

The Texas Natural Resource Conservation Commission (commission or agency) proposes amendments to §1.3 and §1.4. The commission's name will change to the Texas Commission on Environmental Quality on September 1, 2002, and the proposed 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-prong approach in effectuating the name changes in its rules. First, the commission proposes through this limited rulemaking to change 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 proposed 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 proposed to be 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 proposed to be amended to change the name of the agency to the Texas Commission on Environmental Quality, effective September 1, 2002.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there are anticipated to be no significant fiscal implications to units of state or local government as a result of administration and enforcement of the proposed rules.

This rulemaking is intended to implement certain provisions of HB 2912. This bill changed the name of the commission to the Texas Commission on Environmental Quality, effective January 1, 2004. In order to comply with the name change, this rulemaking is intended to change the seal of the commission and the agency's mailing address to reflect the new name, effective September 1, 2002.

The cost to the agency to comply with this rulemaking is not anticipated to be significant. The proposed rulemaking only affects the agency. No other units of state and local government should be affected by this proposal. The commission does not anticipate significant fiscal implications due to implementation of the proposed amendments by units of state and local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from administration of the proposed rules would be compliance with the terms of HB 2912 regarding the change of the agency's name to the Texas Commission on Environmental Quality. To comply with the name-change provision of HB 2912, this rulemaking is intended to change the seal of the commission and the agency's mailing address to reflect the new name, effective September 1, 2002.

The proposed rulemaking is intended to only affect the operations of the agency by changing the seal of the commission and the agency's mailing address to reflect the name change. No individuals or businesses should be significantly affected by these changes; therefore, no significant costs are anticipated to individuals and businesses due to implementation of this rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are anticipated to be no adverse fiscal implications to small or micro-businesses as a result of the proposed amended sections, which are intended to implement provisions of HB 2912 concerning the change of the agency's name to the Texas Commission on Environmental Quality. To comply with the name-change provision of HB 2912, this rulemaking is intended to change the seal of the commission and the agency's mailing address to reflect the new name, effective September 1, 2002.

The proposed rulemaking is intended to only affect the operations of the agency by changing the seal of the commission and the agency's mailing address to reflect the name change. No small or micro-

businesses should be adversely affected by these changes; therefore, no significant costs to small or micro-businesses are anticipated due to implementation of this rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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 proposal does not meet the definition of "major environmental rule" because the rulemaking 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. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed 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 proposed 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 proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed 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 has 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 (CMP), nor will they affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-089-003-AD. Comments must be submitted by 5:00 p.m. on April 1, 2002. For further information, please contact Auburn Mitchell, Office of Environmental Policy, Analysis, and Assessment, (512) 239-1973.

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission 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 proposed amendments implement HB 2912, 77th Legislature, 2001.

CHAPTER 1

PURPOSE OF RULES, GENERAL PROVISIONS

§1.3, §1.4

§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 [The commission's] 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 [The] chief clerk's mailing address is: Office of Chief Clerk, Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], 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 [The] seal of the commission will bear the words "Texas Commission on Environmental Quality" ["Texas Natural Resource Conservation Commission"] encircling the oak and olive branches common to other official state seals.