

The Texas Natural Resource Conservation Commission (commission or agency) adopts the amendments to §1.3 and §1.4 *without changes* to the proposed text as published in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1441) and will not be republished.

The commission's name will change to the Texas Commission on Environmental Quality on September 1, 2002, and the adopted amendments reflect this change.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

During the 77th legislative session, the agency underwent the sunset review process, culminating in the enactment of House Bill (HB) 2912, which, among other things, extended the term of the agency to September 1, 2013 and changed its name to the Texas Commission on Environmental Quality.

House Bill 2912, §18.01(a), 77th Legislature, 2001, states that: "Effective January 1, 2004: (1.) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all the powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights, and obligations of the Texas Commission on Environmental Quality;...."

House Bill 2912, §18.01(c) grants the commission latitude in phasing in the name change. Section 18.01(c) provides: "The Texas Natural Resource Conservation Commission shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change.

Until January 1, 2004, to allow for phasing in the change of the agency's name and in accordance with

the timetable established as required by this section, the agency may perform any act authorized by law for the Texas Natural Resource Conservation Commission as the Texas Natural Resource Conservation Commission or as the Texas Commission on Environmental Quality. Any act of the Texas Natural Resource Conservation Commission acting as the Texas Commission on Environmental Quality after the effective date of this Act and before January 1, 2004, is an act of the Texas Natural Resource Conservation Commission.”

In accordance with a timetable adopted by the commission on November 9, 2001, formal, public phase-in of the agency name change will begin September 1, 2002.

The current name of the agency appears in a number of the commission rules; however, it is not feasible to change all these rules simultaneously to conform with the new name. Rather, the commission will take a two-pronged approach in effectuating the name changes in its rules. First, the commission through this limited rulemaking is changing key provisions of its rules, such as the name on the seal and addresses of the agency and chief clerk in this chapter and the definition of “commission” in 30 TAC Chapter 3 (being adopted concurrently in this issue of the *Texas Register*), effective September 1, 2002. Secondly, the balance of the commission rules in which the current name of the agency appears, or that of its predecessors (Texas Water Commission and Texas Air Control Board), will be revised on a chapter-by-chapter basis as rulemakings are convened to modify those chapters for other reasons or as part of the quadrennial review of our rules in accordance with Texas Government Code, §2001.039.

SECTION BY SECTION DISCUSSION

Section 1.3, *Business Office and Mailing Address of the Agency*, is amended in subsection (a) to add "Texas Commission on Environmental Quality" to the agency mailing address, effective September 1, 2002. In subsection (b), the name of the agency appearing in the chief clerk's address is proposed to be amended to the Texas Commission on Environmental Quality, effective September 1, 2002.

Section 1.4, *Seal of the Commission*, is amended to change the name of the agency to the Texas Commission on Environmental Quality, effective September 1, 2002.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the 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 definition of 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 rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking merely proposes to conform certain rules to state statutory requirements relating to the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and assessed whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the adopted rules is to modify certain chapters of the commission rules to reflect the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912. Promulgation of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, no private property will be affected in any way by these rules. There are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program, nor will they affect any action/authorization identified in §505.11. Therefore, the proposed rules are not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A hearing was not held on this rulemaking. The comment period closed April 1, 2002 and no comments were received.

CHAPTER 1

PURPOSE OF RULES, GENERAL PROVISIONS

§1.3, §1.4

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The amendments are also adopted in accordance with HB 2912, 77th Legislature, 2001.

§1.3. Business Office and Mailing Address of the Agency.

(a) Agency offices. The agency's offices are located at Park 35, 12100 North Interstate 35, Austin. Effective September 1, 2002, the mailing address is: Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(b) Chief clerk's address. Effective September 1, 2002, the chief clerk's mailing address is: Office of Chief Clerk, Texas Commission on Environmental Quality, Mail Code 105, P.O. Box 13087,

Austin, Texas 78711-3087. The chief clerk's office is located in Austin, Park 35, Building F, 12015 North Interstate 35.

§1.4. Seal of the Commission.

Effective September 1, 2002, the seal of the commission will bear the words “Texas Commission on Environmental Quality” encircling the oak and olive branches common to other official state seals.