

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: March 30, 2022

DATE OF REQUEST: March 11, 2022

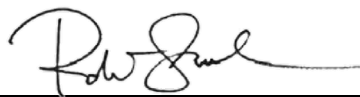
INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Cecilia Mena, Rule/Agenda Coordinator, (512) 239-6098

CAPTION: Docket No. 2021-0682-RUL. Consideration for the adoption of the repeal of Sections 308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141 of 30 TAC Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System; Section 314.1 of 30 TAC Chapter 314, Toxic Pollutant Effluent Standards; and Section 315.1 of 30 TAC Chapter 315, Pretreatment Regulations for Existing and New Sources of Pollution; and adoption of new Sections 305.542-305.544 of 30 TAC Chapter 305, Consolidated Permits.

The rulemaking adoption is the result of the 2019 quadrennial rule reviews of these chapters. The rulemaking adoption will repeal and adopt these rules within Chapter 305, Subchapter P, with the exception of Chapter 308, Subchapters C and J which have been determined as obsolete. The rulemaking adoption will also adopt by reference 40 Code of Federal Regulations Part 125, Subpart N. The proposed rules were published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6884). (Laurie Fleet, Celia Castro; Rule Project No. 2021-020-305-OW)



Director



Division Deputy Director


Cecilia Mena

Agenda Coordinator

Copy to CCC Secretary? NO YES

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.: 2021-0682-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 305, Consolidated Permits
Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System
Chapter 314, Toxic Pollutant Effluent Standards
Chapter 315, Pretreatment Regulations for Existing and New Sources of Pollution
Consolidation of TPDES Program Regulations
Rule Project No. 2021-020-305-OW

Background and reason(s) for the rulemaking:

During the 2019 quadrennial rule reviews, the Texas Commission on Environmental Quality (TCEQ, agency, or commission) determined that 30 Texas Administrative Code (TAC) Chapter 308, Subchapters C and J were obsolete. Additionally, the executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated with Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations, similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program. Lastly, the executive director identified a federal regulation related to cooling water intake structures at oil and gas facilities (40 Code of Federal Regulations (CFR) Part 125, Subpart N) that was not previously adopted when 40 CFR Part 125 was adopted in Chapter 308. This rulemaking will adopt this additional federal regulation by reference.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This adopted rulemaking will repeal Chapters 308, 314, and 315 and re-propose these rules within Chapter 305, Subchapter P, except Chapter 308, Subchapters C and J which will not be re-proposed because these subchapters were determined to be obsolete. The rulemaking will also adopt by reference 40 CFR Part 125, Subpart N.

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.

Re: Docket No. 2021-0682-RUL

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;
- 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 Regulated Community, the Public, and Agency programs:

The regulated community, the public, and the agency will benefit from the repeal of obsolete rules and the consolidation of the rules governing the TPDES program. These actions will improve the overall organization of TCEQ rules and remove outdated rules. Additionally, adopting 40 CFR Part 125, Subpart N will ensure that cooling water intake structures at oil and gas facilities are regulated in accordance with federal regulations, as required by the Memorandum of Agreement between TCEQ and the United States Environmental Protection Agency regarding the TPDES program, effective January 15, 2021.

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 is no known controversial concern or legislative interest at this time.

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

If Chapter 308, Subchapters C and J are not repealed, these obsolete rules will remain in effect. A potential alternative to the adopted rulemaking would be to repeal only those

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subchapters that are obsolete but not consolidate Chapters 305, 308, 314, and 315. If these rules are not consolidated, the regulations governing the TPDES program will remain fragmented across multiple rule chapters. Failure to adopt by reference 40 CFR Part 125, Subpart N may jeopardize TPDES program authorization for oil and gas discharges.

Key points in the adoption rulemaking schedule:

***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, 2022

Agency contacts:

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Celia Castro, Staff Attorney, (512) 239-5692

Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

Attachments: None

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

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§305.542 - 305.544.

New §§305.542 - 305.544 are adopted without changes to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6884), 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 wherein the commission determined that 30 TAC Chapter 308 Subchapters C and J, were obsolete (Non-Rule Project Number 2019-034-308-OW; December 13, 2019, issue of the *Texas Register* (44 TexReg 7718)). Additionally, the executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations similar to Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking adopts by reference federal regulations that were previously adopted by reference in Chapters 308, 314, and 315, except for Chapter 308, Subchapters C and J, which were identified as obsolete. Subchapter C in its entirety and Subchapter J as relating to compliance dates were not re-proposed in this rulemaking. Subchapter J

relating to cooling water intakes will be adopted in the new rule §305.544.

Additionally, this rulemaking adopts by reference federal regulations related to cooling water intake structures at oil and gas facilities (40 Code of Federal Regulations (CFR) Part 125, Subpart N) that were not previously adopted in Chapter 308 because TCEQ didn't have authority to regulate oil and gas facilities until the United States Environmental Protection Agency (EPA) granted TPDES program authority for wastewater discharges from oil and gas facilities in January 2021. Concurrently with this rulemaking, the commission is repealing 30 TAC Chapters 308, 314, and 315.

Section by Section Discussion

§305.542. Pretreatment Standards.

Adopted new §305.542 adopts by reference 40 CFR Part 403, as amended, with the following exceptions. The commission is not adopting 40 CFR §§403.16 or 40 CFR §403.19 because 40 CFR §403.16 is less stringent than 30 TAC §305.535 and 40 CFR §403.19 expired in 2005. Additionally, the adopted rule states that where 40 CFR §403.11 provides procedures for requesting and holding a public hearing, the commission shall instead require notice of and hold a public meeting. Public meetings conducted by the executive director provide an opportunity for public comment and follow the procedures described in 40 CFR §403.11.

The federal regulations in 40 CFR Part 403 establish responsibilities of Federal, State, and local government, industry, and the public to implement National Pretreatment

Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works or which may contaminate sewage sludge.

The federal regulations in 40 CFR Part 403, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 315. EPA amended 40 CFR Part 403 several times after 1998. The adopted rule adopts by reference the most current version of 40 CFR Part 403 adopted on November 2, 2020, as amended.

§305.543. Toxic Pollutant Effluent Standards and Prohibitions.

Adopted new §305.543 adopts by reference 40 CFR Part 129, Subpart A, as in effect on the date of TPDES program authorization, as amended. No changes to these federal regulations have been adopted by EPA since the date of TPDES program authorization in September 1998. The federal regulations in 40 CFR Part 129 establish effluent standards or prohibitions for the discharge of toxic pollutants.

§305.544. Criteria and Standards for Texas Pollutant Discharge Elimination System Permits.

Adopted new §305.544(1), (2), (4), and (8) adopts by reference 40 CFR Part 125, Subparts A, B, G, and M, respectively, as each of these subparts were in effect on the date of TPDES program authorization, as amended. No changes to these federal

regulations have been adopted by EPA since the date of TPDES program authorization in September 1998.

The federal regulations in 40 CFR Part 125, Subpart A establish criteria and standards for the imposition of technology-based treatment requirements in permits under Clean Water Act (CWA) §301(b), including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under CWA §402(a)(1). 40 CFR Part 125, Subpart B establishes guidelines under CWA §318 and §402 for approval of any discharge of pollutants associated with an aquaculture project. 40 CFR Part 125, Subpart G establishes the criteria to be applied by EPA in acting on CWA §301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a CWA §301(h) modification of the secondary treatment requirements. 40 CFR Part 125, Subpart M establishes guidelines for issuance of permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans.

Adopted new §305.544(3) adopts by reference 40 CFR Part 125, Subpart D, as amended. The federal regulations in 40 CFR Part 125, Subpart D establish the criteria and standards to be used in determining whether effluent limitations alternative to those required by promulgated EPA effluent limitations guidelines under CWA §301 and §304 (referred to as “national limits”) should be imposed on a discharger because

factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits.

The federal regulations in 40 CFR Part 125, Subpart D, which were in effect on the date of TPDES program authorization (i.e. September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA amended 40 CFR Part 125, Subpart D after 1998. The adopted rule adopts by reference the most current version of 40 CFR Part 125, Subpart D adopted on May 15, 2000, as amended.

Adopted new §305.544(5) adopts by reference 40 CFR Part 125, Subpart H, as amended. The federal regulations in 40 CFR Part 125, Subpart H describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under CWA §316(a) in permits issued under CWA §402(a).

The federal regulations in 40 CFR Part 125, Subpart H, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA amended 40 CFR Part 125, Subpart H after 1998. The adopted rule adopts by reference the most current version of 40 CFR Part 125, Subpart H adopted on May 15, 2000, as amended.

Adopted new §305.544(6) adopts by reference 40 CFR Part 125, Subpart I, as amended.

The federal regulations in 40 CFR Part 125, Subpart I establish requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new facilities. The term “new facility” is defined in 40 CFR §125.83.

The federal regulations in 40 CFR Part 125, Subpart I, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA amended 40 CFR Part 125, Subpart I after 1998. The adopted rule adopts by reference the most current version of 40 CFR Part 125, Subpart I adopted on August 15, 2014, as amended.

Adopted new §305.544(7) adopts by reference 40 CFR Part 125, Subpart J, as amended. The federal regulations in 40 CFR Part 125, Subpart J establish the requirements that apply to cooling water intake structures at existing facilities. The term “existing facility” is defined in 40 CFR §125.92.

The federal regulations in 40 CFR Part 125, Subpart J, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA repealed 40 CFR Part 125, Subpart J after 1998 and subsequently adopted new regulations in 40 CFR Part 125, Subpart J. The adopted rule adopts by reference the most current version of 40 CFR Part 125, Subpart J adopted on August 15, 2014, as amended.

Adopted new §305.544(9) adopts by reference 40 CFR Part 125, Subpart N, as amended. The federal regulations in 40 CFR Part 125, Subpart N establish requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities. The term “new offshore oil and gas extraction facility” is defined in 40 CFR §125.92. The adopted rule adopts by reference the current version of 40 CFR Part 125, Subpart N adopted on June 16, 2006, as amended.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 308, Subchapters A, B, D, G, H, I, and M that are adopted for repeal will be re-adopted within Chapter 305, Subchapter P in adopted new §§305.542 - 305.544 to improve the overall organization of TCEQ rules related to the TPDES program. This

rulemaking is also being adopted in response to a quadrennial rule review wherein the commission determined that Chapter 308, Subchapters C and J were obsolete.

Subchapter C in its entirety and Subchapter J as relating to compliance dates will not be re-adopted in this rulemaking. Subchapter J relating to cooling water intakes will be re-adopted in the new §305.544. In addition, the adopted rulemaking adopts by reference 40 CFR Part 125, Subpart N that was not previously adopted in Chapter 308. Therefore, it is not anticipated that the adopted new rules would 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 commission concludes that the adopted new rules do not meet the definition of a “Major environmental rule.”

Furthermore, even if the adopted new rules did meet the definition of a major environmental rule, the adopted new rules would not be subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general

powers of the agency instead of under a specific state law. The adopted new rules of §§305.542-305.544 would not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted new rules would not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an assessment of whether the rulemaking adoption constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted action is to consolidate rules from Chapters 308 (with the exception of Subchapters C and J), 314, and 315 into Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program. In addition, the rulemaking adoption will adopt by reference 40 CFR Part 125, Subpart N, that was not previously adopted in Chapter 308. The rulemaking adoption will substantially advance this stated purpose. Promulgation and enforcement of this rulemaking adoption will be neither a statutory

nor a constitutional taking of private real property because the rulemaking adoption will not affect real property.

In particular, there are no burdens imposed on private real property, and the rulemaking adoption will consolidate rules for the purpose of improving organization of TCEQ rules related to the TPDES program. Because the rulemaking adoption will not affect real property, it would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the adopted new rules. Therefore, this rulemaking adoption will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rulemaking adoption in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rulemaking adoption 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 rulemaking adoption includes policies for discharges of wastewater.

The rulemaking adoption 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 rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules will be consistent with these CMP goals and policies and the rulemaking will not create or have a direct or significant adverse effect on any CNRAs.

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 P: ADDITIONAL CONDITIONS [EFFLUENT GUIDELINES AND
STANDARDS] FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES)
PERMITS
§§305.542 - 305.544**

Statutory Authority

The rulemaking 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 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; and 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.

The adopted new rules implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

§305.542. Pretreatment Standards.

40 Code of Federal Regulations (CFR) Part 403 (Federal Register, Volume 85, November 2, 2020), as amended, is adopted by reference, except 40 CFR §403.16 and §403.19, and except where 40 CFR §403.11 provides procedures for requesting and holding a public hearing, the commission shall instead require notice of and hold a public meeting. Such a public meeting shall be conducted by the executive director, shall be an opportunity for public comment, and shall otherwise follow the procedures described in 40 CFR §403.11.

§305.543. Toxic Pollutant Effluent Standards and Prohibitions.

Except to the extent that it is less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations Part 129, Subpart A, as in effect on the date of TPDES program authorization, as amended, is adopted by reference.

§305.544. Criteria and Standards for Texas Pollutant Discharge Elimination System Permits.

Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, the following federal regulations are adopted by

reference, as amended:

(1) 40 Code of Federal Regulations (CFR) Part 125, Subpart A, relating to imposing technology-based treatment requirements, as in effect on the date of Texas Pollutant Discharge Elimination System (TPDES) program authorization;

(2) 40 CFR Part 125, Subpart B, relating to issuance of permits to aquaculture projects, as in effect on the date of TPDES program authorization;

(3) 40 CFR Part 125, Subpart D, relating to determining fundamentally different factors (*Federal Register*, Volume 65, May 15, 2000);

(4) 40 CFR Part 125, Subpart G, relating to modifying the secondary treatment requirements, as in effect on the date of TPDES program authorization;

(5) 40 CFR Part 125, Subpart H, relating to determining alternative effluent limitations (*Federal Register*, Volume 65, May 15, 2000);

(6) 40 CFR Part 125, Subpart I, relating to cooling water intake structures for new facilities (*Federal Register*, Volume 79, August 15, 2014);

(7) 40 CFR Part 125, Subpart J, relating to relating to cooling water intake structures for existing facilities (*Federal Register*, Volume 79, August 15, 2014);

(8) 40 CFR Part 125, Subpart M, relating to ocean discharges, as in effect on the date of TPDES program authorization; and

(9) 40 CFR Part 125, Subpart N, relating to cooling water intake structures for new offshore oil and gas extraction facilities (*Federal Register*, Volume 71, June 16, 2006).

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141.

The repeal of §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141 is adopted without changes to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6888), 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 wherein the commission determined that 30 TAC Chapter 308 Subchapters C and J were obsolete (Non-Rule Project Number 2019-034-308-OW; December 13, 2019, issue of the *Texas Register* (44 TexReg 7718)). Additionally, the executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into 30 TAC Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking adopts the repeal of Chapter 308. Concurrently with this rulemaking, the commission is adopting new §305.544 to adopt by reference federal regulations

that were previously adopted by reference in Chapter 308, except Subchapters C and J which were determined to be obsolete. Subchapter C in its entirety and Subchapter J as relating to compliance dates will not be re-proposed. Subchapter J relating to cooling water intakes will be adopted in the new rule §305.544.

Section by Section Discussion

The commission adopts the repeal of §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141. These sections adopt by reference federal regulations in 40 Code of Federal Regulations (CFR) Part 125. In a concurrent rulemaking, the commission is adopting new §305.544 to adopt by reference 40 CFR Part 125.

Final Regulatory Impact Determination

The commission reviewed the adopted repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 308 Subchapters A, B, D, G, H, I, and M are adopted for repeal because the executive director has identified them as one of several rules related to the TPDES program that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 308 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. This rulemaking is also being adopted in response to a quadrennial rule review wherein the commission determined that Chapter 308 Subchapters C and J were obsolete. Therefore, it is not anticipated that the adopted repeals would 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 commission concludes that the adopted repeals do not meet the definition of a “Major environmental rule.”

Furthermore, even if the adopted repeals did meet the definition of a major environmental rule, the adopted repeals would not be subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to

implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted repeals of §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141 would not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeals would not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted repeals and performed an assessment of whether the repeals constitute a taking under Texas Government Code, Chapter 2007.

The specific purpose of the adopted action is to repeal rules that will be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 308 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation will improve the overall organization of TCEQ rules related to the TPDES program. In addition, this rulemaking is also being adopted in response to a quadrennial rule review wherein the commission determined that Chapter 308,

Subchapters C and J were obsolete. These subchapters will not be re-proposed or consolidated into Chapter 305, Subchapter P. The adopted repeals will substantially advance these stated purposes. Promulgation and enforcement of these adopted repeals will be neither a statutory nor a constitutional taking of private real property because the adopted repeals will not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted repeals will eliminate both unnecessary rules and obsolete rules. Because the repeals would not affect real property, they would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, these adopted repeals will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted repeal in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rulemaking adoption 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 rulemaking adoption includes policies for discharges of wastewater.

The rulemaking adoption 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 rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules will be consistent with these CMP goals and policies and the rulemaking will not create or have a direct or significant adverse effect on any CNRAs.

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 A: CRITERIA AND STANDARDS FOR IMPOSING TECHNOLOGY BASED
TREATMENT REQUIREMENTS**

§308.1

Statutory Authority

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

[§308.1. Criteria and Standards for Imposing Technology-based Treatment

Requirements under the Clean Water Act, §301(b) and §402.]

[40 Code of Federal Regulations, Part 125, Subpart A, as in effect on the date of Texas pollutant discharge elimination system program authorization, as amended, is adopted by reference.]

**SUBCHAPTER B: CRITERIA FOR ISSUANCE OF PERMITS
TO AQUACULTURE PROJECTS**

§308.21

Statutory Authority

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

[§308.21. Criteria for Issuance of Permits to Aquaculture Projects.]

[40 Code of Regulations, Part 125, Subpart B, as in effect on the date of Texas pollutant discharge elimination system program authorization, as amended, is adopted by reference.]

**SUBCHAPTER C: CRITERIA AND EXTENDING COMPLIANCE DATES FOR FACILITIES
INSTALLING INNOVATIVE TECHNOLOGY UNDER THE CLEAN WATER ACT, §301(K)**

§308.31

Statutory Authority

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

[§308.31. Criteria for Extending Compliance Dates for Facilities Installing Innovative

Technology under the Clean Water Act, §301(k).]

[40 Code of Federal Regulations, Part 125, Subpart C, as in effect on the date of Texas pollutant discharge elimination system program authorization, as amended, is adopted by reference.]

**SUBCHAPTER D: CRITERIA AND STANDARDS FOR DETERMINING
FUNDAMENTALLY DIFFERENT FACTORS UNDER THE CLEAN WATER ACT,
§301(B)(1)(A),
(B)(2)(A), AND (E)
§308.41**

Statutory Authority

The repeal 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 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 adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011,

and 26.027.

**[§308.41. Criteria for Standards for Determining Fundamentally Different Factors
under the Clean Water Act, §301(b)(1)(A), (2)(A), and (E).]**

[40 Code of Federal Regulations, Part 125, Subpart D, as in effect on the date of
Texas pollutant discharge elimination system program authorization, as amended, is
adopted by reference.]

SUBCHAPTER G: CRITERIA MODIFYING THE SECONDARY TREATMENT

§308.71

Statutory Authority

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

[§308.71. Criteria for Modifying the Secondary Treatment Requirements under the

Clean Water Act, §301(h).]

[40 Code of Federal Regulations, Part 125, Subpart G, as in effect on the date of Texas pollutants discharge elimination system program authorization, as amended, is adopted by reference.]

SUBCHAPTER H: CRITERIA FOR DETERMINING ALTERNATIVE EFFLUENT

LIMITATIONS UNDER THE CLEAN WATER ACT, §316(A)

§308.81

Statutory Authority

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

[§308.81. Criteria for Determining Alternative Effluent Limitations under the Clean

Water Act, §316(a).]

[40 Code of Federal Regulations, Part 125, Subpart H, as in effect on the date of Texas pollutant discharge elimination system program authorization, as amended, is adopted by reference.]

SUBCHAPTER I: CRITERIA APPLICABLE TO COOLING WATER INTAKE STRUCTURES

UNDER CLEAN WATER ACT, §316(b)

§308.91

Statutory Authority

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

[§308.91. Criteria Applicable to Cooling Water Intake Structures under the Clean

Water Act, §316(b).]

[The following regulations contained in 40 Code of Federal Regulations (CFR) Part 125, as amended, are incorporated by reference.]

[(1) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.80, What are the purposes and scope of this subpart?]

[(2) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.81, Who is subject to this subpart?]

[(3) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.82, When must I comply with this subpart?]

[(4) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.83, What special definitions apply to this subpart?]

[(5) Subpart I - Requirements Applicable to Cooling Water Intake

Structures for New Facilities Under Section 316(b) of the Act, §125.84, As an owner or operator of a new facility, what must I do to comply with this subpart?]

[(6) Subpart I - Requirements Applicable to Cooling Water Intake

Structures for New Facilities Under Section 316(b) of the Act, §125.85, May alternative requirements be authorized?]

[(7) Subpart I - Requirements Applicable to Cooling Water Intake

Structures for New Facilities Under Section 316(b) of the Act, §125.86, As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit?]

[(8) Subpart I - Requirements Applicable to Cooling Water Intake

Structures for New Facilities Under Section 316(b) of the Act, §125.87, As an owner or operator of a new facility, must I perform monitoring?]

[(9) Subpart I - Requirements Applicable to Cooling Water Intake

Structures for New Facilities Under Section 316(b) of the Act, §125.88, As an owner or operator of a new facility, must I keep records and report?]

[(10) Subpart I - Requirements Applicable to Cooling Water Intake

Structures for New Facilities Under Section 316(b) of the Act, §125.89, As the Director,
what must I do to comply with the requirements of this subpart?]

**SUBCHAPTER J: CRITERIA FOR EXTENDING COMPLIANCE DATES UNDER THE
CLEAN WATER ACT, §301(I)**

§308.101

Statutory Authority

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

[§308.101. Criteria for Extending Compliance Dates under the Clean Water Act,

§301(i).]

[40 Code of Federal Regulations, Part 125, Subpart J, as in effect on the date of Texas pollutant discharge elimination system program authorization, as amended, is adopted by reference.]

SUBCHAPTER M: OCEAN DISCHARGE CRITERIA

§308.141

Statutory Authority

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

[§308.141. Ocean Discharge Criteria.]

[40 Code of Federal Regulations, Part 125, Subpart M, as in effect on the date of Texas pollutant discharge elimination system program authorization is adopted by reference.]

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §314.1.

The repeal of §§314.1 is adopted without changes to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6894), and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into 30 TAC Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations, similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking adopts the repeal of 30 TAC Chapter 314. Concurrently with this rulemaking, the commission is adopting new 30 TAC §305.543 to adopt by reference federal regulations that were previously adopted by reference in 30 TAC Chapter 314.

Section Discussion

The commission adopts the repeal of §314.1, which adopts by reference federal regulations in 40 Code of Federal Regulations (CFR) Part 129. In a concurrent

rulemaking, the commission is adopting new §305.543 to adopt by reference 40 CFR Part 129.

Final Regulatory Impact Determination

The commission reviewed the adopted repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeal is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 314 is adopted for repeal because the executive director has identified it as one of several rules related to the TPDES program that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 314 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. Therefore, it is not anticipated that the adopted repeal would 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 commission concludes that the adopted repeal does not meet the definition of a “Major environmental rule.”

Furthermore, even if the adopted repeal did meet the definition of a major environmental rule, the adopted repeal 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 to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted repeal of §314.1 will not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeal would not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact

analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted repeal and performed an assessment of whether the adopted repeal constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted action is to repeal a rule that will be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 314 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation will improve the overall organization of TCEQ rules related to the TPDES program. The adopted repeal will substantially advance this stated purpose. Promulgation and enforcement of this adopted repeal will be neither a statutory nor a constitutional taking of private real property because the adopted repeal would not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted repeal will eliminate an unnecessary rule that would be re-proposed and consolidated in Chapter 305, Subchapter P. Because the adopted repeal would not affect real property, it would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, this adopted repeal will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted repeal in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rulemaking adoption 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 rulemaking adoption includes policies for discharges of wastewater.

The rulemaking adoption 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 rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules will be consistent with these CMP goals and policies and the rulemaking will not create or have a direct or significant adverse effect on any CNRAs.

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.

§314.1

Statutory Authority

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

[§314.1. Toxic Pollutant Effluent Standards and Prohibitions.]

[40 Code of Federal Regulations, Part 129, Subpart A, concerning toxic pollutant effluent standards and prohibitions, as in effect on the date of TPDES program authorization, as amended, is adopted by reference.]

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §315.1.

The repeal of §315.1 is adopted without changes to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6896), and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into 30 TAC Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations, similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking adopts the repeal of Chapter 315. Concurrently with this rulemaking, the commission is adopting new §305.542 to adopt by reference federal regulations that were previously adopted by reference in Chapter 315.

Section Discussion

The commission adopts the repeal of §315.1 which adopts by reference federal regulations in 40 Code of Federal Regulations (CFR) Part 403. In a concurrent

rulemaking, the commission is adopting new §305.542 to adopt by reference 40 CFR Part 403.

Final Regulatory Impact Determination

The commission reviewed the adopted repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeal is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 315 is adopted for repeal because the executive director has identified it as one of several rules related to the TPDES program that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 315 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. Therefore, it is not anticipated that the adopted repeal would 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 commission concludes that the adopted repeal does not meet the definition of a “Major environmental rule.”

Furthermore, even if the adopted repeal did meet the definition of a major environmental rule, the adopted repeal 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 to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted repeal of §315.1 would not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeal would not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact

analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted repeal and performed an assessment of whether the adopted repeal constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted action is to repeal a rule that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 315 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation will improve the overall organization of TCEQ rules related to the TPDES program. The adopted repeal will substantially advance this stated purpose. Promulgation and enforcement of this adopted repeal will be neither a statutory nor a constitutional taking of private real property because the adopted repeal will not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted repeal will eliminate an unnecessary rule that will be re-proposed and consolidated in Chapter 305, Subchapter P. Because the adopted repeal will not affect real property, it will not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, this adopted repeal will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted repeal in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rulemaking adoption 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 rulemaking adoption includes policies for discharges of wastewater.

The rulemaking adoption 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 rulemaking will not violate or exceed any

standards identified in the applicable CMP goals and policies because the rulemaking adoption will be consistent with these CMP goals and policies and the rulemaking will not create or have a direct or significant adverse effect on any CNRAs.

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 A: GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND
NEW SOURCES OF POLLUTION**

§315.1

Statutory Authority

The repeal 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 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 adopted 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.]

[40 Code of Federal Regulations Part 403, and Appendices A-E, which are in effect on the date of TPDES program authorization, as amended, are adopted by reference, except 40 Code of Federal Regulations §403.16, and except as follows: Where 40 Code of Federal Regulations §403.11(b)(2) and §403.11(c) provide procedures for requesting and holding a public hearing, the commission shall instead require notice of and hold a public meeting. Such a public meeting shall be conducted by the executive director, shall be an opportunity for public comment, and shall otherwise follow the procedures described in §403.11(b)(2) and §403.11(c).]

sibly train staff on related changes, which could cause facilities to incur costs to comply with the proposed rule.

HHSC is unable to provide an estimate of the number of small businesses and micro businesses affected by H.B. 119, however, there are a total of 61 licensed private psychiatric hospitals and four CSUs in Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, HHSC Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the implementation of H.B. 119, which further ensures all patients and clients retain the necessary access to organ transplants and may decrease the occurrence of costly lawsuits and administrative complaints on the basis of organ transplant discrimination in licensed health care facilities and from licensed providers.

Trey Wood has also determined that for the first five years the rule is in effect, businesses required to comply with the proposed rule may incur economic costs because the proposed amendment may require health care facilities to update current policies and procedures and train staff on those changes.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to their property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR_PRT@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R145" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure

the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendment implements Texas Health and Safety Code, Chapter 161, Subchapter S, Allocation of Kidneys and Other Organs Available for Transplant

§510.44. *Miscellaneous Policies and Protocols.*

(a) Determination of death. The hospital shall adopt, implement, and enforce protocols to be used in determining death which comply with Health and Safety Code (HSC), Title 8, Subtitle A, Chapter 671, Subchapter A (relating to Determination of Death).

(b) Organ and tissue donors. The hospital shall adopt, implement, and enforce a written protocol to identify potential organ and tissue donors which is in compliance with the Texas Anatomical Gift Act, HSC, Chapter 692. The hospital shall make its protocol available to the public during the hospital's normal business hours. The hospital's protocol shall include all requirements in HSC, §692.013 (relating to Hospital Protocol).

(c) Professional nurse reporting and peer review. A facility shall adopt, implement, and enforce a policy to ensure that the facility complies with Occupations Code, §301.401 (relating to Grounds for Reporting Registered Nurse), §301.402 (relating to Duty of Registered Nurse to Report), §301.403 (relating to Duty of Peer Review Committee to Report), §301.404 (relating to Duty of Nursing Educational Program to Report), §301.405 (relating to Duty of Person Employing Registered Nurse to Report), and Chapter 303 (relating to Nursing Peer Review), and with the rules adopted by the Board of Nurse Examiners at 22 Texas Administrative Code, §217.16 (relating to Minor Incidents), §217.19 (relating to Incident-Based Nursing Peer Review) and §217.20 (relating to Safe Harbor Peer Review for RNs).

(d) Discrimination prohibited. A facility shall not discriminate based on a patient's disability and shall comply with Texas Health and Safety Code Chapter 161, Subchapter S (relating to Allocation of Kidneys and Other Organs Available for Transplant).

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 27, 2021.

TRD-202103807

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: November 7, 2021

For further information, please call: (512) 834-4591

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMITS

30 TAC §§305.542 - 305.544

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§305.542 - 305.544.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is being proposed in response to a quadrennial rule review wherein the commission determined that 30 TAC Chapter 308, Subchapters C and J, were obsolete (Non-Rule Project Number 2019-034-308-OW; December 13, 2019, issue of the *Texas Register* (44 TexReg 7718)). Additionally, the executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations similar to Chapter 305, Subchapter P. Consolidating these rules would improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking proposes to adopt by reference federal regulations that were previously adopted by reference in Chapters 308, 314, and 315, except for Chapter 308, Subchapters C and J which were identified as obsolete. Subchapter C in its entirety and Subchapter J as relating to compliance dates will not be re-proposed in this rulemaking. Subchapter J relating to cooling water intakes will be re-proposed in the new rule §305.544. Additionally, this rulemaking proposes to adopt by reference federal regulations related to cooling water intake structures at oil and gas facilities (40 Code of Federal Regulations (CFR) Part 125, Subpart N) that were not previously adopted in Chapter 308 because TCEQ didn't have authority to regulate oil and gas facilities until the United States Environmental Protection Agency (EPA) granted TPDES program authority for wastewater discharges from oil and gas facilities in January 2021. Concurrently with this rulemaking, the commission is proposing to repeal 30 TAC Chapters 308, 314, and 315.

Section by Section Discussion

§305.542. *Pretreatment Standards.*

Proposed new §305.542 would adopt by reference 40 CFR Part 403, as amended, with the following exceptions. The commission is not proposing to adopt 40 CFR §§403.16 or 40 CFR §403.19 because 40 CFR §403.16 is less stringent than 30 TAC §305.535 and 40 CFR §403.19 expired in 2005. Additionally, the proposed rule states that where 40 CFR §403.11 provides procedures for requesting and holding a public hearing, the commission shall instead require notice of and hold a public meeting. Public meetings conducted by the executive director provide an opportunity for public comment and follow the procedures described in 40 CFR §403.11.

The federal regulations in 40 CFR Part 403 establish responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works or which may contaminate sewage sludge.

The federal regulations in 40 CFR Part 403, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 315. EPA amended 40 CFR Part 403 several times after 1998. The proposed rule would adopt by reference the most

current version of 40 CFR Part 403 adopted on November 2, 2020, as amended.

§305.543. *Toxic Pollutant Effluent Standards and Prohibitions.*

Proposed new §305.543 would adopt by reference 40 CFR Part 129, Subpart A, as in effect on the date of TPDES program authorization, as amended. No changes to these federal regulations have been adopted by EPA since the date of TPDES program authorization in September 1998. The federal regulations in 40 CFR Part 129 establish effluent standards or prohibitions for the discharge of toxic pollutants.

§305.544. *Criteria and Standards for Texas Pollutant Discharge Elimination System Permits.*

Proposed new §305.544(1), (2), (4), and (8) would adopt by reference 40 CFR Part 125, Subparts A, B, G, and M, respectively, as each of these subparts were in effect on the date of TPDES program authorization, as amended. No changes to these federal regulations have been adopted by EPA since the date of TPDES program authorization in September 1998.

The federal regulations in 40 CFR Part 125, Subpart A establish criteria and standards for the imposition of technology-based treatment requirements in permits under Clean Water Act (CWA) §301(b), including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under CWA §402(a)(1). 40 CFR Part 125, Subpart B establishes guidelines under CWA §318 and §402 for approval of any discharge of pollutants associated with an aquaculture project. 40 CFR Part 125, Subpart G establishes the criteria to be applied by EPA in acting on CWA §301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a CWA §301(h) modification of the secondary treatment requirements. 40 CFR Part 125, Subpart M establishes guidelines for issuance of permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans.

Proposed new §305.544(3) would adopt by reference 40 CFR Part 125, Subpart D, as amended. The federal regulations in 40 CFR Part 125, Subpart D establish the criteria and standards to be used in determining whether effluent limitations alternative to those required by promulgated EPA effluent limitations guidelines under CWA §301 and §304 (referred to as "national limits") should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits.

The federal regulations in 40 CFR Part 125, Subpart D, which were in effect on the date of TPDES program authorization (i.e. September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA amended 40 CFR Part 125, Subpart D after 1998. The proposed rule would adopt by reference the most current version of 40 CFR Part 125, Subpart D adopted on May 15, 2000, as amended.

Proposed new §305.544(5) would adopt by reference 40 CFR Part 125, Subpart H, as amended. The federal regulations in 40 CFR Part 125, Subpart H describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under CWA, §316(a) in permits issued under CWA §402(a).

The federal regulations in 40 CFR Part 125, Subpart H, which were in effect on the date of TPDES program authorization (i.e.,

September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA amended 40 CFR Part 125, Subpart H after 1998. The proposed rule would adopt by reference the most current version of 40 CFR Part 125, Subpart H adopted on May 15, 2000, as amended.

Proposed new §305.544(6) would adopt by reference 40 CFR Part 125, Subpart I, as amended. The federal regulations in 40 CFR Part 125, Subpart I establish requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new facilities. The term "new facility" is defined in 40 CFR §125.83.

The federal regulations in 40 CFR Part 125, Subpart I, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA amended 40 CFR Part 125, Subpart I after 1998. The proposed rule would adopt by reference the most current version of 40 CFR Part 125, Subpart I adopted on August 15, 2014, as amended.

Proposed new §305.544(7) would adopt by reference 40 CFR Part 125, Subpart J, as amended. The federal regulations in 40 CFR Part 125, Subpart J establish the requirements that apply to cooling water intake structures at existing facilities. The term "existing facility" is defined in 40 CFR §125.92.

The federal regulations in 40 CFR Part 125, Subpart J, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA repealed 40 CFR Part 125, Subpart J after 1998 and subsequently adopted new regulations in 40 CFR Part 125, Subpart J. The proposed rule would adopt by reference the most current version of 40 CFR Part 125, Subpart J adopted on August 15, 2014, as amended.

Proposed new §305.544(9) would adopt by reference 40 CFR Part 125, Subpart N, as amended. The federal regulations in 40 CFR Part 125, Subpart N establish requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities. The term "new offshore oil and gas extraction facility" is defined in 40 CFR §125.92. The proposed rule would adopt by reference the current version of 40 CFR Part 125, Subpart N adopted on June 16, 2006, as amended.

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 that the proposed new 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 rules.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed new rules would be in effect, the public benefit anticipated would be improved readability with the removal of obsolete provisions, consolidation of the rules governing the TPDES program, and compliance with the Memorandum of Agreement between the agency and the EPA regarding the same program.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals. The proposed rulemaking contains a reference to 40 CFR Part 125, Subpart N, which should not create a new fiscal impact because regulated entities were required to submit to federal regulations prior to the EPA

granting TPDES program authority for wastewater discharges from oil and gas facilities.

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 new rules 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 new rules would be in effect. The new rules 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 that the proposed new 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 that the proposed new 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 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 would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed new rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 308, Subchapters A, B, D, G, H, I, and M that are proposed for repeal would be re-proposed within Chapter 305, Subchapter P in proposed new §§305.542 - 305.544 to improve the overall organization of TCEQ rules related to the TPDES program. This rulemaking is also being proposed in response to a quadrennial rule review wherein the commission determined that

Chapter 308, Subchapters C and J were obsolete. Subchapter C in its entirety and Subchapter J as relating to compliance dates will not be re-proposed in this rulemaking. Subchapter J relating to cooling water intakes will be re-proposed in the new §305.544. In addition, the proposed rulemaking would adopt by reference 40 CFR Part 125, Subpart N that was not previously adopted in Chapter 308. Therefore, it is not anticipated that the proposed new rules would 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 commission concludes that the proposed new rules do not meet the definition of a "Major environmental rule."

Furthermore, even if the proposed new rules did meet the definition of a major environmental rule, the proposed new rules would not be subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed new rules of §§305.542-305.544 would not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed new rules would not constitute a major environmental rule, a regulatory impact analysis is not required.

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed action is to consolidate rules from Chapters 308 (with the exception of Subchapters C and J), 314, and 315 into Chapter 305, Subchapter P. Consolidating these rules would improve the overall organization of TCEQ rules related to the TPDES program. In addition, the proposed rulemaking would adopt by reference 40 CFR Part 125, Subpart N, that was not previously adopted in Chapter 308. The proposed rulemaking would substantially advance this stated purpose. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property because the proposed rulemaking would not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed rulemaking would consolidate rules for the purpose of improving organization of TCEQ rules related to the TPDES program. Because the proposed rulemaking would not affect real property, it would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed new rules. Therefore, this proposed rulemaking would

not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed new rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rulemaking 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 rulemaking include 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 new rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules would be consistent with these CMP goals and policies and the rules 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_YT-RIMmM0YjEtMzcyNy00MjMyLTK0MGQtZDc0ODA1NDImMW-Zl%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a

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 rulemaking 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; and 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.

The proposed new rules implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

§305.542. Pretreatment Standards.

40 Code of Federal Regulations (CFR) Part 403 (Federal Register, Volume 85, November 2, 2020), as amended, is adopted by reference, except 40 CFR §403.16 and §403.19, and except where 40 CFR §403.11 provides procedures for requesting and holding a public hearing, the commission shall instead require notice of and hold a public meeting. Such a public meeting shall be conducted by the executive director, shall be an opportunity for public comment, and shall otherwise follow the procedures described in 40 CFR §403.11.

§305.543. Toxic Pollutant Effluent Standards and Prohibitions.

Except to the extent that it is less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations Part 129, Subpart A, as in effect on the date of TPDES program authorization, as amended, is adopted by reference.

§305.544. Criteria and Standards for Texas Pollutant Discharge Elimination System Permits.

Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, the following federal regulations are adopted by reference, as amended:

(1) 40 Code of Federal Regulations (CFR) Part 125, Subpart A, relating to imposing technology-based treatment requirements, as in effect on the date of Texas Pollutant Discharge Elimination System (TPDES) program authorization;

(2) 40 CFR Part 125, Subpart B, relating to issuance of permits to aquaculture projects, as in effect on the date of TPDES program authorization;

(3) 40 CFR Part 125, Subpart D, relating to determining fundamentally different factors (*Federal Register*, Volume 65, May 15, 2000);

(4) 40 CFR Part 125, Subpart G, relating to modifying the secondary treatment requirements, as in effect on the date of TPDES program authorization;

(5) 40 CFR Part 125, Subpart H, relating to determining alternative effluent limitations (*Federal Register*, Volume 65, May 15, 2000);

(6) 40 CFR Part 125, Subpart I, relating to cooling water intake structures for new facilities (*Federal Register*, Volume 79, August 15, 2014);

(7) 40 CFR Part 125, Subpart J, relating to relating to cooling water intake structures for existing facilities (*Federal Register*, Volume 79, August 15, 2014);

(8) 40 CFR Part 125, Subpart M, relating to ocean discharges, as in effect on the date of TPDES program authorization; and

(9) 40 CFR Part 125, Subpart N, relating to cooling water intake structures for new offshore oil and gas extraction facilities (*Federal Register*, Volume 71, June 16, 2006).

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-202103753

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 308. CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is being proposed in response to a quadrennial rule review wherein the commission determined that 30 TAC Chapter 308 Subchapters C and J were obsolete (Non-Rule Project Number 2019-034-308-OW; December 13, 2019, issue of the *Texas Register* (44 TexReg 7718)). Additionally, the executive director identified several rules related to the Texas

Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into 30 TAC Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules would improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking proposes to repeal Chapter 308. Concurrently with this rulemaking, the commission is proposing new §305.544 to adopt by reference federal regulations that were previously adopted by reference in Chapter 308, except Subchapters C and J which were determined to be obsolete. Subchapter C in its entirety and Subchapter J as relating to compliance dates will not be re-proposed. Subchapter J relating to cooling water intakes will be re-proposed in the new rule §305.544.

Section by Section Discussion

The commission proposes to repeal §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141. These sections adopt by reference federal regulations in 40 Code of Federal Regulations (CFR) Part 125. In a concurrent rulemaking, the commission is proposing new §305.544 to adopt by reference 40 CFR Part 125.

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 that the proposed repeals 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 repeals.

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 with the repeal of obsolete rules and the consolidation of the rules governing the TPDES program.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals. This rulemaking proposes to repeal Chapter 308. Concurrently with this rulemaking, the commission is proposing new §305.544 to adopt by reference the federal regulations that were previously adopted by reference in Chapter 308. The proposed rulemaking removes the content of Subchapters C and J, which were determined to be obsolete.

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 repeals 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 repeals 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 that 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 that 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 would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed repeals should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 308 Subchapters A, B, D, G, H, I, and M are proposed for repeal because the executive director has identified them as one of several rules related to the TPDES that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 308 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. This rulemaking is also being proposed in response to a quadrennial rule review wherein the commission determined that Chapter 308 Subchapters C and J were obsolete. Therefore, it is not anticipated that the proposed repeals would 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 commission concludes that the proposed repeals do not meet the definition of a "Major environmental rule."

Furthermore, even if the proposed repeals did meet the definition of a major environmental rule, the proposed repeals would not be subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an

express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed repeals of §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141 would not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed repeals would not constitute a major environmental rule, a regulatory impact analysis is not required.

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

Takings Impact Assessment

The commission evaluated the proposed repeals and performed an assessment of whether the proposed repeals constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed action is to repeal rules that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 314 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. In addition, this rulemaking is also being proposed in response to a quadrennial rule review wherein the commission determined that Chapter 308, Subchapters C and J were obsolete. These subchapters will not be re-proposed or consolidated into Chapter 305, Subchapter P. The proposed repeals would substantially advance these stated purposes. Promulgation and enforcement of these proposed repeals would be neither a statutory nor a constitutional taking of private real property because the proposed repeals would not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed repeals would eliminate both unnecessary rules and obsolete rules. Because the repeals would not affect real property, they would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, these proposed repeals would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed repeal in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rulemaking 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 applica-

ble to the proposed rulemaking 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 rulemaking would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules would be consistent with these CMP goals and policies and the rulemaking 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_YT-RIMmMOYjEtMzcyNy00MjMyLTk0MGQkZDc0ODA1NDlmMW-Zl%40thread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22Is-BroadcastMeeting%22%3atrue%7d&btype=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.

SUBCHAPTER A. CRITERIA AND STANDARDS FOR IMPOSING TECHNOLOGY-BASED TREATMENT REQUIREMENTS

30 TAC §308.1

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.

§308.1. Criteria and Standards for Imposing Technology-based Treatment Requirements under the Clean Water Act, §301(b) and §402.

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-202103758

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



SUBCHAPTER B. CRITERIA FOR ISSUANCE OF PERMITS TO AQUACULTURE PROJECTS

30 TAC §308.21

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.

§308.21. Criteria for Issuance of Permits to Aquaculture Projects.

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.

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Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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SUBCHAPTER C. CRITERIA AND EXTENDING COMPLIANCE DATES FOR FACILITIES INSTALLING INNOVATIVE TECHNOLOGY UNDER THE CLEAN WATER ACT, §301(K)

30 TAC §308.31

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.

§308.31. Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology under the Clean Water Act, §301(k).

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

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Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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SUBCHAPTER D. CRITERIA AND STANDARDS FOR DETERMINING FUNDAMENTALLY DIFFERENT FACTORS UNDER THE CLEAN WATER ACT, §301(B)(1)(A), (B)(2)(A), AND (E)

30 TAC §308.41

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.

§308.41. *Criteria for Standards for Determining Fundamentally Different Factors under the Clean Water Act, §301(b)(1)(A), (2)(A), and (E).*

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

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Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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

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SUBCHAPTER G. CRITERIA FOR MODIFYING THE SECONDARY TREATMENT

30 TAC §308.71

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.

§308.71. *Criteria for Modifying the Secondary Treatment Requirements under the Clean Water Act, §301(h).*

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

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Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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

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SUBCHAPTER H. CRITERIA FOR DETERMINING ALTERNATIVE EFFLUENT LIMITATIONS UNDER THE CLEAN WATER ACT, §316(A)

30 TAC §308.81

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.

§308.81. Criteria for Determining Alternative Effluent Limitations under the Clean Water Act, §316(a).

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

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Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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



SUBCHAPTER I. CRITERIA APPLICABLE TO COOLING WATER INTAKE STRUCTURES UNDER CLEAN WATER ACT, §316(b)

30 TAC §308.91

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.

§308.91. Criteria Applicable to Cooling Water Intake Structures under the Clean Water Act, §316(b).

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

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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



SUBCHAPTER J. CRITERIA FOR EXTENDING COMPLIANCE DATES UNDER THE CLEAN WATER ACT, §301(I)

30 TAC §308.101

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.

§308.101. Criteria for Extending Compliance Dates under the Clean Water Act, §301(i).

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

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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



SUBCHAPTER M. OCEAN DISCHARGE CRITERIA

30 TAC §308.141

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.

§308.141. *Ocean Discharge Criteria.*

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-202103773

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 314. TOXIC POLLUTANT EFFLUENT STANDARDS

30 TAC §314.1

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §314.1.

Background and Summary of the Factual Basis for the Proposed Rule

The executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into 30 TAC Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations, similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules would improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking proposes to repeal 30 TAC Chapter 314. Concurrently with this rulemaking, the commission is proposing new 30 TAC §305.543 to adopt by reference federal regulations that were previously adopted by reference in 30 TAC Chapter 314.

Section Discussion

The commission proposes to repeal §314.1, which adopts by reference federal regulations in 40 Code of Federal Regulations

(CFR) Part 129. In a concurrent rulemaking, the commission is proposing new §305.543 to adopt by reference 40 CFR Part 129.

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 that the proposed repeal 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 repeal.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed repeal would be in effect, the public benefit anticipated would be improved readability with the consolidation of the rules governing the TPDES program.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals. This rulemaking proposes to repeal Chapter 314, and concurrently with this rulemaking, the commission is proposing new §305.543 to adopt by reference federal regulations that were previously adopted by reference in Chapter 314.

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 repeal 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 repeal 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 that the proposed repeal 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 repeal would not adversely affect a small or micro-business in a material way for the first five years that the proposed repeal 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 would repeal an existing regulation. The proposed rulemaking would not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed repeal should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeal is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 314 is proposed for repeal because the executive director has identified it as one of several rules related to the TPDES that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 314 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. Therefore, it is not anticipated that the proposed repeal would 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 commission concludes that the proposed repeal does not meet the definition of a "Major environmental rule."

Furthermore, even if the proposed repeal did meet the definition of a major environmental rule, the proposed repeal 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 to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed repeal of §314.1 will not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed repeal would not constitute a major environmental rule, a regulatory impact analysis is not required.

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

Takings Impact Assessment

The commission evaluated the proposed repeal and performed an assessment of whether the proposed repeal constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed action is to repeal a rule that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 314 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. The proposed repeal would substantially advance this stated purpose. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitu-

tional taking of private real property because the proposed repeal would not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed repeal would eliminate an unnecessary rule that would be re-proposed and consolidated in Chapter 305, Subchapter P. Because the proposed repeal would not affect real property, it would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed repeal. Therefore, this proposed repeal would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed repeal in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rulemaking 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 rulemaking 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 is 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

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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_YT-RIMmMOYjEtMzcyNy00MjMyLTk0MGQtZDc0ODA1NDImMW-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%3atrue%7d&btype=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.

§314.1. Toxic Pollutant Effluent Standards and Prohibitions.

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-202103780

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

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CHAPTER 315. PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

SUBCHAPTER A. GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

30 TAC §315.1

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §315.1.

Background and Summary of the Factual Basis for the Proposed Rule

The executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into 30 TAC Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations, similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules would improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking proposes to repeal Chapter 315. Concurrently with this rulemaking, the commission is proposing new §305.542 to adopt by reference federal regulations that were previously adopted by reference in Chapter 315.

Section Discussion

The commission proposes to repeal §315.1 which adopts by reference federal regulations in 40 Code of Federal Regulations (CFR) Part 403. In a concurrent rulemaking, the commission is proposing new §305.543 to adopt by reference 40 CFR Part 403.

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 repeal 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 repeal.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed repeal would be in effect, the public benefit anticipated would be improved readability with the consolidation of the rules governing the TPDES program.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals. This rulemaking proposes to repeal Chapter 315, and concurrently with this rulemaking, the commission is proposing new §305.542 to adopt by reference federal regulations that were previously adopted by reference in Chapter 315.

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 repeal 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 repeal would be in effect. The repeal 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 repeal for the first five-year period the proposed repeal 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 repeal would not adversely affect a small or micro-business in a material way for the first five years the proposed repeal 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 would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed repeal should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeal is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 315 is proposed for repeal because the executive director has identified it as one of several rules related to the TPDES that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 315 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. Therefore, it is not anticipated that the proposed repeal would 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 commission concludes that the proposed repeal does not meet the definition of a "Major environmental rule."

Furthermore, even if the proposed repeal did meet the definition of a major environmental rule, the proposed repeal 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 to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed repeal of §315.1 would not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed repeal would not constitute a major environmental rule, a regulatory impact analysis is not required.

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 pre-amble.

Takings Impact Assessment

The commission evaluated the proposed repeal and performed an assessment of whether the proposed repeal constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed action is to repeal a rule that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 314 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. The proposed repeal would substantially advance this stated purpose. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitutional taking of private real property because the proposed repeal would not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed repeal would eliminate an unnecessary rule that would be re-proposed and consolidated in Chapter 305, Subchapter P. Because the proposed repeal would not affect real property, it would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed repeal. Therefore, this proposed repeal would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed repeal in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and

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

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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_YTRIMmMOYjEtMzcyNy00MjMyLTk0MGQtZDc0ODA1NDImMW-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%7d&btype=a&role=a

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Statutory Authority

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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)).

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES AND REPEALING RULES

Docket No. 2021-0682-RUL

Rule Project No. 2021-020-305-OW

On March 30, 2022, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code (TAC) Chapter 305, Consolidated Permits, and repealed rules in 30 TAC Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System, Chapter 314, Toxic Pollutant Effluent Standards, and Chapter 315, Pretreatment Regulations for Existing and New Sources of Pollution. The proposed rules were published for comment in the October 8, 2021 issue of the *Texas Register* (46 TexReg 6884).

IT IS THEREFORE ORDERED BY THE COMMISSION that amended rules are hereby adopted and the repealed 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 adopted and repealed rules and the preamble to the adopted and 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