

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§321.71 - 321.81, 321.91 - 321.97, and 321.211 - 321.220. Repealed §§321.71 - 321.81, 321.91 - 321.97, and 321.211 - 321.220 are adopted without changes to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6898) 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 (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)).

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

Section by Section Discussion

Subchapter E: Surface Coal Mining, Preparation and Reclamation Activities

The commission adopts the repeal of §§321.71 - 321.81. The MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing wastewater discharge authorizations under this subchapter. The TCEQ authorizes discharges from surface coal mining, preparation and reclamation activities under an individual permit which comply with all necessary NPDES requirements.

Subchapter F: Shrimp Industry

The commission adopts the repeal of §§321.91 - 321.97. The MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing wastewater discharge authorizations under this subchapter. The TCEQ authorizes discharges from shrimp facilities under either an individual permit or general permit which comply with all necessary NPDES requirements.

Subchapter L: Discharges to Surface Waters from Motor Vehicles Cleaning Facilities

The commission adopts the repeal of §§321.211 - 321.220. The MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing wastewater discharge authorizations under this subchapter. The TCEQ authorizes discharges from motor vehicles cleaning facilities under an individual permit which comply with all necessary NPDES requirements.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking actions are not subject to that statute because the adopted 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 rulemaking adoption is to repeal Chapter 321, Subchapters E, F, and L. Chapter 321, Subchapter E regulated discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulated discharges from the shrimp industry; and Subchapter L regulated discharges from motor vehicles cleaning facilities. The adopted rulemaking repeals these subchapters pursuant to the MOA between the TCEQ and the EPA concerning the NPDES program. The MOA prohibits the TCEQ from issuing authorizations under these subchapters because they do not entail all NPDES requirements. The TCEQ authorizes the discharges described in Subchapters E, F, and L under an individual permit or general permit which comply with all necessary NPDES requirements. The adopted rulemaking action will promote consistency between federal and state rules.

Furthermore, even if the rulemaking adoption did meet the definition of a “Major environmental rule,” it 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 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 rulemaking adoption does not meet any of these requirements. First, this rulemaking adoption does not exceed a standard set by federal law, because it promotes consistency with federal law and repeals rules that do exceed federal standards. Second, the rulemaking adoption does not exceed an express requirement of state law, but rather, it expands the scope of an existing state law. Third, the rulemaking adoption 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 commission adopts the rulemaking action under Texas Water Code, §§5.013, 5.102, 5.105, 5.120, 26.011, and 26.027. Therefore, the commission does not adopt this rulemaking action 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 regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for the adopted rulemaking action pursuant to Texas Government Code, §2007.043. The specific purpose of this adopted rulemaking is to repeal Chapter 321, Subchapters E, F, and L. Chapter 321, Subchapter E regulated discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulated discharges from the shrimp industry; and Subchapter L regulated discharges from motor vehicles cleaning facilities. These subchapters are obsolete because the MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing authorizations under these subchapters. The TCEQ authorizes these discharges under an individual permit or general permit which comply with all necessary NPDES requirements.

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

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found the adoption was a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) (Actions and Rules Subject to the Coastal Management Program), and therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this adopted rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the adopted rulemaking does not affect any coastal natural resource areas because discharges from the activities regulated by the sections adopted for repeal are being authorized under either an individual permit or general permit which comply with NPDES requirements. Repealing these subchapters removes the ability of these activities to be authorized under a registration.

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 virtual public hearing on November 9, 2021. The comment period closed on November 9, 2021. No public comments were received.

**SUBCHAPTER E: SURFACE COAL MINING, PREPARATION, AND RECLAMATION
ACTIVITIES**

§§321.71 - §§321.81

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; 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 authorize 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.

The rulemaking adoption implements the Memorandum of Agreement between the TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits the TCEQ from issuing authorizations under this subchapter.

§321.71. Introduction and Purpose.

§321.72. Definitions.

§321.73. Discharges Authorized by Rule.

§321.74. Permit Required.

§321.75. Term, Modifications.

§321.76. Hearing.

§321.77. Enforcement.

§321.78. Effluent Limitations.

§321.79. Additional Effluent Limitations.

§321.80. Associated Facilities.

§321.81. Monitoring and Reporting of Data.

SUBCHAPTER F: SHRIMP INDUSTRY

§§321.91 - §§321.97

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; 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 authorize 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.

The adopted rulemaking implements the Memorandum of Agreement between the TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits the TCEQ from issuing authorizations under this subchapter.

§321.91. Definitions.

§321.92. Applicability.

§321.93. Certificate of Registration.

§321.94. Domestic Waste Disposal.

§321.95. Requirements.

§321.96. Right of Review.

§321.97. Motion to Overturn.

SUBCHAPTER L: DISCHARGES TO SURFACE WATERS FROM MOTOR VEHICLES

CLEANING FACILITIES

§§321.211 - §§321.220

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; 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 authorize 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.

The adopted rulemaking implements the Memorandum of Agreement between the

TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits the TCEQ from issuing authorizations under this subchapter.

§321.211. Definitions.

§321.212. Purpose and Applicability.

§321.213. Certificate of Registration and Public Notice.

§321.214. Active Agency Permits.

§321.215. General Requirements for Discharge.

§321.216. Specific Requirements for Discharge.

§321.217. Sampling, Reporting, and Recordkeeping.

§321.218. Restrictions.

§321.219. Enforcement and Revocation.

§321.220. Annual Waste Treatment Fee.