

The Texas Natural Resource Conservation Commission (commission or agency) adopts the amendment to §3.2, *Definitions, without change* to the proposed text as published in the April 1, 2002 issue of the *Texas Register* (27 TexReg 1443) 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 amendment reflects this change.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

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 address of the chief clerk in 30 TAC Chapter 1 (being adopted concurrently in this issue of the *Texas Register*) and the definition of “commission” in this chapter, 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 DISCUSSION

The name of the agency appearing in §3.2(8) concerning the definition of the “commission” is changed as of September 1, 2002 to the Texas Commission on Environmental Quality. Paragraphs (5), (11), (15), (17), (18), (21), (27), (31) - (33), and (35) - (38) are amended to make minor grammatical and administrative revisions.

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 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 rule and performed an assessment of 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 rule 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 rule 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 rule 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 this rule. There are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rule is 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 it affect any action/authorization identified in §505.11. Therefore, the rule is 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 3
DEFINITIONS

§3.2

STATUTORY AUTHORITY

The amendment is 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 amendment is also adopted in accordance with HB 2912, 77th Legislature, 2001.

§3.2. Definitions.

The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Agency** -- The commission, executive director, and their staffs.

(2) **APA** -- The Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

(3) **Applicant** -- A person who submits an application to the commission.

(4) **Application** -- A petition or written request to the commission for an order, permit, license, registration, standard exemption, or other approval.

(5) **CERCLA (Superfund)** -- Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code (USC), §§9601 - 9675 (1980, as amended).

(6) **Chairman** -- The chairman of the commission.

(7) **Chief clerk** -- The chief clerk of the commission or any authorized individual designated by the chief clerk to act in his or her place.

(8) **Commission** -- As of September 1, 2002, the agency's name shall be the Texas Commission on Environmental Quality. In these rules, the term "commission" means the commissioners acting in their official capacity.

(9) **Commissioner** -- A member of the commission.

(10) **Contested case** -- A proceeding subject to the contested case requirements of the APA.

- (11) **CWA** -- Clean Water Act, Federal Water Pollution Control Act, 33 USC, §§1251 - 1387 (1977, as amended).
- (12) **Enforcement action** -- An action, initiated by the executive director, seeking an enforcement order.
- (13) **Enforcement order** -- Any commission order enforcing or directing compliance with any provisions; whether of statutes, rules, regulations, permits or licenses, or orders; which the commission is entitled by law to enforce or with which the commission is entitled by law to compel compliance.
- (14) **EPA** -- The United States Environmental Protection Agency, the Administrator of the EPA, or his/her designee.
- (15) **EPCRA** -- The Emergency Planning and Community Right-To-Know Act, 42 USC, §§11001 - 11050 (1986).
- (16) **Executive director** -- The executive director of the commission, or any authorized individual designated to act for the executive director.
- (17) **FCAA** -- The Federal Clean Air Act, 42 USC, §§7401 - 7671q (1970, as amended).

(18) **FIFRA** -- The Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC, §§135 - 136y (1972, as amended).

(19) **General counsel** -- The general counsel of the commission, or any authorized individual designated by the general counsel to act in his or her place.

(20) **Judge** -- A SOAH administrative law judge.

(21) **NEPA** -- The National Environmental Policy Act, 42 USC, §§4321 - 4370e (1969, as amended).

(22) **Open Meetings Act** -- Texas Open Meetings Act, Texas Government Code, Chapter 551.

(23) **Party** -- Each person named or admitted as a party in a contested case.

(24) **Permit** -- Written permission from the commission, including a license or other authorization, to engage in a business or occupation, to perform an act (such as to build, install, modify, or operate a facility), or to engage in a transaction, which would be unlawful absent such permission.

(25) **Person** -- An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(26) **Pleadings** -- Written allegations filed by parties concerning their respective claims, such as applications, protests, complaints, claims, petitions, executive director preliminary reports, answers, motions, and other similar documents, including those submitted by the executive director and the public interest counsel.

(27) **PPA** -- Pollution Prevention Act, 42 USC, §§13101 - 13109 (1990).

(28) **Protestant** -- Any person opposing, in whole or in part, an application.

(29) **Public Information Act** -- Texas Public Information Act, Texas Government Code, Chapter 552.

(30) **Public interest counsel** -- The public interest counsel of the commission, or any authorized individual designated by the public interest counsel to act in his or her place.

(31) **RCRA** -- The Resource Conservation and Recovery Act, 42 USC, §§6901 - 6991i (1976, as amended).

(32) **SARA** -- Superfund Amendments and Reauthorization Act, Public Law Number 99-499, 100 Stat. 1613 (codified as amended in scattered sections of 10 USC, 26 USC, and 42 USC) (1986).

(33) **SDWA** -- Safe Drinking Water Act, 42 USC, §§300f - 300j-26 (1974, as amended).

(34) **SOAH** -- The State Office of Administrative Hearings.

(35) **TCAA** -- The Texas Clean Air Act, Texas Health and Safety Code (THSC), Chapter 382.

(36) **TRCA** -- The Texas Radiation Control Act, THSC, Chapter 401.

(37) **TSCA** -- Toxic Substances Control Act, 15 USC, §§2601 - 2692 (1976, as amended).

(38) **TSWDA** -- The Texas Solid Waste Disposal Act, THSC, Chapter 361.