

[(15) SCMPRA--Surface coal mining, preparation, or reclamation activity; all activities necessary and incident to those activities, defined as surface coal mining operations by the Surface Coal Mining and Reclamation Act, Texas Civil Statutes, Article 5920-11, §3(16) and (17).]

[(16) SCMPRO--Surface coal mining, preparation, or reclamation operator.]

[(17) Settleable solids--That matter measured by the method specified in the most current edition of Standards Methods for the Examination of Water and Wastewater for the determination of settleable matter.]

[(18) Significant quantities of coal--That amount of coal that, when exposed to water, causes pollution, or degrades water quality, or makes the water unsuitable for its designated uses.]

[(19) 10-year, 24-hour precipitation event--The maximum 24-hour precipitation event with a probable recurrence interval of once in 10 years as defined by the National Weather Service and Technical Paper No. 40, Rainfall Frequency Atlas

of the United States, May 1961, or equivalent regional or rainfall probability information developed therefrom.]

[(20) Treatment facility or treatment system--All structures that contain, convey, and chemically, biologically, or physically treat coal mine drainage, coal preparation plant process wastewater, drainage from coal preparation plant associated areas, or domestic wastewater, and that remove pollutants from such waters. This definition includes all pipes, channels, ponds, basins, tanks, and all other equipment serving such structures.]

[\$321.73. Discharges Authorized by Rule.]

[The effluent limitations of this subchapter are statewide standards. Pursuant to this subchapter, discharges from a SCMPRA are authorized provided:]

[(1) the SCMPRO has a valid license from the Railroad Commission of Texas for the SCMPRA; that requires compliance with §§321.78-321.80 of this title (relating to Effluent Limitations; Additional Effluent Limitations; and Associated Facilities);]

[(2) there is no feasible alternative for wastewater treatment, disposal, or use, other than discharge;]

[(3) the SCMPRO is not under an injunction prohibiting discharge;]

[(4) the SCMPRA is not the subject of enforcement action by this or any other state or federal agency for acts or omissions which may require regulation by permit because of noncompliance; and]

[(5) the SCMPRA is not required to have a permit pursuant to §321.74(a) of this title (relating to Permit Required).]

[§321.74. Permit Required.]

[A waste discharge permit may be required for a SCMPRA if:]

[(1) the executive director of the commission has determined that the SCMPRA cannot be adequately regulated by §§321.78-321.80 of this title (relating to Effluent Limitations; Additional Effluent Limitations; and Associated Facilities);]

[(2) the SCMPRA discharge is for any reason inconsistent with the federal Clean Water Act requirements; or]

[(3) information is received by the executive director that raises material issues regarding the ability of the effluent limits of §§321.78-321.80 of this title

(relating to Effluent Limitations; Additional Effluent Limitations; and Associated Facilities), to protect water quality, the environment, and human health.]

[(b) A waste discharge permit shall be required for a discharge from sewage treatment facilities in SCMPRA's.]

[(c) If the executive director of the commission has determined that a permit is required the commission will notify the Railroad Commission of Texas of its intent to require a permit 45 days after receipt of the mining application.]

[(d) For the purpose of this section receipt of the mining application is the date of publication of notice that an application has been received.]

[(e) An operator of a SCMPRA may determine that his operation is better regulated by a permit, and apply for a permit at any time.]

[(f) Permits issued by the commission may, upon a showing of cause, specify effluent limitations more or less stringent than standard limitations in this subchapter, provided, however, that the permits issued may not authorize discharges less stringent than the minimum standard limitation promulgated as a rule by the Railroad Commission of Texas.]

[§321.75. Term, Modifications.]

[(a) Waste discharge permits regulating SCMPRA's shall be issued for a term not to exceed five years.]

[(b) Waste discharge permits regulating SCMPRA's may be renewed, revised, or amended pursuant to §§305.61-305.68 of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension).]

[(c) Waste discharge permits regulating SCMPRA's may be involuntarily revoked, amended, or suspended for good cause pursuant to Chapter 305 of this title (relating to Consolidated Permits), or because of:]

[(1) any change in circumstance that indicates a temporary or permanent reduction or elimination of any discharge authorized by permit;]

[(2) material alterations or additions to the SCMPRA that are not authorized by commission rule and valid license of the Railroad Commission of Texas; or]

[(3) cessation of SCMPRA operations pursuant to its Railroad Commission surface mining permit.]

[§321.76. Hearing.]

[Hearings held on permits for SCMPRA's will be held pursuant to Texas Water Commission procedures. Notice will be given to the Railroad Commission of Texas of any hearing held under this section.]

[§321.77. Enforcement.]

[(a) Waste discharges authorized by rule. Although the Railroad Commission of Texas is the primary enforcer of its licenses, which include the requirements of this chapter, the commission retains jurisdiction to enforce compliance with the Texas Water Code and the statewide standards of §§321.78-321.80 of this title (relating to Effluent Limitations; Additional Effluent Limitations; and Associated Facilities).]

[(b) Waste discharges authorized by permit. Any waste discharge permit issued by the commission to SCMPRAs will be enforced by the executive director.]

[(c) Notice. Notice of the commission's enforcement actions involving SCMPRA's will be given to the Railroad Commission of Texas.]

[§321.78. Effluent Limitations.]

[(a) Active mining areas. These limitations apply to all SCMPRA discharges from active mining areas, unless otherwise specified by commission permit. However, ponds which receive waters which have not been in contact with coal deposits, coal spoil, or acid-forming or toxic-forming spoil shall be regulated by the effluent limitations shown under subsection (b) of this section. For every treatment system, the permittee shall submit to the executive director the necessary data that demonstrates that the treatment system will be designed, constructed, and operated to comply with the discharge limitations provided in the tables in paragraphs (1) and (2) of this subsection.]

[(1) Acid of ferruginous mine drainage. The provisions of this paragraph are applicable to acid or ferruginous mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.]

[Figure: 30 TAC §321.78(a)(1)]

<u>POLLUTANT OR POLLUTANT PROPERTY</u>	<u>GRAB SAMPLE LIMITS (Concentration in mg/l)</u>	
	<u>MAXIMUM FOR ANY ONE DAY</u>	<u>AVERAGE OF DAILY VALUES FOR 30 CONSECUTIVE DAYS</u>
Iron, Total	6.0	3.0
Manganese, Total	2.0	1.0
Total Suspended Solids	70.0	35.0

pH * *

[* Within the range 6.0 to 9.0 standard units at all times.]

[(2) Alkaline mine drainage. The provisions of this paragraph are applicable to alkaline mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.]

[Figure: 30 TAC §321.78(a)(2)]

<u>POLLUTANT OR POLLUTANT PROPERTY</u>	<u>GRAB SAMPLE LIMITS</u> (Concentration in mg/l)	
	<u>MAXIMUM FOR ANY ONE DAY</u>	<u>AVERAGE OF DAILY VALUES FOR 30 CONSECUTIVE DAYS</u>
Iron, Total	6.0	3.0
Total Suspended Solids	70.0	35.0
pH	*	*

[Within the range 6.0 to 9.0 standard units at all times.]

[(b) Reclamation areas.]

[(1) The provisions of this paragraph and the following table are applicable to discharges from reclamation areas until the performance bond issued to the facility by the appropriate authority has been released. Any retention pond or

series of ponds shall be designed to treat at least the volume of water caused by a 10-year, 24-hour precipitation event, based upon the appropriate pond drainage area.]

[Figure: 30 TAC §321.78(b)(1)]

<u>POLLUTANT OR POLLUTANT PROPERTY</u>	<u>GRAB SAMPLE LIMITS</u> (Concentration in ml/l)		<u>AVERAGE OF DAILY VALUES FOR 30 CONSECUTIVE DAYS</u>
		<u>MAXIMUM FOR ANY ONE DAY</u>	
Settleable Solids		0.5	N/A
pH		*	N/A

[* Within the range 6.0 to 9.0 standard units at all times.]

[(2) Any discharge or increase in volume of a discharge caused by precipitation of greater than the 10-year, 24-hour precipitation event, or series of events, shall at a minimum, comply with the following limitations instead of the otherwise applicable limitations: pH within the range of 6.0 to 9.0 standard units at all times.]

[(3) The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in paragraph (2) of this subsection.]

[(c) Combined waste streams. Where waste streams from any facility covered by a section in this subchapter are combined for treatment or discharge with waste

streams covered by another section, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge.]

[§321.79. Additional Effluent Limitations.]

[In addition to the effluent limitations set forth in §321.78 of this subchapter (relating to Effluent Limitations), all discharges from SCMPRAs shall comply with §319.22 of this title (relating to Quality Levels-Inland Waters) and §319.23 of this title (relating to Quality Levels-Tidal Waters), that regulate hazardous metals. Additionally, if mining operations include sewage treatment facilities, the discharge from such sewage treatment plant shall comply with the limitations in the commission discharge permit.]

[§321.80. Associated Facilities.]

[The provisions of this section are applicable to discharges from a coal preparation plant and coal preparation plant associated areas.]

[(1) Except as provided pursuant to a waste discharge permit, there shall be no discharge of process wastewater from a coal preparation plant water circuit to waters in the state.]

[(2) The provisions of this section and the following table apply to discharges from coal preparation plants and coal preparation plant associated areas other than process wastewater.]

[Figure: 30 TAC §321.80(2)]

<u>POLLUTANT OR POLLUTANT PROPERTY</u>	<u>GRAB SAMPLE LIMITS</u> (Concentration in mg/l)	
	<u>MAXIMUM FOR ANY ONE DAY</u>	<u>AVERAGE OF DAILY VALUES WITHIN 30 CONSECUTIVE DAYS</u>
Iron, Total	6.0	3.0
Manganese, Total	2.0	1.0
Total Suspended Solids	70.0	35.0
pH	*	*

[* Within the range 6.0 to 9.0 standard units at all times.]

[(3) In order to prevent immediate harm to human health or the environment which is not otherwise avoidable, or to allow necessary maintenance and repair work, the commission may, under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions), grant a temporary or emergency order authorizing the discharge of process or other wastewater regulated by this subchapter.]

[(4) Discharges from associated facilities may be allowed by a discharge permit pursuant to the applicable regulations of the commission.]

[§321.81. Monitoring and Reporting of Data.]

[(a) Discharges authorized by rule.]

[(1) All discharges from active mining areas authorized by rule shall be monitored for the listed pollutants in the appropriate category at least once per week, and on the first day of and third day after beginning discharge.]]

[(2) All discharges from reclamation areas authorized by rule shall be monitored for the listed pollutants in the appropriate category at least once per week when discharge occurs.]

[(3) Monitoring shall consist of:]

[(A) samples and analyses of the discharge for limited constituents; and]

[(B) flow measurements.]

[(4) Samples from each source discharging into the same drainage area shall be combined into a single-flow, weighted grab sample for analysis and reporting.]

[(5) Monitoring results shall be compiled on the Texas Water Commission monthly effluent report. The report for a particular month shall be submitted to the Railroad Commission of Texas so that the report will be received no later than the 25th day of the following month.]

[(6) All discharges from active mining areas shall be monitored at least twice per year for all metals referenced in §321.79 of this title (relating to Additional Effluent Limitations).]

[(7) All monitoring data shall be recorded and kept available on site for inspection by commission personnel for a minimum period of three years.]

[(b) Discharges authorized by permit. All such discharges shall comply with the monitoring and reporting requirements specified in the permit.]

SUBCHAPTER F: SHRIMP INDUSTRY

§§321.91 - §§321.97

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted rulemaking implements the Memorandum of Agreement between the TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits the TCEQ from issuing authorizations under this subchapter.

[§321.91. Definitions.]

[The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Bait-shrimp dealer--A person who is engaged in the business of selling shrimp for bait purposes and who is required to be licensed under Parks and Wildlife Code, Chapter 77.]

[(2) BOD₅--Abbreviation for five-day biochemical oxygen demand.]

[(3) Grab sample--An individual sample collected in less than 15 minutes.]

[(4) mg/l--Abbreviation for milligrams per liter.]

[(5) Mobile vendor--A person who operates a retail shrimp sales business from an automobile, truck, or van.]

[(6) Packer--A shrimp offloading facility that deheads, peels, or deveins less than 25% of the gross weight of the total amount of shrimp it handles before the product is sold. Two or more shrimp packing operations under common ownership within 100 feet from each other will be considered as one packing operation for the purposes of this definition. Packers are categorized as follows.]

[(A) Small packer--A packer which never generates more than 30,000 gallons of shrimp wastewater during any calendar month.]

[(B) Medium packer--A packer which never generates more than 60,000 gallons during any calendar month but which generates more than 30,000 gallons of shrimp wastewater during any calendar month.]

[(C) Large packer--A packer which generates more than 60,000 gallons of shrimp wastewater during any calendar month.]

[(7) POTW--Publicly owned treatment works.]

[(8) Processor--A shrimp offloading facility that deheads, peels, or deveins 25% or more of the gross weight of the total amount of shrimp it handles before the product is sold.]

[(9) Residual chlorine--Chlorine in the shrimp wastewater when discharged.]

[(10) Shrimp boat--A commercial trawler, required to be licensed under Parks and Wildlife Code, Chapter 77, that collects shrimp and then unloads them at a shrimp offloading facility.]

[(11) Shrimp offloading facility--A shrimp handling operation that typically transfers shrimp from trawlers to a dock area and then washes, weighs, boxes, and ices the shrimp before selling them on either the wholesale or retail market.]

[(12) Shrimp wastewater--Waterborne shrimp wastes from the washing, weighing, boxing, icing, deheading, peeling, deveining or other processing of shrimp prior to the marketing of the shrimp.]

[(13) TSS--Abbreviation for total suspended solids.]

[(14) Water quality limited segment--A surface water segment classified by the commission as water quality limited where conventional treatment of waste discharged to the segment is not stringent enough for the segment to meet applicable water quality standards; monitoring data have shown significant violations of water quality standards; advanced waste treatment for point sources is required to protect

existing exceptional water quality; or the segment is a domestic water supply reservoir.]

[§321.92. Applicability.]

[(a) The purpose of this subchapter is to regulate by rule certain small and medium shrimp packers that meet the requirements outlined herein.]

[(b) Large packers or shrimp processors do not qualify to be regulated by rule under this subchapter. Both large packers and shrimp processors must either utilize a POTW for shrimp wastewater disposal or obtain a wastewater discharge permit from the Texas Water Commission prior to any such disposal.]

[(c) Any packer that proposes to discharge into or adjacent to a water quality limited segment or into a water body specifically listed within this subchapter does not qualify to be regulated by rule under this subchapter. Shrimp wastewater discharges from such facilities must be made pursuant to a permit issued under the Texas Water Code, Chapter 26. In the alternative, such facilities may utilize a POTW.]

[(d) Packers discharging into the following water bodies are not qualified to be regulated by rule under this subchapter:]

[(1) the Taylor Bayou Turning Basin in Jefferson County off the Sabine-Neches Canal, inland from a line between the southernmost tip of Texaco Island and the north side of the state Highway 87 bridge over the intercoastal canal.]

[(2) the Lynn's Bayou Turning Basin in Calhoun County west of the confluence of the turning basin and Lavaca Bay.]

[(3) the Port Mansfield Harbor in Willacy County west of the confluence of the harbor and the Laguna Madre.]

[(4) the Brownsville fishing harbor in Cameron County north of the confluence of the harbor and the Brownsville ship channel.]

[(5) Port Isabel turning basin, ship channel and shrimp harbor in Cameron County west of the Garcia Street swing bridge, south of the Highway 100 bridge, and north of the confluence of the Port Isabel ship channel and the Brownsville ship channel.]

[(e) Mobile vendors, shrimp boats, and bait-shrimp dealers are exempt from the requirements of this subchapter.]

[§321.93. Certificate of Registration.]

[Any small or medium packer that does not discharge into or adjacent to a water quality limited segment or water bodies listed herein shall apply for a certificate of registration, unless they instead choose to obtain a wastewater discharge permit or to utilize a POTW. Application forms will be supplied by the commission upon request. Before issuing a Certificate, the executive director will review each application to determine whether the packer's operation can meet the requirements of §321.95 of this title (relating to Requirements).]

[§321.94. Domestic Waste Disposal.]

[No domestic sewage may be discharged into or adjacent to the water in the state under this subchapter.]

[§321.95. Requirements.]

[(a) Small packers who have acquired a certificate of registration as set out in §321.93 of this title (relating to Certificate of Registration) at a minimum, shall meet the following requirements:]

[(1) Effluent limitations-The shrimp wastewater shall be treated to reduce the TSS concentration in the effluent to 500 mg/l or less measured by grab sample. In addition, the wastewater shall not cause a nuisance. If chlorine is used, the residual chlorine in the effluent shall not exceed 4 mg/l measured by grab sample.]

[(2) Monitoring-The shrimp wastewater volume discharged shall be estimated daily during times of discharge. Records of these estimates shall be kept on-site for a period of three years. These discharge flow estimates shall be based on water consumption records or other methods approved by the executive director.]

[(3) Reporting-The packer shall report any noncompliance, which may endanger human health or safety, or the environment, to the executive director. Report of such information shall be provided orally to the appropriate Texas Water Commission district office within 48 hours from the time the permittee becomes aware of the noncompliance. A written submission of such information shall also be provided to the appropriate district and Austin office of the Texas Water Commission within five working days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.]

[(4) Solids disposal-All shrimp solid wastes shall be placed in covered air-tight containers and sent daily to a solid waste disposal site approved by the appropriate state agency.]

[(b) Medium packers who have acquired a certificate of registration as set out in §321.93 of this title (relating to Certificate of Registration) at a minimum, shall meet the following requirements:]

[(1) Effluent limitations-The shrimp wastewater shall be treated to reduce the TSS concentration in the effluent to 500 mg/l or less, measured by grab sample. In addition, the wastewater shall not cause a nuisance. If chlorine is used, the residual chlorine in the effluent shall not exceed 4 mg/l measured by grab sample.]

[(2) Monitoring and reporting:]

[(A) The shrimp wastewater volume discharged shall be estimated daily during times of discharge. These discharge flow estimates shall be based on water consumption records or other methods approved by the executive director.]

[(B) Grab samples of the treated effluent shall be taken once per calendar week during any calendar week in which any discharge occurs. These samples shall be analyzed for TSS, BOD₅, and residual chlorine, if chlorine is used at the facility.]

[(C) The analytical results of the grab samples and the flow estimates shall be recorded on the appropriate commission monthly effluent report form. The report must be received by the commission in Austin no later than the 20th day of the

month after the month in which the grab samples were taken. During a calendar week, i.e. Sunday through Saturday, when no wastewater discharge occurs, no sampling is required. For such weeks, the monthly report shall indicate that no discharge occurred.]

[(D) The packer shall report any noncompliance, which may endanger human health or safety, or the environment, to the executive director. Report of such information shall be provided orally to the appropriate Texas Water Commission district office within 48 hours from the time the permittee becomes aware of the noncompliance. A written submission of such information shall also be provided to the appropriate district and Austin office of the Texas Water Commission within five working days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.]

[(3) Solids disposal: All shrimp solid wastes shall be placed in covered air-tight containers and sent daily to a solid waste disposal site approved by the appropriate state agency.]

[(c) Each packer must treat its entire shrimp wastewater stream as required by the executive director's classification. Packers are prohibited from treating a portion of their shrimp wastewater stream to levels mandated by rule and then treating the remaining portion to levels dictated by their permit or dictated by POTW pre-treatment requirements. If a packer obtains a discharge permit, all shrimp wastewater at the specified site must be treated to the levels contained in the permit. If a packer ties into a POTW, all shrimp wastewater at the specified site must discharge to the POTW.]

[\$321.96. Right of Review.]

[(a) The executive director may review available data pertaining to the operation of shrimp facilities. A change in circumstances at a facility may warrant reclassification of the facility under this subchapter or a determination that the facility must obtain a wastewater discharge permit or tie into a POTW. The executive director shall notify the owner of the facility of any such reclassification or determination after which the facility will have 30 days to respond. If no response is made within this 30-day period, the facility must meet the requirements imposed by reclassification, apply for a permit, or tie into a POTW, whichever is appropriate, under a schedule approved by the executive director. The executive director may extend this 30-day period where additional time is shown to be necessary. In the event reclassification will qualify a permitted facility for regulation by rule, the facility may apply for a certificate of registration. Once the facility receives the certificate, it may seek cancellation of its permit.]

[(b) If a facility with a certificate of registration fails to comply with the terms of this subchapter, the executive director may revoke the certificate or take other enforcement action as provided for in the Texas Water Code, or both.]

[(c) Facilities classified as small or medium packers shall have the continuing obligation to immediately provide written notice to the executive director of any changes which will reclassify them as large packers or processors.]

[\$321.97. Motion to Overturn.]

[Any person aggrieved by a decision of the executive director under this subchapter may file with the chief clerk a motion to overturn under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).]

SUBCHAPTER L: DISCHARGES TO SURFACE WATERS FROM MOTOR VEHICLES

CLEANING FACILITIES

§§321.211 - §§321.220

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted rulemaking implements the Memorandum of Agreement between the TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits the TCEQ from issuing authorizations under this subchapter.

[\S321.211. Definitions.]

[The following words and terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.]

[(1) Domestic Sewage--Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.]

[(2) Existing Facilities--Motor vehicles cleaning facilities in active operation, including the discharge of facility wastewater, prior to January 5, 1996.]

[(3) Facility Wastewater--Wastewater generated at motor vehicle cleaning facilities as a result of washing the exterior of motor vehicles and specifically excluding domestic sewage.]

[(4) Grab Sample--An individual sample collected in less than 15 minutes.

[(5) MGD--Million gallons per day.]

[(6) Mg/l--Milligrams per liter.]

[(7) Motor Vehicles Cleaning Facilities--Facilities engaged in washing, waxing, and polishing motor vehicles, or in furnishing facilities for the self-service washing of motor vehicles.]

[(8) New Facilities--Motor vehicles cleaning facilities not defined in this section as existing facilities.]

[(9) Point Source Discharge--A discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.]

[(10) Publicly Owned Treatment Works or "POTW"--A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and discharges from such a treatment works.]

[(11) Registrant--An individual or entity authorized by the executive director to discharge facility wastewater from facilities associated with motor vehicle cleaning under the terms and requirements of this subchapter.]

[§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 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 and Public Notice), §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 Emergency Orders, Temporary Orders, and Executive Director Authorizations) 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.]

[§321.213. Certificate of Registration and Public Notice.]

[(a) An applicant must apply for registration on a form approved by the executive director. A completed application shall be submitted to the agency's Wastewater Permits Section (MC 148). An existing facility that does not hold a valid agency wastewater discharge permit must submit an application for registration or an application for a permit within 365 days after the date this rule takes effect. Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.215 of this

title (relating to General Requirements for Discharge) and §321.216 of this title (relating to Specific Requirements for Discharge).]

[(b) The executive director may take action on an application to issue a certificate of registration, provided:]

[(1) At least 30 days prior to approving an application and issuing the certificate of registration, notice of the application has been provided by the applicant, at the applicant's cost:]

[(A) in a newspaper regularly published and generally circulated within the county and area wherein the proposed facility and discharge is to be located;]

[(B) in writing by certified mail (return receipt requested) to the county judge of the county in which the facility is to be located and also when the facility is to be located within the jurisdictional boundaries of a city or town, to the mayor of that city or town; and]

[(C) the notices of application are provided in a format approved by the commission and shall fairly set forth the substance of the application and proposed action, including but not limited to, the general location of any point of discharge, the

method of obtaining additional information about the application, and the method for submitting comment on the application.]

[(2) With any application for a registration, submitted pursuant to this subchapter, the applicant shall also provide proof to the executive director that public notice was provided in accordance with paragraph (1) of this subsection. The proof shall be provided within 14 days of obtaining the following information, which shall consist of:]

[(A) a signed affidavit from the publisher acknowledging that the notice was published, indicating the date of publication, and providing a copy of the newspaper clipping; and]

[(B) a sworn statement from the applicant that written notice was mailed to the appropriate entities, identified in this subsection, along with a copy(s) of the return receipt acknowledgment from the U.S. Postal Service.]

[(3) The application, including the material required by paragraph (2) of this subsection, shall be mailed to the agency's Wastewater Permits Section (MC 148). The application shall undergo review by the executive director following the determination that notice requirements of this section are met.]

[(4) Any pertinent comments received by the executive director prior to the end of the 30-day period, after all the notices have been provided, will be considered as a part of any decision of approval, denial, or modification of a request for registration from an applicant. The executive director shall mail notice of the final decision to the applicant and to any other person who submitted comments on the application.]

[(c) The public notice provisions of this section do not apply to an existing facility which is operating under an existing agency wastewater discharge permit if the facility applies for registration prior to the expiration date of the permit.]

[(d) An existing facility which does not hold a valid agency wastewater discharge permit must submit an application for registration or an application for a permit within 365 days after the date this rule takes effect. Public notice provisions of this section do not apply to an existing facility if an application for registration is received by the executive director within 365 days after the date this rule takes effect.]

[§321.214. Active Agency Permits.]

[Motor vehicle cleaning facilities that are currently operating under a valid agency wastewater discharge permit may apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final registration, the executive director shall void the permit. This subchapter does not prevent the

executive director from denying a registration or registration application and requiring the facility to have a permit.]

[§321.215. General Requirements for Discharge.]

[(a) Only facility wastewater which meets the requirements of this subchapter can be discharged into water in the state.]

[(b) Facility wastewater shall be treated to conform to effluent discharge requirements, including a reduction of total suspended solids, oil and grease and other possible pollutants and, if necessary, adjustment of pH.]

[(c) There shall be no discharge of domestic sewage into or adjacent to water in the state. All domestic sewage shall be either routed to an authorized and adequately designed septic tank/drain field system, POTW, or transported to an approved off-site disposal facility, or disposed of in accordance with an approved agency order or permit.]

[(d) Disposal of solid wastes shall be in accordance with Chapter 361 of the Texas Health and Safety Code.]

[(e) The discharge shall not cause any nuisance conditions.]

[(f) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following:]

[(1) The registrant shall report any noncompliance (to include any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the agency's Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the agency's Regional Office and to the agency's Water Section, Enforcement Division (MC 149), within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.]

[(2) Any noncompliance which is greater than 40% of the authorized effluent limitations as expressed in §321.216(a) of this title shall be reported in writing to the agency's Regional Office and to the agency's Water Section, Enforcement Division (MC 149), within five working days of becoming aware of the condition.]

[(g) The registrant must notify the executive director, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the agency's Wastewater Permits Section (MC 148).]

[(h) The executive director may deny an application for registration on the following grounds: the potential or actual adverse impact on, or close proximity to, a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such determination, the executive director may also consider other factors necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.]

[(i) The discharge shall not be acutely toxic to aquatic life, as described in §§307.1-307.10 of this title (relating to Texas Surface Water Quality Standards).]

[§321.216. Specific Requirements for Discharge.]

[(a) All facilities regulated under this rule are authorized to discharge facility wastewater from motor vehicles cleaning facilities in accordance with the following limitations and monitoring requirements:]

[Figure: 30 TAC §321.216(a)]

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Flow (MGD)	N/A	Estimate	1/month*
Oil and Grease	15 mg/l	Grab	1/quarter*
Total Suspended Solids	65 mg/l	Grab	1/quarter*
Chemical Oxygen Demand	Report	Grab	1/quarter*

[* When discharge occurs.]

[(b) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored once per month (1/month) by grab sample.]

[(c) There shall be no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil.]

[(d) All discharges from motor vehicle cleaning facilities shall comply with §319.22 of this title (relating to Quality Levels--Inland Waters) or shall comply with §319.23 of this title (relating to Quality Levels--Tidal Waters).]

[§321.217. Sampling, Reporting, and Recordkeeping.]

[(a) Unless otherwise specified in this rule, sampling and laboratory test methods shall comply with procedures specified in §319.11 of this title (relating to Sampling and Laboratory Testing Methods).]

[(b) All analytical results shall be reported by the registrant to the executive director on the Motor Vehicles Cleaning Facilities Report form approved by the executive director. Monitoring results shall be reported to the executive director in accordance with the following schedule.]

[Figure: 30 TAC §321.217(b)]

<u>Monitoring Period</u>	<u>Report Due</u>
January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

[(c) The registrant shall maintain results of monitoring of each constituent specified in §321.216 of this title or the equivalent information shall be maintained for a minimum of three years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.]

[§321.218. Restrictions.]

[(a) This rule does not convey property rights or grant any exclusive privilege.]

[(b) Separate authorizations may be required by the executive director, municipalities, or other agencies for discharges to publicly owned treatment works, domestic sewage plants, storm water sewers, or for air emissions.]

[(c) Nothing in this rule shall be construed to authorize any injury to persons or property, or an invasion of other property rights, or any infringement of state or local law or regulations.]

[§321.219. Enforcement and Revocation.]

[If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code and under Chapter 70 of this title (relating to Enforcement). The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an emergency order, or temporary order as provided by Chapter 35 of this title

(relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for the discharge of wastewater into or adjacent to water in the state. The executive director may require a motor vehicle cleaning facility defined as exempt from registration under §321.212 of this title (relating to Purpose and Applicability) to obtain a registration when an exempt facility is causing water pollution that could be avoided through compliance with the requirements of this subchapter.]

[§321.220. Annual Waste Treatment Fee.]

[(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge wastes to surface waters from motor vehicles cleaning facilities under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.]

[(b) The fee assessed annually shall be in accordance with the following fee rate schedule:]

[(1) for any active facility, the fee shall be \$500, as determined by either the information specified on the application for registration or on the Motor Vehicles Cleaning Facilities Report forms submitted during the calendar year.]

[(2) for any inactive facility, the fee shall be \$250.]

[(3) any increased assessment above the amounts in paragraphs (1) or (2)
of this subsection shall be in accordance with regulations adopted by the commission.]

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§351.41 - 351.45.

Repealed §§351.41 - 351.45 are adopted without changes to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6902) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is being adopted in response to a quadrennial rule review (Non-Rule Project Number 2019-029-351-OW) wherein the commission determined that Chapter 351, Subchapter D was obsolete (October 25, 2019, issue of the *Texas Register* (44 TexReg 6384)).

The rules in Chapter 351, Subchapter D were based on Texas Water Code, Chapter 26, Subchapter C, Regional and Area-Wide Systems, which encourages and promotes the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state. Within any standard metropolitan statistical area in the state, the commission is authorized to implement this policy by defining areas of regional or area-wide systems and designating a system to serve the area defined. In relation with this authority, the rules designated the Rio Grande Valley Pollution Control Authority as a regional provider for the Lower Rio Grande Valley Regional Area. The commission adopts this rulemaking because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area.

Section by Section Discussion

Subchapter D: Lower Rio Grande Valley

The commission adopts the repeal of §§351.41 - 351.45, which designated the Rio Grande Valley Pollution Control Authority as a regional provider for the Lower Rio Grande Valley Regional Area. This subchapter is obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking action is not subject to that statute because the adopted rules do not meet the criteria for "Major environmental rules" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225 applies only to rules that are specifically intended 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 specific purpose of this rulemaking adoption is to repeal Chapter 351, Subchapter D, which designated the Rio Grande Valley Pollution Control Authority as a regional wastewater service provider for the Lower Rio Grande Valley Regional Area. This subchapter is obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater

permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

Furthermore, even if the rulemaking adoption did meet the definition of a "Major environmental rule," it is not be subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §201.0225(a) applies only to a state agency's adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless state law specifically requires the rule; (2) exceeds an express requirement of state law, unless federal law specifically requires the rule; (3) exceeds 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) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the rulemaking adoption does not meet any of these requirements. First, this rulemaking adoption does not exceed a standard set by federal law because it promotes consistency with federal law and repeals rules that do exceed federal standards. Second, the rulemaking adoption does not exceed an express requirement of state law, but rather expands the scope of an existing state law. Third, the rulemaking adoption does not 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. Finally, the commission adopts this rulemaking action under Texas Water Code, §§5.013, 5.102, 5.105, 5.120, 26.011, and 26.027. Therefore, the commission does not adopt the rulemaking action solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for the adopted rulemaking action pursuant to Texas Government Code, §2007.043. The specific purpose of this adopted rulemaking is to repeal Chapter 351, Subchapter D, which designated the Rio Grande Valley Pollution Control Authority as a regional wastewater service provider for the Lower Rio Grande Valley Regional Area. This subchapter was obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

The rulemaking adoption will not affect a landowner's rights in private real property because this adopted rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The rulemaking adoption does not constitute a taking because it does not burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the sections proposed for repeal are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC

§505.11(b)(2) or (4), nor will the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the rulemaking adoption is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on November 9, 2021. The comment period closed on November 9, 2021. No public comments were received.

SUBCHAPTER D: LOWER RIO GRANDE VALLEY

§§351.41 - 351.45

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state; and TWC, §26.081, which authorizes the commission to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

The rulemaking adoption implements TWC, §§5.103, 5.105, 5.013, and 26.081.

[§351.41. Definitions.]

[The following words and terms, when used in these §§351.41-351.45 of this title (relating to Lower Rio Grande Valley), shall have the following meanings, unless the context clearly indicates otherwise:]

[(1) Authority--The Rio Grande Valley Pollution Control Authority.]

[(2) Regional area--The area of Hidalgo and Cameron Counties, excluding the area within the boundaries of the Cameron County Fresh Water Supply District 1 and the incorporated and extraterritorial jurisdictional limits of the City of Brownsville, Texas.]

[§351.42. Designation of Regional Area.]

[The area of Hidalgo and Cameron Counties, excluding the area within the boundaries of the Cameron County Fresh Water Supply District 1 and the incorporated and extraterritorial jurisdiction limits of the City of Brownsville, Texas, is designated as an area in which the implementation of a regional system is necessary to effectuate the policy stated in §26.081.]

[§351.43. Designation of Regional Entity.]

[The Rio Grande Valley Pollution Control Authority is designated as the governmental entity to design, construct, and operate a regional sewerage system in the regional area.]

[§351.44. Additional Duties of Regional Entity.]

[After development of the area-wide system, the Rio Grande Valley Pollution Control Authority shall provide a regional wastewater collection and treatment service to all legal entities requiring such services within the regional area, upon such terms as may be agreed upon by the parties or as may be ordered by the commission if agreement cannot be reached.]

[§351.45. Assistance to Department.]

[The Rio Grande Valley Pollution Control Authority is designated as the agency to aid the department in inspection, surveillance, testing, enforcement, and such other powers and responsibilities contained in the authority's creating and enabling legislation, in all of Hidalgo and Cameron Counties.]

found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed repeal includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed repeal includes policies for discharges of wastewater.

The proposed rulemaking is consistent with the above goals and policies by requiring wastewater discharges to comply with federal regulations established to protect water resources.

Promulgation and enforcement of the repeal would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed repeal would be consistent with these CMP goals and policies and the repeal would not create or have a direct or significant adverse effect on any CNRAs.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Virtual Public Hearing

The commission will hold a virtual public hearing on this proposal on November 9, 2021, at 10:00 a.m. 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 virtual hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by November 8, 2021. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on November 8, 2021, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTRIMmM0YjEtMzcyNy00MjMyLTk0MGQtZDc0ODA1NDImMW-Zl%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22Is-BroadcastMeeting%22%3a%22true%22%2c%22Role%22%3a%22Participant%22%2c%22Type%22%3a%22Regular%22%7d&type=a&role=a

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 Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. 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 2021-020-305-OW. The comment period closes on November 9, 2021. 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 Ms. Laurie Fleet, Water Quality Division, at (512) 239-5445.

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The proposed repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

§315.1. General Pretreatment Regulations for Existing and New Sources of Pollution.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2021.

TRD-202103782

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 7, 2021

For further information, please call: (512) 239-2809

CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§321.71 - 321.81, 321.91 - 321.97, and 321.211 - 321.220.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is being proposed in response to a quadrennial rule reviews (Non-Rule Project Number 2019-033-321-OW) wherein the commission determined that Chapter 321, Subchapters E, F, and L were obsolete (December 13, 2019, issue of the *Texas Register* (44 TexReg 7719)).

Chapter 321, Subchapter E regulates wastewater discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulates wastewater discharges from the shrimp industry; and Subchapter L regulates wastewater discharges from motor vehicles cleaning facilities. These subchapters are obsolete because the Memorandum of Agreement (MOA) between TCEQ and the United States Environmental Protection Agency (EPA) concerning the National Pollutant Discharge Elimination System (NPDES) program prohibits TCEQ from issuing wastewater discharge authorizations under these subchapters. TCEQ authorizes these discharges under either an individual permit or general permit which comply with all necessary NPDES requirements.

Section by Section Discussion

Subchapter E: Surface Coal Mining, Preparation and Reclamation Activities

The commission proposes the repeal of §§321.71 - 321.81. The MOA between TCEQ and the EPA concerning the NPDES program prohibits TCEQ from issuing wastewater discharge authorizations under this subchapter. TCEQ authorizes discharges from surface coal mining, preparation and reclamation activities under an individual permit which comply with all necessary NPDES requirements.

Subchapter F: Shrimp Industry

The commission proposes the repeal of §§321.91 - 321.97. The MOA between TCEQ and the EPA concerning the NPDES program prohibits TCEQ from issuing wastewater discharge authorizations under this subchapter. TCEQ authorizes discharges from shrimp facilities under either an individual permit or general permit which comply with all necessary NPDES requirements.

Subchapter L: Discharges to Surface Waters from Motor Vehicles Cleaning Facilities

The commission proposes the repeal of §§321.211 - 321.220. The MOA between TCEQ and the EPA concerning the NPDES program prohibits TCEQ from issuing wastewater discharge authorizations under this subchapter. TCEQ authorizes discharges from motor vehicles cleaning facilities under an individual permit which comply with all necessary NPDES requirements.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules would be 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 rulemaking.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed repeals would be in effect the public benefit anticipated would be improved readability of the chapter and compliance with the MOU between the TCEQ and the EPA. The proposed rulemaking is 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 would not adversely affect a local economy in a material way for the first five years that the proposed rulemaking would be in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed repeals would be in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

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 repeals would be in effect.

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 would not adversely affect a small or micro-business in a material way for the first five years the proposed repeals would be in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would 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 repeals obsolete rules relating to wastewater discharges. The proposed rulemaking would not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking actions would not be subject to that statute because the proposed repeals do not meet the criteria for "Major environmental rules" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225 applies only to rules that are specifically intended 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 specific purpose of this proposed rulemaking is to repeal Chapter 321, Subchapters E, F, and L. Chapter 321, Subchapter E regulates discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulates discharges from the shrimp industry; and Subchapter L regulates discharges from motor vehicles cleaning facilities. The proposed rulemaking seeks to repeal these subchapters pursuant to the MOA between TCEQ and EPA concerning the NPDES program. The MOA prohibits TCEQ from issuing authorizations under these subchapters because they do not entail all NPDES requirements. TCEQ authorizes the discharges described in Subchapters E, F, and L under an individual permit which comply with all necessary NPDES requirements. The proposed rulemaking action will promote consistency between federal and state rules.

Furthermore, even if the proposed rulemaking did meet the definition of a "Major environmental rule," it would not be subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless state law specifically requires the rule; (2) exceeds an express requirement of state law, unless federal law specifically requires the rule; (3) exceeds 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) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rulemaking would not meet any of these requirements. First, this rulemaking would not exceed a standard set by federal law, it promotes consistency with federal law and repeals rules that do exceed federal standards. Second, the proposed rulemaking would not exceed an express requirement of state law, but rather expands the scope of an existing state law. Third, the proposed rulemaking would not 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. Finally, the commission proposes the rulemaking action under Texas Water Code, §§5.013, 5.102, 5.105, 5.120, 26.011, and 26.027. Therefore, the commission does not propose this rulemaking action solely under the commission's general powers.

The commission invites public comment on the Draft Regulatory Impact Analysis Determination.

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 has prepared a takings impact assessment for the proposed rulemaking action pursuant to Texas Government Code, §2007.043. The specific purpose of this proposed rulemaking is to repeal Chapter 321, Subchapters E, F, and L. Chapter 321, Subchapter E regulates discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulates discharges from the shrimp industry; and Subchapter L regulates discharges from motor vehicles cleaning facilities. These subchapters are obsolete because the MOA between TCEQ and EPA concerning the NPDES program prohibits TCEQ from issuing authorizations under these subchapters. TCEQ authorizes these discharges under an individual permit which comply with all necessary NPDES requirements.

The proposed rulemaking would not affect a landowner's rights in private real property because this proposed rulemaking would not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rulemaking would not constitute a taking because it would not burden private real property.

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)(2) (Actions

and Rules Subject to the Coastal Management Program), and will, therefore, require that goals and policies of the Texas Coastal Management Program (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 would not affect any coastal natural resource areas because discharges from the activities regulated by the sections proposed for repeal are being authorized under either an individual permit or general permit which comply with NPDES requirements. Repealing these subchapters removes the ability of these activities to be authorized under a registration.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Virtual Public Hearing

The commission will hold a virtual public hearing on this proposal on November 9, 2021, at 2:00 p.m. 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 virtual hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by November 5, 2021. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on November 8, 2021, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ND-ExOTI0ZDAtMGQ3NC00ZDlZLTkwMzUtMTcyYzkyNDc1ODAz%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22b237360-1655-4724-96f6-ba9493e841ba%22%2c%22Is-BroadcastMeeting%22%3a%22true%7d

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 Ms. Lee Bellware, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. 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 2021-022-321-OW. The comment period closes on November 9, 2021. 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 Ms. Laurie Fleet, Water Quality Division, (512) 239-5445.

SUBCHAPTER E. SURFACE COAL MINING, PREPARATION, AND RECLAMATION ACTIVITIES

30 TAC §§321.71 - 321.81

Statutory Authority

The rulemaking action is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The proposed rulemaking implements the Memorandum of Agreement between TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits TCEQ from issuing authorizations under this subchapter.

§321.71. *Introduction and Purpose.*

§321.72. *Definitions.*

§321.73. *Discharges Authorized by Rule.*

§321.74. *Permit Required.*

§321.75. *Term, Modifications.*

§321.76. *Hearing.*

§321.77. *Enforcement.*

§321.78. *Effluent Limitations.*

§321.79. *Additional Effluent Limitations.*

§321.80. *Associated Facilities.*

§321.81. *Monitoring and Reporting of Data.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2021.

TRD-202103788

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 7, 2021

For further information, please call: (512) 239-6095

SUBCHAPTER F. SHRIMP INDUSTRY

30 TAC §§321.91 - 321.97

Statutory Authority

The rulemaking action is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The proposed rulemaking implements the Memorandum of Agreement between TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits TCEQ from issuing authorizations under this subchapter.

§321.91. *Definitions.*

§321.92. *Applicability.*

§321.93. *Certificate of Registration.*

§321.94. *Domestic Waste Disposal.*

§321.95. *Requirements.*

§321.96. *Right of Review.*

§321.97. *Motion to Overturn.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2021.

TRD-202103789

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 7, 2021

For further information, please call: (512) 239-6095

SUBCHAPTER L. DISCHARGES TO SURFACE WATERS FROM MOTOR VEHICLES CLEANING FACILITIES

30 TAC §§321.211 - 321.220

Statutory Authority

The rulemaking action is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The proposed rulemaking implements the Memorandum of Agreement between TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits TCEQ from issuing authorizations under this subchapter.

§321.211. *Definitions.*

§321.212. *Purpose and Applicability.*

§321.213. *Certificate of Registration and Public Notice.*

§321.214. *Active Agency Permits.*

§321.215. *General Requirements for Discharge.*

§321.216. *Specific Requirements for Discharge.*

§321.217. *Sampling, Reporting, and Recordkeeping.*

§321.218. *Restrictions.*

§321.219. *Enforcement and Revocation.*

§321.220. *Annual Waste Treatment Fee.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2021.

TRD-202103790

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 7, 2021

For further information, please call: (512) 239-6095



CHAPTER 351. REGIONALIZATION

SUBCHAPTER D. LOWER RIO GRANDE VALLEY

30 TAC §§351.41 - 351.45

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§351.41 - 351.45.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is being proposed in response to a quadrennial rule review (Non-Rule Project Number 2019-029-351-OW) wherein the commission determined that Chapter 351, Subchapter D was obsolete (October 25, 2019, issue of the *Texas Register* (44 TexReg 6384)).

The rules in Chapter 351, Subchapter D are based on Texas Water Code, Chapter 26, Subchapter C, Regional and Area-Wide Systems, which encourages and promotes the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state. Within any standard metropolitan statistical area in the state, the commission is authorized to implement this policy by defining areas of regional or area-wide systems and designating a system to serve the area defined. In relation with this authority, the rules designate the Rio Grande Valley Pollution Control Authority as a regional provider for the Lower Rio Grande Valley Regional Area. The commission proposes this rulemaking because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area.

Section by Section Discussion

Subchapter D: Lower Rio Grande Valley

The commission proposes the repeal of §§351.41 - 351.45, which designate the Rio Grande Valley Pollution Control Authority as a regional provider for the Lower Rio Grande Valley Regional Area. This subchapter is obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules would be 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 rulemaking.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules would be in effect the public benefit anticipated would be improved readability and transparency in the chapter because of the removal of obsolete provisions. The proposed rulemaking is 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 would not adversely affect a local economy in a material way for the first five years that the proposed rulemaking would be in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rules would be in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

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 would be in effect.

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 would not adversely affect a small or micro-business in a material way for the first five years the proposed rules would be in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would 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 would repeal obsolete rules relating to a regional provider that no longer exists. The proposed rulemaking would not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking would not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to that statute because the proposed rules do not meet the criteria for "Major environmental rules" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225, applies only to rules that are specifically intended 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 specific purpose of this proposed rulemaking is to repeal Chapter 351, Subchapter D, which designates the Rio Grande Valley Pollution Control Authority as a regional wastewater service provider for the Lower Rio Grande Valley Regional Area. This subchapter is obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

Furthermore, even if the proposed rulemaking did meet the definition of a "Major environmental rule," it would not be subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas

Government Code, §2001.0225(a). Texas Government Code, §201.0225(a) applies only to a state agency's adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless state law specifically requires the rule; (2) exceeds an express requirement of state law, unless federal law specifically requires the rule; (3) exceeds 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) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rulemaking does not meet any of these requirements. First, this rulemaking would not exceed a standard set by federal law it promotes consistency with federal law and repeals rules that do exceed federal standards. Second, the proposed rulemaking would not exceed an express requirement of state law, but rather expands the scope of an existing state law. Third, the proposed rulemaking would not 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. Finally, the commission proposes this rulemaking action under Texas Water Code, §§5.013, 5.102, 5.105, 5.120, 26.011, and 26.027. Therefore, the commission does not propose the rulemaking action solely under the commission's general powers.

The commission invites public comment on the Draft Regulatory Impact Analysis Determination.

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 has prepared a takings impact assessment for the proposed rulemaking action pursuant to Texas Government Code, §2007.043. The specific purpose of this proposed rulemaking is to repeal Chapter 351, Subchapter D, which designates the Rio Grande Valley Pollution Control Authority as a regional wastewater service provider for the Lower Rio Grande Valley Regional Area. This subchapter is obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

The proposed rulemaking would not affect a landowner's rights in private real property because this proposed rulemaking would not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rulemaking would not constitute a taking because it would not burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the sections proposed for repeal are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Virtual Public Hearing

The commission will hold a virtual public hearing on this proposal on November 9, 2021, at 2:00 p.m. 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 virtual hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by November 5, 2021. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on November 8, 2021, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/join/19%3ameeting_ND-ExOTI0ZDAtMGQ3NC00ZDIzLTkwMzUtMTcyYzkyNDc1ODAz%40thread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%22bf237360-1655-4724-96f6-ba9493e841ba%22%2c%22Is-BroadcastMeeting%22%3atrue%7d

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 Ms. Lee Bellware, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. 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 2021-022-321-OW. The comment period closes on November 9, 2021. 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 Ms. Laurie Fleet, Water Quality Division, (512) 239-5445.

Statutory Authority

The rulemaking action is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state; and TWC, §26.081, which authorizes the commission to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

The proposed rulemaking implements TWC, §§5.103, 5.105, 5.013, and 26.081.

§351.41. *Definitions.*

§351.42. *Designation of Regional Area.*

§351.43. *Designation of Regional Entity.*

§351.44. *Additional Duties of Regional Entity.*

§351.45. *Assistance to Department.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2021.

TRD-202103787

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 7, 2021

For further information, please call: (512) 239-6095



Texas Commission on Environmental Quality



ORDER REPEALING RULES

Docket No. 2021-0681-RUL

Rule Project No. 2021-022-321-OW

On March 30, 2022, the Texas Commission on Environmental Quality (Commission) adopted the repeal of 30 Texas Administrative Code Chapter 321, Control of Certain Activities by Rule, Subchapters E, F, and L and Chapter 351, Regionalization, Subchapter D. The proposed rules were published for comment in the October 8, 2021 issue of the *Texas Register* (46 TexReg 6898).

IT IS THEREFORE ORDERED BY THE COMMISSION that the rules are hereby repealed. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The repealed rules and the preamble to the repealed rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed