

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 3, 2021

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

From: Earl Lott, Director
Office of Water

Docket No.: 2021-0681-RUL

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

Background and reason(s) for the rulemaking:

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

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

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 This subchapter is obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional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

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

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

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

None.

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

None.

Statutory authority:

- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;

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

Effect on the:

A.) Regulated community:

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

B.) Public:

This rulemaking is not expected to affect the public.

C.) Agency programs:

This rulemaking is not expected to affect agency programs.

Stakeholder meetings:

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

Potential controversial concerns and legislative interest:

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

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

No.

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

If Chapter 321, Subchapters E, F, and L are not repealed, regulated entities may attempt to obtain authorization under these subchapters. As allowed by the MOA with EPA, TCEQ could amend these subchapters to require all NPDES requirements. Amending these subchapters to add all NPDES requirements would result in duplication of 30 Texas Administrative Code Chapters 39, 50, 55, 80, 281, and 305 which already include NPDES requirements. If Chapter 351, Subchapter D is not repealed, this obsolete rule would remain in effect.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: September 22, 2021

Anticipated *Texas Register* publication date: October 8, 2021

Anticipated public hearing date: November 9, 2021

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Anticipated public comment period: October 8, 2021 to November 9, 2021
Anticipated adoption date: March 30, 2022

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Attachments: None

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