

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 16, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Brian Christian, Division Director
Small Business and Environmental Assistance

Docket No.: 2012-0004-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 7, Memoranda of Understanding
HB 451: Don't Mess with Texas Water Program
Rule Project No. 2012-012-007-AD

Background and reason(s) for the rulemaking:

Rulemaking is necessary to implement House Bill (HB) 451, which amends Texas Water Code, Chapter 26, by adding §26.053. HB 451, 82nd Legislature, was authored by Representative Lucio III and joint-authored by Representatives Creighton, Branch, and Bohac. HB 451 was sponsored by Senator Hegar. The bill took effect September 1, 2011.

HB 451 requires the TCEQ to create a program to prevent illegal dumping that affects surface waters of Texas. The bill requires TCEQ to work with the Texas Department of Transportation (TxDOT) to place signs on major highway water crossings that notify drivers of a toll-free number to call to report illegal dumping.

HB 451 requires rulemaking, although no deadline is provided. Rulemaking is estimated to be completed by December 2012.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

Rulemaking consists of a Memorandum of Understanding (MOU) between TCEQ and TxDOT. The MOU outlines the responsibilities of both agencies in implementing this Program.

To implement HB 451, TCEQ will be required to: 1) establish a toll-free telephone number that forwards calls to the appropriate law enforcement agency; 2) coordinate participation with local governments; and 3) coordinate with TxDOT in the placement of signs.

TxDOT will be required to post signs compliant with the Program at locations identified and prioritized by the TCEQ and when previously posted signs identifying a major highway crossing or prohibiting illegal dumping are scheduled to be replaced.

B.) Scope required by federal regulations or state statutes:

HB 451 specifically requires rulemaking.

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C.) Additional staff recommendations that are not required by federal rule or state statute:

Although not specifically required by the legislation, it will be necessary for TCEQ to conduct public outreach to educate Texans about the existence of the Program.

Statutory authority:

Texas Water Code, §§5.103, 5.104(b), 26.011, 26.053

Texas Health and Safety Code, §§361.011, 361.017, 361.024

Effect on the:

A) Regulated community:

Local governments who participate in the Program may realize some fiscal implications if they need to develop infrastructure for handling enforcement of illegal dumping. It is anticipated that local governments that could incur significant costs may opt to not participate in the Program.

B) Public:

There could be a positive effect on citizens who live in an area that participates in the Program since they will have another mechanism to report illegal dumping. There is no expected fiscal impact to consumers.

C) Agency programs:

Several agency programs may be affected by the rule.

Small Business and Environmental Assistance (SBEA) staff will establish and maintain the toll-free telephone number. Staff will also manage any required agreements with participating local governments.

It will be necessary to coordinate with Information Resources staff to set up the toll-free number.

The rule will not create a group of affected persons who are not already affected by statute.

Stakeholder meetings:

SBEA held one open stakeholder meeting in Austin on November 8, 2011. Invited stakeholders included councils of government, cities, municipalities, law enforcement agencies, environmental groups, river authorities, and the general public.

In general, stakeholders expressed support for the Don't Mess with Texas Water Program. Stakeholders discussed the following issues:

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- Working with local entities and existing programs to help the public report illegal dumping. The new Program should work with and learn from existing programs.
- Using TxDOT's existing "Don't Mess with Texas" campaign to help build the Program. Many stakeholders indicated that this will help create a brand for the new Program.
- Handling and enforcement of illegal dumping complaints. Stakeholders expressed the necessity for participating local governments to be able to properly respond to reports of illegal dumping.
- Using the toll-free number hotline. Stakeholders indicated that the phone number needs to be easy for the public to use.
- Providing public outreach and education. Many stakeholders stated that a necessary part of the Program will be educating the public about the existence of the hotline and the importance of stopping illegal dumping.
- Posting road signs compliant with Program requirements. Some stakeholders suggested that signs should be posted in areas that will provide the most visibility.

Public comment:

The commission held a public hearing on August 30, 2012, at 2:00 p.m. Commission staff members were available before and after the hearing to address specific questions from those who attended the hearing. The comment period closed on September 10, 2012. The commission did not receive any comments on the proposed rule.

Significant changes from proposal:

No changes were made to the rule from proposal.

Potential controversial concerns and legislative interest:

There are no known controversial issues. Representative Lucio III filed an identical bill during the 81st Legislative Session, which passed the House but was never voted on by the Senate. Representative Lucio III has expressed the importance of this Program working with other illegal dumping programs and the Don't Mess with Texas campaign.

Does this rulemaking affect any current policies or require development of new policies?

This rulemaking does not affect current policy or require the development of new policy.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

HB 451 specifically requires rulemaking to implement this Program.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** August 10, 2012

Anticipated *Texas Register* publication date: December 21, 2012

Anticipated effective date: December 27, 2012

Six-month *Texas Register* filing deadline: February 10, 2013

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