

The Texas Commission on Environmental Quality (commission) adopts an amendment to §350.1.

Section 350.1 is adopted *without change* to the proposed text as published in the May 30, 2003 issue of the *Texas Register* (28 TexReg 4274) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Texas Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the adopted amendment is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act.

According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

The adopted rule would require that engineering, geoscientific, and surveying information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer, a licensed professional geoscientist, or licensed professional surveyor and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act, the Texas Geoscience Practice Act, the Texas Professional Land Surveying Practices Act, and the licensing and registration boards under these acts. For professional engineers and professional land surveyors, this is

not a new requirement. In the existing Chapter 350 rules, engineering plans, surveys, etc. have had to be prepared by professional engineers and land surveyors, although only the requirement to use a professional land surveyor (§350.111(a)(3)) was specifically stated in the rules. The adopted rule now specifically states that all engineering, geoscientific, and surveying information shall be prepared and submitted by qualified professionals as set forth by their respective licensing and registration regulations. Qualified professionals include professional geoscientists, professional engineers, and professional land surveyors.

SECTION DISCUSSION

Adopted §350.1, Purpose, adds the requirement that all engineering, geoscientific, and surveying information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer, licensed professional geoscientist, or licensed professional surveyor and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act, the Texas Geoscience Practice Act, the Texas Professional Land Surveying Practices Act, and the licensing and registration boards under these acts.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted 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 criteria for 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 specific intent of the adopted rule is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. The adopted rule is not specifically intended to protect the environment or reduce risks to human health. The adopted rule is intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the adopted rule will 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 commission concludes that the adopted rule does not meet the definition of major environmental rule.

Furthermore, even if the adopted rulemaking did meet the definition of a major environmental rule, the amendment is not subject to Texas Government Code, §2001.0225, because it does not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an

agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted amendment to Chapter 350 does not meet any of these requirements. First, there are no federal standards that this rule would exceed. Second, the adopted rule does not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by the adopted rule. Fourth, the commission adopts this rule to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not adopt the rule solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rule and performed an assessment of whether the rule constitutes a takings under Texas Government Code, Chapter 2007. The specific intent of the rule is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The adopted rule would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the rule does not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the adopted rulemaking. The rule simply requires that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. The adopted rule does not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the adoption is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6).

The commission prepared a consistency determination for the rules under 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable

to the rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the adopted rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the adopted rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The adopted rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act.

PUBLIC COMMENT

A public hearing was not held on this rulemaking and no comments were received during the comment period, which closed June 30, 2003.

SUBCHAPTER A: GENERAL INFORMATION

§350.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; Texas Water Code, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

§350.1. Purpose.

This chapter specifies the information and procedures necessary to demonstrate compliance with the Texas Risk Reduction Program. This program provides a consistent corrective action process directed toward protection of human health and the environment balanced with the economic welfare of the citizens of this state. This program uses a tiered approach incorporating risk assessment techniques to help focus investigations, to determine appropriate protective concentration levels for human health, and when necessary, for ecological receptors. The program also sets reasonable response objectives that will protect human health and the environment and preserve the active and productive use of land.

(1) The provisions of this chapter in no way prohibit actions which should be taken by the person to mitigate emergency situations, to abate an ongoing release, or to stabilize or abate the spread of released chemicals of concern.

(2) All engineering, geoscientific, and surveying information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer, licensed professional geoscientist, or licensed professional surveyor and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act, the Texas Geoscience Practice Act, the Texas Professional Land Surveying Practices Act and the licensing and registration boards under these acts.