

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §292.1 and §292.13.

Sections 292.1 and 292.13 are adopted without changes to the proposed text as published in the November 4, 2022, issue of the *Texas Register* (47 TexReg 7393) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

This rulemaking adoption amends 30 Texas Administrative Code (TAC) Chapter 292 for consistency with the repeal of Texas Water Code (TWC), Chapter 9 and the abolishment of the Central Colorado River Authority. Additionally, this rulemaking adoption amends Chapter 292 to remove or revise outdated references to Industrial Development Bonds and Pollution Control Bonds and Historically Underutilized Businesses (HUB) requirements.

### **Section by Section Discussion**

Additional changes are adopted to clarify language and are considered non-substantive and not specifically addressed in the Section by Section Discussion of this preamble.

#### *§292.1, Objective and Scope of Rules*

The commission adopts amendments to §292.1(a) to account for the repeal of TWC, Chapter 9 made during the 80th Texas Legislature, Regular Session, 2007, in Senate Bill (SB) 3 by Senator Kip Averitt related to the development, management, and preservation of the water resources of the state; providing penalties. The commission also adopts amendments to §292.1(a)(5) by deleting the reference to the Central Colorado River Authority and by renumbering the remaining subsections in this section. The Central Colorado River Authority was dissolved by

the 85th Texas Legislature, Regular Session, 2017, in SB 2262 by Senator Charles Perry.

*§292.13, Minimum Provisions*

The commission adopts amendments to §292.13(5) to remove an outdated reference to Industrial Development Bonds and Pollution Control Bonds from the minimum requirements for administrative policies adopted by the boards of the authorities subject to Chapter 292. Industrial Development Bonds and Pollution Control Bonds are no longer used by these entities. The commission also adopts amended §292.13(6)(B) to update the reference to HUB requirements that must be included in the administrative policies of the authorities subject to Chapter 292.

**Final Regulatory Impact Determination**

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

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the adopted rulemaking is to

implement legislative changes enacted by SB 3 from the 80th Texas Legislature and SB 2262 from the 85th Texas Legislature and to delete or revise outdated references in the rule.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the rules will not 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 cost of complying with the adopted rules is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code §2001.0225(a). The adopted rulemaking does not exceed a standard set by federal or state law. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the rulemaking is adopted pursuant to the commission's specific authority in Texas Water Code §5.013, which gives the commission continuing supervision over districts, and Texas Water Code §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not adopted solely under the commission's general powers.

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

### **Takings Impact Assessment**

The commission evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of this rulemaking is to implement SB 3 from the 80th Texas Legislature relating to the development, management, and preservation of the water resources of the state, and SB 2262 from the 85th Texas Legislature relating to the dissolution of the Central Colorado River Authority and to delete or revise outdated references in the rule. The adopted rules would advance this purpose by making the commission's rules consistent with SB 3 and SB 2262 and by deleting or revising outdated references.

Promulgation and enforcement of these rules will constitute neither a statutory nor a constitutional taking of private real property. These rules will not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking will not burden nor restrict the owner's right to property. These provisions will not impose any burdens or restrictions on private real property. Therefore, the amendments do not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

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

**Public Comment**

The commission held a public hearing on December 7, 2022. The comment period closed on December 7, 2022. The commission received comments from Chambers County Improvement District No. 2, Chambers County Improvement District No. 3, Chambers County Municipal Utility District No. 4, Masterson Advisors LLC (MALLC), Schwartz Page & Harding LLP, and Utility District Advisory Corporation (UDAC). All comments received were in support of the rulemaking without changes.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§292.1**

#### **Statutory Authority**

This amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013 gives the commission continuing supervision over districts, and TWC, §12.081 gives the commission the authority to issue rules necessary to supervise districts.

The adopted amendment implements Senate Bill (SB) 3 from the 80th Texas Legislature, 2007, related to the development, management, and preservation of the water resources of the state; and it implements SB 2262 from the 85th Texas Legislature, 2017, relating to the dissolution of the Central Colorado River Authority.

#### **§292.1. Objective and Scope of Rules.**

(a) The commission has the continuing right of supervision of districts and authorities created under Article III, §52 and Article XVI, §59 of the Texas Constitution. [The authorities identified in Texas Water Code (TWC), §9.010, shall report to the Texas Water Advisory Council as specified in TWC, §9.011.] This chapter shall govern the administrative policies of the following districts:

- (1) Angelina and Neches River Authority;

(2) Bexar-Medina-Atascosa Counties Water Control and Improvement District  
Number 1;

(3) Brazos River Authority;

(4) Canadian River Municipal Water Authority;

(5) [(6)] Central Colorado River Authority; ]

(5) [(6)] Colorado River Municipal Water District;

(6) [(7)] Dallas County Utility and Reclamation District;

(7) [(8)] Guadalupe-Blanco River Authority;

(8) [(9)] Gulf Coast Water Authority;

(9) [(10)] Lavaca-Navidad River Authority;

(10) [(11)] Lower Colorado River Authority;

(11) [(12)] Lower Neches Valley Authority;

(12) [(13)] Mackenzie Municipal Water Authority;

(13) [(14)] North Central Texas Municipal Water Authority;

(14) [(15)] North Harris County Regional Water Authority;

(15) [(16)] North Texas Municipal Water District;

(16) [(17)] Northeast Texas Municipal Water District;

(17) [(18)] Nueces River Authority;

(18) [(19)] Red River Authority of Texas;

(19) [(20)] Sabine River Authority;

(20) [(21)] San Antonio River Authority;

(21) [(22)] San Jacinto River Authority;

(22) [(23)] Sulphur River Basin Authority;

(23) [(24)] Sulphur River Municipal Water District;

(24) [(25)] Tarrant Regional Water District, a Water Control and Improvement  
District;



(25) [(26)] Titus County Fresh Water Supply District Number 1;

(26) [(27)] Trinity River Authority of Texas;

(27) [(28)] Upper Colorado River Authority;

(28) [(29)] Upper Guadalupe River Authority;

(29) [(30)] Upper Neches River Municipal Water Authority; and

(30) [(31)] West Central Texas Municipal Water District.

(b) Nothing in this chapter shall be construed to relieve a district of its legal duties, obligations, or liabilities relative to its responsibilities as defined in its enabling legislation or in the TWC.

## **SUBCHAPTER B: ADMINISTRATIVE POLICIES**

### **§292.13**

#### **Statutory Authority**

This amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013 gives the commission continuing supervision over districts, and TWC, §12.081 gives the commission the authority to issue rules necessary to supervise districts.

The adopted amendment implements SB 3 from the 80th Texas Legislature, 2007, related to the development, management, and preservation of the water resources of the state; and it implements SB 2262 from the 85th Texas Legislature, 2017, relating to the dissolution of the Central Colorado River Authority.

#### **§292.13. Minimum Provisions.**

The following provisions shall be incorporated into the administrative policies adopted by the authorities subject to these rules.

(1) Code of Ethics. The administrative policies shall mandate compliance with the following standards:

(A) the Local Government Code, Chapter 171, relating to conflicts of interests with a business entity in which the official has a substantial interest.

(B) Texas Government Code, Chapter 573, relating to nepotism.

(C) for River Authorities, Texas Government Code, Chapter 572, relating to standards of conduct, personal financial disclosure, and conflict of interest.

(D) Article III, Section 52, of the Texas Constitution, relating to the prohibition on granting public money or things of value to any individual, association or corporation.

(2) Travel Expenditures. The administrative policies shall provide for reimbursing district officials for necessary and reasonable travel expenditures incurred while conducting business or performing official duties or assignments. The board may adopt additional policies which further define the criteria for necessary and reasonable travel expenditures and which provide procedures for the reimbursement of expenses.

(3) Investments. The administrative policies shall provide for compliance with the following statutes:

(A) Subchapter A, Chapter 2256, Government Code (the Public Funds Investment Act);

(B) Chapter 2257, Government Code (the Public Funds Collateral Act); and

(C) any other appropriate statutes which are applicable to the investment of the authority's funds.

(4) Professional Services Policy. The administrative policies shall provide for compliance with the following standards:

(A) Texas Government Code, Chapter 2254, Subchapter A (the Professional Services Procurement Act) which prohibits the selection of professional services based on competitive bids.

(B) A list shall be maintained of at least three qualified persons or firms for each area of professional service used by the authority. The pre-qualified persons or firms shall be sent a request for proposal for any contract award for a new project which is expected to exceed \$25,000.

[(5) Industrial Development Bonds and Pollution Control Bonds. The administrative policies shall reference any industrial development corporation associated with the authority and shall provide for compliance with the memorandum issued by the State Auditor on October 7, 1988 relating to the disclosure of industrial development and pollution control bonds.]

(5)[(6)] Management Policies. The administrative policies shall provide for the following:

(A) an independent management audit to be conducted every five years and submitted to the executive director. As an alternative, an internal audit office may be established which reports to the board of directors.

(B) compliance with the provisions and intent of Texas Government Code Chapter 2161 [§106, Contracting With Historically Underutilized Businesses of Texas, Article V, General Provisions of Texas House Bill 1, 72nd Legislature, First Called Session (1991)] relative to contracting with underutilized businesses and providing equal employment opportunities.