

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §331.1. Section §331.1 is adopted *without change* to the proposed text as published in the June 7, 2002 issue of the *Texas Register* (27 TexReg 4915) and will not be republished.

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

House Bill (HB) 2912, 77th Legislature, 2001, amended Texas Water Code (TWC), §27.003, by adding the phrase “taking into consideration” before the words “economic development of the state.” This rulemaking amends §331.1 by replacing the reference to TWC, §27.003 with language reflecting the amended text of §27.003.

#### SECTION DISCUSSION

Section 331.1, Purpose, Scope, and Applicability, adopts an amendment which clarifies that economic development of the state would be one of the factors taken into consideration when maintaining the quality of fresh water in the state.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the adopted 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 adopted 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 preventing underground injection that may pollute the waters in the state. Since the adopted rule states a policy which requires the consideration of the economic development of the state, the adopted rule is not likely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The adopted 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 adopted rule does not exceed the four applicability requirements of Texas Government Code, §2001.0025(a)(1) - (4) in that the adopted 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) adopt a rule solely under the general powers of the agency.

The adopted rule does not exceed a standard set by federal law because there are no such corresponding federal standards relating to the commission taking into consideration the economic development of the state in preventing underground injection that may pollute the waters in the state. Further, the adopted rule does not exceed an express requirement of state law because it is mandated by state law. The

adopted rule does not exceed the requirements of a delegation agreement concerning injection wells because the delegation agreement does not establish express requirements for taking into consideration the economic development of the state. Finally, this rule is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of TWC, §27.003 and §27.019. No public comment was received on the regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

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

The specific purpose of the adopted rule is to conform commission policy to HB 2912, §1.27, which changed state policy to provide that the commission take into consideration the economic development of the state in preventing underground injection that may pollute the waters in the state. Before enactment of HB 2912, §1.27, the state policy provided that the commission should prevent underground injection that may pollute the waters in the state consistent with the economic development of the state, in TWC, §27.003.

The adopted rule substantially advances the purpose stated previously by changing the policy of the commission to conform to HB 2912, §1.27.

The adopted rule does not place any burden on real property and it does not obtain any benefit to society from the 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 adopted rule setting a policy to take into consideration the economic development of the state will not constitute a taking because the adopted 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 adopted rule because the policy of the state on this issue has been determined by law through the enactment of HB 2912, §1.27.

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

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the 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 adopted rule is not subject to the Texas Coastal Management Program.

#### PUBLIC COMMENT

No public hearing was held on this rulemaking and no comments were received during the comment period that closed on July 8, 2002.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§331.1**

#### **STATUTORY AUTHORITY**

The amendment is adopted 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 §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

#### **§331.1. Purpose, Scope, and Applicability.**

(a) The purpose of this chapter is to implement the provisions of the Injection Well Act, Texas Water Code, Chapter 27, as it applies to the commission. The implementation shall be consistent with the policy of this state to: maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries, taking into consideration the economic development of the state; prevent underground injection that may pollute fresh water; and require the use of all reasonable methods to implement this policy.

(b) This chapter applies to all injection wells and activities within the commission's jurisdiction.

(c) Exemptions from the prohibition of injection of hazardous waste authorized by 40 Code of Federal Regulations Part 148 are not within the scope of the commission's jurisdiction.