

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of Subchapter N, §305.521, *Adoption of Memorandum of Understanding by Reference*, as published in the October 26, 2001 issue of the *Texas Register* (26 TexReg 8496).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the repeal is to consolidate memoranda of understanding (MOU) adopted by reference with the Texas Department of Transportation (TxDOT). The repeal will remove §305.521 and replace the MOU on *Consolidated Permits, Water Quality Impacts From Certain Transportation Projects*, with a consolidated MOU which addresses other topics, such as air quality. The consolidated MOU will be adopted by reference in 30 TAC §7.119, *Memorandum of Understanding Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission*. Rule actions for §7.119 are proposed in this issue of the *Texas Register*.

SECTION DISCUSSION

The repeal will consolidate references to MOUs with TxDOT in §7.119.

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 §2001.0225, and it does not meet any of the four applicability requirements listed in §2001.0225(a). These four requirements are: 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.

Elimination of the rule allows MOUs with TxDOT to be consolidated in one location. The repeal of §305.521 places no requirements on the regulated community.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the repeal under Texas Government Code, §2007.043. The specific purpose of the repeal is to make it easier for the public and the two state agencies involved to understand the types of activities coordinated in order to prevent duplication of effort and to clarify responsibilities. The repeal will advance this purpose by consolidating existing MOUs into one location (30 TAC Chapter 7, *Memoranda of Understanding*). Promulgation and enforcement of the repeal will not burden private real property which is the subject of §2007.043, because there is merely a repeal of an agreement among state agencies in order to support a consolidation at another location in the rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the adopted rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and the commission's rules in 30 TAC Chapter 281, Subchapter B, *Consistency with the Coastal Management Program*.

The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the regulatory action is consistent with the applicable CMP goals and policies. The CMP goals in 31 TAC §501.12 applicable to this proposed rulemaking action include in general all of the ten goals, but apply more specifically to §501.12(7): to make agency and subdivision decision-making affecting Coastal Natural Resource Areas (CNRAs) efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. Repealing §305.521 and placing a revised and updated MOU under §7.119 will improve the efficiency of addressing CNRAs when they are the subject of environmental documents processed under the MOU. All of the 18 policies contained in 31 TAC §501.14 have the potential of being addressed in environmental documents prepared by TxDOT and reviewed by the commission under the provisions of the MOU. Repealing §305.521 and placing a revised and updated MOU under §7.119 will also improve the efficiency of coordinated environmental review between the two agencies. The commission solicited comments on the consistency determination. No comments were received on the consistency determination.

HEARINGS AND COMMENTERS

Proposals for this rule were published September 29, 2000 (25 TexReg 9863) and October 26, 2001 (26 TexReg 8496). Public hearings were previously held on October 24, 2000 and November 27, 2001. The comment period for the proposal of September 29, 2000 closed on November 13, 2000, and the comment period for the proposal of October 26, 2001 closed on December 3, 2001. One person attended the hearing held on October 24, 2000, and no persons were present at the hearing of November 27, 2001. No comments were received during either the hearing or comment period on the

repeal of §305.521.

**SUBCHAPTER N: ADOPTION OF MEMORANDUM OF
UNDERSTANDING BY REFERENCE**

§305.521

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.104, which requires the commission to enter into MOUs with other state agencies to clarify and provide for their respective duties, responsibilities, or functions; TWC, §5.103, which establishes the commission's authority to adopt rules; and TWC, §5.105, which establishes commission authority to set policy.

§305.521. Adoption of Memorandum of Understanding by Reference.