

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §305.64, Transfer of Permits.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2912, 77th Legislature, 2001, amended Texas Water Code (TWC), §26.003, by adding the phrase “taking into consideration” before the words “economic development of the state.”

This proposal amends §305.64 to reflect the change made by HB 2912 to TWC.

#### SECTION DISCUSSION

The proposed amendment to §305.64(i)(8) adds the phrase “taking into consideration” before the words “economic development of the state” and would modify sentence structure to reflect the concept in TWC, §26.003, which is that economic development of the state should be taken into consideration when actions are taken to maintain the quality of water in the state, rather than the actions should be consistent with economic development.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed rule is in effect, there will be no significant fiscal implications for the agency or any other unit of state or local government due to administration and enforcement of the proposed rule.

The proposed rule is intended to implement certain provisions of HB 2912, which required the commission to clarify that economic development of the state would be one of several factors taken into consideration when actions are taken to maintain the quality of water in the state. The proposed rule would revise existing commission rules to implement the provisions of HB 2912. The proposed rule is not anticipated to result in fiscal implications for units of state and local government.

#### **PUBLIC BENEFITS AND COSTS**

Mr. Davis has also determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of implementing the proposed rule will be compliance with legislative requirements to consider economic development when taking actions to maintain the quality of water in the state.

The proposed rule would implement certain provisions of HB 2912, which required the commission to clarify that economic development of the state would be taken into consideration when actions are taken to maintain the quality of water in the state. The proposed rule would revise existing commission rules to implement the provisions of HB 2912. The proposed rule is not anticipated to result in significant fiscal implications for individuals or businesses.

#### **SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT**

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed rule, which would implement certain provisions of HB 2912, which required the commission to clarify that economic development of the state would be taken into

consideration when actions are taken to maintain the quality of water in the state. The proposed rule would revise existing commission rules to implement the provisions of HB 2912. The proposed rule is not anticipated to result in fiscal implications for small and micro-businesses.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the proposed rule is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule does not meet the definition of a major environmental rule because the specific intent of the rule is to clarify commission policy to state that the commission must take into consideration the economic development of the state. The rule substantially advances this purpose by specifically stating that the commission will take into consideration the economic development of the state when maintaining the quality of water in the state. Since the proposed rule states a policy which requires the consideration of the economic development of

the state, the proposed rule does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The proposed rule is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the requirement for consideration of the economic development of the state is inserted into policy statements which provide for the protection of the environment and the public health and safety.

In addition, the proposed rule does not exceed the four applicability requirements of Texas Government Code, §2001.0025(a)(1) - (4) in that the proposed rule does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) propose to adopt a rule solely under the general powers of the agency.

The proposed rule does not exceed a standard set by federal law because there are no such corresponding federal standards stating that the commission take into consideration the economic development of the state in maintaining the quality of water in the state. Further, the proposed rule does not exceed an express requirement of state law because it is mandated by state law. The proposed rule does not exceed the requirements of delegation agreements concerning water quality because the delegation agreements do not establish express requirements for taking into consideration the economic development of the state. Finally, this proposed rule is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of TWC, §26.003 and §26.011. The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposed rule in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 applies to the proposed rule and that the rule does not constitute a statutory or constitutional taking.

The specific purpose of the proposed rule is to conform commission policy to HB 2912, §1.26, which changed state policy to provide that the commission take into consideration the economic development of the state in maintaining water quality in the state. Before enactment of HB 2912, §1.26, the state policy on maintaining the quality of water in the state provided that the commission should maintain water quality consistent with the economic development of the state, in TWC, §26.003.

The proposed rule substantially advances the purpose stated previously by changing the policy of the commission to conform to HB 2912, §1.26.

The proposed rule does not place any burden on real property and it does not obtain any benefit to society from the proposed use of private real property because it does not directly apply to the ownership or use of a particular parcel of private real property.

Promulgation of the proposed rule setting a policy to take into consideration the economic development of the state will not constitute a taking because the proposed rule does not directly apply to the ownership or use of a particular parcel of private real property.

There are no reasonable alternative actions that the commission may take regarding this proposed rule because the policy of the state on this issue has been determined by law through the enactment of HB 2912, §1.26.

Since the proposed rule does not directly apply to the ownership or use of a particular parcel of real property, it does not burden an owner of real property in a manner which would be a statutory or constitutional taking. Specifically, the proposed rule does 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 proposed rule.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, 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 must be received by 5:00 p.m. on July 8, 2002 and should reference Rule Log Number

2002-045-305-WT. For further information, please contact Debra Barber, Policy and Regulations  
Division, at (512) 239-0412.

**SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS,  
REVOCATION, AND SUSPENSION OF PERMITS**

**§305.64**

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with 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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which provides the commission with the power necessary and convenient to carry out its responsibilities under TWC, Chapter 26.

The proposed amendment implements TWC, §26.003, relating to the policy of the state to maintain water quality.

**§305.64. Transfer of Permits.**

(a) - (h) (No change.)

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

(1) - (7) (No change.)

(8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration [and] the economic development of the state and/or would minimize the damage to the environment; and

(9) (No change.)

(j) (No change.)