

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

Background and Summary of the Factual Basis for the Proposed Rules

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

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

Section by Section Discussion

Subchapter D: Lower Rio Grande Valley

The commission proposes the repeal of §§351.41 - 351.45 which designate the Rio Grande Valley Pollution Control Authority as a regional provider for the Lower Rio Grande Valley Regional Area. This subchapter is obsolete because the Rio Grande Valley Pollution Control

Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules would be in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rulemaking.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules will be in effect the public benefit anticipated would be improved readability and transparency in the chapter because of the removal of obsolete provisions. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking would not adversely affect a local economy in a material way for the first five years that the proposed rulemaking would be in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed

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

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules would be in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking would not adversely affect a small or micro-business in a material way for the first five years the proposed rules would be in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking repeals obsolete rules relating to a regional provider that no longer exists. The proposed rulemaking would not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to that statute because the proposed rules do not meet the criteria for "Major environmental rules" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

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

Furthermore, even if the proposed rulemaking did meet the definition of a "Major environmental rule," it would not be subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §201.0225(a) applies only to a state agency's adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless state law

specifically requires the rule; (2) exceeds an express requirement of state law, unless federal law specifically requires the rule; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) is adopted solely under the general powers of the agency instead of under a specific state law.

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

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

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

Takings Impact Assessment

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

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

Consistency with the Coastal Management Program

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

Written comments on the consistency of this rulemaking may be submitted to the contact

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Lee Bellware, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2021-022-321-OW. The comment period closes on November 9, 2021. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Ms. Laurie Fleet, Water Quality Division, (512) 239-5445.

SUCHAPTER D: LOWER RIO GRANDE VALLEY

§§351.41 - 351.45

Statutory Authority

The rulemaking action is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which 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; TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state; and TWC, §26.081, which authorizes the commission to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

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

[§351.41. Definitions.]

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

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

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

[§351.42. Designation of Regional Area].

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

[§351.43. Designation of Regional Entity.]

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

[§351.44. Additional Duties of Regional Entity.]

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

[§351.45. Assistance to Department.]

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