

The Texas Natural Resource Conservation Commission (commission) proposes new §7.102, concerning the Memorandum of Understanding (“MOU”) between the Texas State Soil and Water Conservation Board (board) and the Texas Natural Resource Conservation Commission.

EXPLANATION OF PROPOSED RULE

The MOU will set forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for nonpoint source (NPS) pollution programs to protect the quality of the state’s water, fulfilling the requirements of Agriculture Code, Title 7, Chapter 201, Section 201.026.

The MOU contains procedures for handling of complaint investigations.

FISCAL NOTE

Steve Minick, Budget and Planning Division, has determined that for each of the first five years the section is in effect, there will be no fiscal implications for state and local units of government as a result of administering the section.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule there will be efficient coordination between the board and the commission for the purpose of protecting water quality. There will be no effect on small

businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, Section 2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to adopt an MOU between the board and the commission. This MOU will define the jurisdictional authority of both agencies for NPS pollution programs and it will provide for procedural mechanisms relating to water quality protection and NPS pollution programs. The MOU will not burden private real property as it does not propose any substantive regulations impacting private real property.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log No. 96126-007-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, fax (512) 239-5687. Written comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the Texas Register. For further information concerning this proposal, please contact Darrell Williams, Agriculture & Watershed Management Division, (512)239-4480.

STATUTORY AUTHORITY

The new section is proposed under the Water Code, §5.103, which authorizes the commission to adopt rules as necessary for the performance of its functions, and Agriculture Code, Title 7 Chapter 201, §201.026, which provides authorization for a coordination of efforts between the State Soil and Conservation Board and the Texas Natural Resource Conservation Commission relating to NPS pollution programs.

There are no other rules, codes, or statutes that will be effected by this proposal.

§7.102. Adoption of Memoranda of Understanding between The Texas State Soil and Water Conservation Board and The Texas Natural Resource Conservation Commission.

(a) The memorandum of understanding between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission, which will set forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for nonpoint source pollution programs.

(1) Whereas, the Texas State Soil and Water Conservation Board, here within called the Board, is the state agency with the primary responsibility for activities relating to agricultural and silvicultural nonpoint source (NPS) pollution abatement; and

(2) Whereas, the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on matters relating to agricultural and silvicultural nonpoint source pollution abatement; and

(3) Whereas, the Board shall establish and implement a water quality management plan certification program, in accordance with Senate Bill (SB) 503 of the Texas 73rd State Legislature for agricultural and silvicultural lands; and

(4) Whereas, for purposes of this Agreement, the Board is responsible for NPS pollution abatement activities on all agricultural and silvicultural land as defined by SB 503, Texas 73rd State Legislature; and

(5) Whereas, the Texas Natural Resource Conservation Commission here within known as the Commission, is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

(6) Whereas, the Commission has been designated as the lead agency for the Federal Clean Water Act, §319 program administered by the EPA; and

(7) Whereas, the Commission, as the state agency responsible for the quality of the waters of the State, shall coordinate all water quality programs of the State; and

(8) Whereas, the Commission shall coordinate all its agricultural and silvicultural NPS pollution activities with the Board; and

(9) Whereas, for the purpose of this Agreement, the Commission is responsible for the enforcement of all NPS pollution regulations, including that on agricultural and silvicultural lands as defined by existing rules of the commission; and

(10) Whereas, consistent with the intent of Federal Clean Water Act, §319, the Board and the Commission are committed to the development and implementation of a coordinated NPS pollution program for the State; and

(11) Whereas, consistent with Texas law and public policy, the Board and commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and

(12) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this Agreement, the Parties, desiring to cooperate in function and service agree as follows:

(b) The Texas Natural Resource Conservation Commission agrees to:

(1) Administer, for the State, the Federal Clean Water Act, §319 grant program for NPS pollution. The commission will be responsible for coordinating the preparation of annual grant work programs.

(2) Execute cooperative agreements and associated amendments, and grant awards and contracts. The commission will be responsible for monitoring implementation of work programs, and providing EPA with necessary financial and programmatic reporting information for non-agricultural/silvicultural surface and ground water work program elements.

(3) Implement the provisions of the EPA-approved Federal Clean Water Act, §319 management programs for non-agricultural/silvicultural surface and ground water NPS pollution.

(4) Complete, under current administrative procedures, all projects and programs for which grant funds have been awarded, under Federal Clean Water Act, §319. All future projects and programs implementing the EPA-approved Federal Clean Water Act, §319 management program for agricultural/silvicultural NPS pollution, and supported by §319 federal grants, will be administered by the Board via a separate grant with EPA.

(5) Provide to the Board all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

(6) Coordinate with the Board those compliance and enforcement actions relative to agricultural and silvicultural NPS pollution.

(7) Provide the Board with access to the commission's electronic database for all current agricultural waste management plans.

(8) Develop and maintain state guidance for all NPS pollution abatement projects other than agricultural or silvicultural NPS pollution projects as defined by this Agreement and SB 503.

(c) The Texas State Soil and Water Conservation Board agrees to:

(1) Serve as the recipient of grants from EPA for agricultural and silvicultural NPS pollution projects as defined in this Agreement and SB 503 and funded through Federal Clean Water Act, §319.

(2) Coordinate directly with the EPA on matters relating to programmatic and financial issues of agricultural and silvicultural projects funded to the Board through separate grants from EPA under Federal Clean Water Act, §319. Notify the Commission in writing on any decision made that results in a change in the programmatic or financial status of a project.

(3) Provide the EPA with required reports for all agricultural/silvicultural projects funded to the Board by Federal Clean Water Act, §319. Reports will be submitted in accordance with EPA requirements.

(4) Process citizen complaints related to agricultural and silvicultural NPS pollution. Procedures shall be consistent with the practices and standards of the commission for processing enforcement actions.

(5) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural NPS pollution project/program activities as negotiated with EPA.

(6) Develop and maintain a current electronic database to track and document the proceedings of all water quality management plans and corrective action plans. Data recorded will include, but not be limited to, the identification of applicant(s), date of application for each plan, and approval date of each plan.

(7) Provide the commission with access to the Board's electronic database for all water quality management plans. Software and equipment necessary to facilitate electronic transfer of data should be compatible with that of the commission.

(8) Refer to the commission in accordance with SB 503 any enforcement action under the jurisdiction of the commission. The Board shall provide the commission a sufficient evidentiary record to support the enforcement action including, but not limited to, original documents or "certified copies" of the original documents and hard copies of all records and documents relating to the complaint. Formal documents should be consistent with standard commission formats.

(9) Provide the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of individual water quality management plans for agricultural and silvicultural lands.

(10) Develop and maintain state guidance for agricultural or silvicultural NPS pollution as defined by this Agreement and SB 503.

(11) Provide to the commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the NPS Management Plan.

(d) Both parties agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals to be funded under Federal Clean Water Act, §319.

(2) Coordinate efforts in the development and submission of an annual work program (a "single comprehensive package" of project proposals) to EPA for Federal Clean Water Act, §319, funding.

(3) Negotiate, on an annual basis, the percentage of the administrative budget of the Federal Clean Water Act, §319 base grant funds that will accrue to each party.

(4) Maintain each party's existing level of effort required by the EPA for the implementation of §319 programs/projects.

(5) Communicate and coordinate directly with each other and the EPA on matters relating to program/project planning and implementation of NPS pollution activities/projects funded by Federal Clean Water Act, §319.

(6) Provide required reports to the EPA on NPS pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

(7) Meet semi-annually to review and discuss the state's NPS water quality program.

(8) Work together to develop criteria for the development of water quality management programs, that satisfy the state water quality standards as established by the commission.

(9) Comply with all relevant state and federal statutes and procedures, and grant conditions, including financial audits, data quality assurance and quality control, and progress reports.

(10) Cooperate on activities related to the implementation of the "Texas State Management Plan for Agricultural Chemicals in Ground Water".

(11) Handle all complaints in the following manner:

(A) The Board shall investigate all complaints against facilities for which there is a certified water quality management plan or for which one has been applied.

(B) The commission shall investigate all complaints against facilities for which a waste management plan has been approved, a permit has been issued, or a permit or authorization is required in accordance with Chapter 321 of this title (relating to Control of Certain Activities by Rule).

(C) Any general complaint received by the commission will be investigated to determine whether a permit or authorization is required of such a facility. If it is determined a permit is not required, the commission will refer the complaint to the Board as soon as possible. These facilities will have the opportunity to pursue either approval of a waste management plan through the commission or a corrective action plan or water quality management plan through their local soil and water conservation district and the Board, as the case may require.

(D) Any general complaint received by the Board will be investigated and a determination made as to whether such a facility will need to implement a corrective action plan. Those facilities which require a permit or authorization under Chapter 321 of this title will be referred to the commission as soon as possible.

(e) General conditions:

(1) Term of Agreement. The term of this MOU shall be from the effective date until termination of this agreement.

(2) Notice of Termination. Any party may terminate this Agreement upon a 90 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of the other party can this Agreement be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this Agreement shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this Agreement will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this Agreement to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on