

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§351.41 - 351.45.

Repealed §§351.41 - 351.45 are adopted without changes to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6902) and, therefore,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 2019-029-351-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 were 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 designated the Rio Grande Valley Pollution Control Authority as a regional provider for the Lower Rio Grande Valley Regional Area. The commission adopts 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 adopts the repeal of §§351.41 - 351.45, which designated 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 This subchapter is obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional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.

## **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 action is 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 351, Subchapter D, which designated 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 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, §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 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 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 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 adopt the 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 351, Subchapter D, which designated the Rio Grande Valley Pollution Control Authority as a regional wastewater service provider for the Lower Rio Grande Valley Regional Area. This subchapter was 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 rulemaking adoption will 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 would 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 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 rulemaking adoption is not subject to the Texas Coastal Management Program (CMP).

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 D: LOWER RIO GRANDE VALLEY**

### **§§351.41 - 351.45**

#### **Statutory Authority**

The rulemaking action 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 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; 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 rulemaking adoption implements TWC, §§5.103, 5.105, 5.013, and 26.081.

**§351.41. Definitions.**

§351.42. Designation of Regional Area.

§351.43. Designation of Regional Entity.

§351.44. Additional Duties of Regional Entity.

§351.45. Assistance to Department.