

The Texas Natural Resource Conservation Commission (commission or agency) proposes an amendment to §3.2. The commission's name will change to the Texas Commission on Environmental Quality on September 1, 2002, and the proposed amendment reflects this change.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

During the 77th legislative session, the agency underwent the sunset review process culminating in the enactment of House Bill (HB) 2912, which, among other things, extended the term of the agency to September 1, 2013 and changed its name to the Texas Commission on Environmental Quality.

House Bill 2912, §18.01(a), 77th Legislature, 2001, states that: “ Effective January 1, 2004: (1) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all the powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights and obligations of the Texas Commission on Environmental Quality;....”

House Bill 2912, §18.01(c) grants the commission latitude in phasing in the name change. Section 18.01(c) provides: “The Texas Natural Resource Conservation Commission shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Until January 1, 2004, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required by this section, the agency may perform any act authorized by law for the Texas Natural Resource Conservation Commission as the Texas Natural Resource Conservation Commission or as the Texas Commission on Environmental Quality. Any act of the Texas Natural

Resource Conservation Commission acting as the Texas Commission on Environmental Quality after the effective date of this Act and before January 1, 2004, is an act of the Texas Natural Resource Conservation Commission.”

In accordance with a timetable adopted by the commission on November 9, 2001, formal, public phase in of the agency name change will begin September 1, 2002.

The current name of the agency appears in a number of the commission rules; however, it is not feasible to change all these rules simultaneously to conform with the new name. Rather, the commission will take a two-prong approach in effectuating the name changes in its rules. First, the commission proposes through this limited rulemaking to change key provisions of its rules, such as the name on the seal and address of the chief clerk in 30 TAC Chapter 1 (being proposed concurrently in this issue of the *Texas Register*) and the definition of “commission” in this chapter, effective September 1, 2002. Secondly, the balance of the commission rules in which the current name of the agency appears, or that of its predecessors (Texas Water Commission and Texas Air Control Board), will be revised on a chapter-by-chapter basis as rulemakings are convened to modify those chapters for other reasons or as part of the quadrennial review of our rules in accordance with Texas Government Code, §2001.039.

SECTION DISCUSSION

The name of the agency appearing in §3.2(8) concerning the definition of the “commission” is proposed to be changed as of September 1, 2002 to the Texas Commission on Environmental Quality.

Paragraphs (5), (11), (15), (17), (18), (21), (27), (31) - (33), and (35) - (38) are proposed to be amended to make minor grammatical and administrative revisions.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rule is in effect, there will be no fiscal impacts to units of state or local government as a result of administration and enforcement of the proposed rule.

This rulemaking is intended to implement certain provisions of HB 2912. This bill changed the name of the commission to the Texas Commission on Environmental Quality, effective January 1, 2004. In order to comply with the name change, this rulemaking is intended to update the name of the agency in the existing Chapter 3 definitions rule, effective September 1, 2002.

The proposed rulemaking only affects the agency. No other units of state and local government are affected by this proposal. The commission does not anticipate significant fiscal implications due to implementation of the proposed amendment.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from administration of the proposed rule would be compliance with the terms of HB 2912 regarding the change of the agency's name to the Texas Commission on Environmental

Quality. In order to comply with the name-change provision of HB 2912, this rulemaking is intended to update the name of the agency in the existing Chapter 3 definitions rule, effective September 1, 2002.

The proposed rulemaking only affects the agency. No individuals or businesses should be affected by these changes; therefore, there are no anticipated costs to individuals and businesses due to implementation of this rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to small or micro-businesses as a result of the proposed amended section, which is intended to implement provisions of HB 2912 concerning the change of the agency's name to the Texas Commission on Environmental Quality. In order to comply with the name-change provision of HB 2912, this rulemaking is intended to update the name of the agency in the existing Chapter 3 definitions rule, effective September 1, 2002.

The proposed rulemaking only affects the agency. No small or micro-businesses should be affected by these changes; therefore, there are no anticipated costs to small or micro-businesses due to implementation of this rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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 that statute. A "major environmental rule" means a rule the specific intent of which is 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 proposal does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking merely proposes to conform certain rules to state statutory requirements relating to the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the proposed rule is to modify certain chapters of the commission rules to reflect the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912. Promulgation of the proposed rule would be

neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor 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. In other words, no private property will be affected in any way by this rule. There are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-089-003-AD. Comments must be submitted by 5:00 p.m. on April 1, 2002. For further information, please contact Auburn Mitchell, Office of Environmental Policy, Analysis, and Assessment, (512) 239-1973.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed amendment implements HB 2912, 77th Legislature, 2001.

Chapter 3

Definitions

§3.2

§3.2. Definitions.

The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) **CERCLA (Superfund)** - Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code (USC), §§9601 - 9675 (1980, as amended).

(6) - (7) (No change.)

(8) **Commission** - As of September 1, 2002, the agency's name shall be the Texas Commission on Environmental Quality. [The Texas Natural Resource Conservation Commission.] In these rules, the term "commission" means the commissioners acting in their official capacity.

(9) - (10) (No change.)

(11) **CWA** - Clean Water Act, Federal Water Pollution Control Act, 33 USC, [United States Code] §§1251 - 1387 (1977, as amended).

(12) - (14) (No change.)

(15) **EPCRA** - The Emergency Planning and Community Right-To-Know Act, 42 USC, [United States Code] §§11001 - 11050 (1986).

(16) (No change.)

(17) **FCAA** - The Federal Clean Air Act, 42 USC, [United States Code] §§7401 - 7671q (1970, as amended).

(18) **FIFRA** - The Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC, [United States Code] §§135 - 136y (1972, as amended).

(19) - (20) (No change.)

(21) **NEPA** - The National Environmental Policy Act, 42 USC, [United States Code] §§4321 - 4370e (1969, as amended).

(22) - (26) (No change.)

(27) **PPA** - Pollution Prevention Act, 42 USC, [United States Code] §§13101 - 13109 (1990).

(28) - (30) (No change.)

(31) **RCRA** - The Resource Conservation and Recovery Act, 42 USC, [United States Code] §§6901 - 6991i (1976, as amended).

(32) **SARA** - Superfund Amendments and Reauthorization Act, Public Law Number 99-499, 100 Stat. 1613 (codified as amended in scattered sections of 10 USC [United States Code], 26 USC [United States Code], and 42 USC [United States Code]) (1986).

(33) **SDWA** - Safe Drinking Water Act, 42 USC, [United States Code] §§300f - 300j-26 (1974, as amended).

(34) (No change.)

(35) **TCAA** - The Texas Clean Air Act, Texas Health and Safety Code (THSC), Chapter 382.

(36) **TRCA** - The Texas Radiation Control Act, THSC [Texas Health and Safety Code], Chapter 401.

(37) **TSCA** - Toxic Substances Control Act, 15 USC, [United States Code] §§2601 - 2692 (1976, as amended).

(38) **TSWDA** - The Texas Solid Waste Disposal Act, THSC [Texas Health and Safety Code], Chapter 361.