

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of Section 70.4, concerning Annual Enforcement Report. The repeal is adopted without changes to the proposed text as published in the October 3, 1997, issue of the *Texas Register* (22 TexReg 9852). The purpose of the action is to respond to recent legislative action and to help make certain internal commission operations more efficient. This action is part of the commission's implementation of House Bills (HBs) 1133 and 1367, 75th Legislature, 1997.

EXPLANATION OF THE ADOPTED RULE

The repeal removes current §70.4, which requires the executive director to prepare an annual report of enforcement actions for the previous fiscal year. The section was created during the commission's initial consolidation of its procedural rules and was derived from previous §337.10. The commission adopted §337.10 under its broad rulemaking authority on May 24, 1995.

Recent legislative action created a specific statutory requirement for the compilation and reporting of information on the commission's enforcement actions. House Bills 1133 and 1367, 75th Legislature, 1997, added a new §5.123 to the Texas Water Code, which requires the commission to prepare an electronic report on its enforcement actions. The report must describe the enforcement actions for each type of regulatory program and include: the number of inspections; the number of notices of violations; the number of enforcement actions; the type of enforcement actions; the amount of penalties assessed, deferred, or collected; and any other information the commission determines is relevant. The report must be provided to the governor, lieutenant governor, and speaker of the house of representatives. The commission will make the electronic report available to the general public via the commission's

world wide web site. Therefore, because of the new statutory requirement, the commission believes that the separate requirements in current §70.4 are no longer necessary.

In addition, the repeal will make the commission's internal processes for developing the enforcement report more efficient and result in a report that can be more easily provided to the state's leadership and the general public. The report will be in an electronic format and it will be easily accessible and reproducible to the general public via the world wide web. Wherever possible, the commission will ensure that the electronic report contains links to related information so that additional information will be readily available. Any additional information can still be obtained on a case-by-case basis in accordance with the Public Information Act.

The commission did not prepare a regulatory impact analysis for this rule under Texas Government Code, §2001.0225. This rule concerns internal agency operations and requires no action on the part of regulated entities. Therefore, the commission has determined that this rule does not meet the definition of major environmental rule, or the applicability requirements, as provided by §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make agency operations with regard to the development of an annual enforcement report more efficient. The rule will substantially advance these specific purposes by repealing an unnecessary regulation. Promulgation and enforcement of this rule will not burden private real property which is the subject of

the rule because it concerns commission procedural rules. The following exception to the application of Texas Government Code, Chapter 2007, applies to this rule: the action imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

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

HEARING AND COMMENTERS

A public hearing on the proposed rule was held in Austin on November 3, 1997. The comment period closed November 3, 1997. An individual submitted oral testimony in opposition to the proposal on behalf of the following: Clean Water Action; East Texas Community Network; the Environmental Defense Fund; Henry, Lowerre, Johnson, Hess & Frederick; and the Texas Center for Policy Studies (Henry, Lowerre). No written comments were received.

The commenter focused on the enforcement related reporting by the commission required by HBs 1133 and 1367 and objections to elimination of current 30 TAC §70.4.

Henry, Lowerre objected to the statement in the preamble that the proposed rulemaking would be a streamlining effort. The commenter specifically noted the HBs 1133 and 1367 were not streamlining bills.

The commission agrees that the 75th Legislature did not consider HBs 1133 and 1367 to be “streamlining” legislation. However, the statute will have a streamlining effect on commission operations because it allows the agency to provide the information electronically rather than in hard copy. The commission was referring to this impact on operations in the preamble.

Henry, Lowerre commented that policy decisions are required under HBs 1133 and 1367 which need to be consistent from year to year. The commenter further stated that Texas law requires policy decisions to be made through rulemaking. Finally, the commenter stated that any policy decisions should be open to public comment, and therefore the commission should not repeal the rule but rather amend it to conform with the statute.

The commission believes that the statute is sufficiently clear with respect to the type of information that should be reported and how that information will be provided. Therefore, the commission does not believe that specific rules are necessary for stating policy concerning the enforcement report.

In addition, the repeal of §70.4 is consistent with the commission's regulatory reform goal of eliminating unnecessary rules. As noted, the commission believes that the statute is clear with respect to the type of enforcement information that is to be reported, and that a separate rule is not necessary. The commission notes that the repeal will not result in less information being available from the agency.

Regarding the consistency issue raised by the commenter, the commission believes that in order to maintain the reporting consistency necessary for the meaningful comparisons required by the statute, the commission must continue to report its data in the same manner as it collects the information using existing data systems. Therefore, the commission will not change current data collection systems or report the information in different program formats than those that are currently designed.

Henry, Lowerre commented that additional enforcement data are kept by the commission that should be included in the Annual Enforcement Report. In particular, the commenter noted data required to be reported by grant agreements with the EPA.

The commission reports enforcement information to both the legislature and the EPA using the same format. That information was made available in the current electronic annual report through links on the World Wide Web, and the commission intends to include this additional information with the annual report each year. In addition, any information not provided as part

of, or in conjunction with, the annual report can be requested through the Texas Public Information Act.

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, and Texas Health and Safety Code, §382.017. Section 5.103 requires the commission to adopt rules any time it is repealing any agency statement of general applicability that describes its procedure or practice requirements. Section 382.017 provides the commission with the authority to adopt its rules.

The adopted repeal implements Texas Water Code, §5.123.

SUBCHAPTER A : ENFORCEMENT GENERALLY

§70.4. Annual Enforcement Report.