

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.

**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.

**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).

**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).**

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).

**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).

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).

**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).

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.