

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 16, 2013

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

From: Caroline Sweeney, Deputy Director
Office of Legal Services

Docket No.: 2013-0348-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 7, Memoranda of Understanding
Section 7.119 Memorandum of Understanding between the Texas
Department of Transportation and the Texas Commission on
Environmental Quality
Rule Project No. 2013-019-007-LS

Background and reason(s) for the rulemaking:

This rulemaking adopts, by reference, an update to the current Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality (TCEQ) and the Texas Department of Transportation (TxDOT) addressing the TCEQ's environmental reviews of TxDOT highway (transportation) projects. The updates to the MOU are required to comply with provisions in Senate Bill (SB) 548, SB 1420, and House Bill (HB) 630 of the 82nd Legislature, 2011. The adopted legislation requires TxDOT to amend its rules related to environmental reviews of highway projects and update the relevant TCEQ/TxDOT MOU.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

30 Texas Administrative Code (TAC) §7.119 is being amended to adopt the updates to the MOU. The MOU is in 43 TAC §§2.301 - 2.308. The primary change to the updated MOU addresses newly adopted language in the Texas Transportation Code, §201.607, requiring the two agencies to include in the MOU that comments submitted to TxDOT, later than the available 45-day review period, will be considered by TxDOT to the extent possible. The updated MOU makes only slight changes to the triggers for review of a project, primarily for impaired water assessment units (impaired water bodies). Those changes are being made to comply with current federal requirements associated with the 303(d)- and TMDL-related requirements.

The updated MOU also includes a reference to a new document, environmental report, that TxDOT may request that TCEQ review. An environmental report is a document that TxDOT may choose to develop early in their process, usually prior to conducting either an Environmental Assessment or Environmental Impact Statement. Also included in the MOU is the authorization to implement electronic distribution of TxDOT highway project

information to the TCEQ, and the TCEQ comments to TxDOT. The updated MOU reorganizes and streamlines parts of the MOU.

The TCEQ rule references the text of the updated MOU between TxDOT and the TCEQ. This language is in 43 TAC §§2.301 - 2.308.

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

As required by state statute, the MOU between TxDOT and the TCEQ addressing the coordination process to review certain environmental documents related to highway projects is updated. The updated MOU reflects a requirement in Texas Transportation Code, §201.607, adopted by the 82nd Legislature, 2011, that specifies that comments submitted to TxDOT, later than the available 45-day review period, will be considered by TxDOT to the extent possible. It also adds a new document, environmental report, to the environmental review process.

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

Included in the MOU is the authorization to implement an electronic distribution of TxDOT highway project information and the TCEQ comments. The updated MOU reorganizes and streamlines parts of the MOU.

Statutory authority:

Texas Water Code (TWC), §5.102, General Powers, §5.103, Rules, §5.104, Memoranda of Understanding, and §5.105, General Policy; Texas Transportation Code, §201.607, Environmental, Historical, or Archeological Memorandum of Understanding; Texas Health and Safety Code, §382.035, Memorandum of Understanding; and Texas Transportation Code, §201.607, Environmental, Historical, or Archeological Memorandum of Understanding.

Effect on the:

A.) Regulated community:

Members of the regulated community will have readily available information on the process used by the TCEQ and TxDOT to conduct the required environmental reviews of certain highway projects. TxDOT will include the TCEQ comments in public documents. With this information the regulated community will be able to more fully participate in TxDOT's development of certain highway projects.

B.) Public:

Revising the MOU will allow the public to have readily available information on the process used by the TCEQ and TxDOT to conduct the required environmental reviews of certain highway projects. TxDOT will include TCEQ comments in public documents. The public's opportunity to review TCEQ's environmental-related comments associated with these projects enables them to more fully participate in TxDOT's development of certain highway projects.

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C.) Agency programs:

TCEQ program staff involved in the review process will now have an electronic-based process to manage their comments on coordinated TxDOT highway projects.

Public Comment:

No comments were received from the public during the June 7, thru July 8, 2013, public comment period.

Significant Changes from Proposal:

None.

Potential controversial concerns and legislative interest:

None.

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

No change in current policies. The two agencies have implemented an electronic distribution system to streamline the coordinated review process. The Office of Air is the TCEQ central point of contact for this process with TxDOT.

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

If the rulemaking does not proceed, the TCEQ will not be in compliance with the statutory language in SB 548, SB 1420, and HB 630, 82nd Regular Legislative Session, requiring TxDOT and TCEQ to update their MOU.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: June 7, 2013

Anticipated *Texas Register* adoption publication date: September 20, 2013

Anticipated effective date: September 26, 2013

Six-month Texas Register filing deadline: December, 7, 2013

Agency contacts:

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Bruce McAnally, Texas Register Coordinator, 239-2141

Attachment

The TxDOT preamble published in the May 10, 2013, edition of the *Texas Register* for adoption.

cc: Chief Clerk, 2 copies
Executive Director's Office
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Re: Docket No. 2013-0348-RUL

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