

The Texas Commission on Environmental Quality (commission) adopts amendments to §20.9, Submission of Documents, and §20.15, Petition for Adoption of Rules. The commission also repeals §20.19, Working Committees and Groups. Sections 20.9, 20.15, and 20.19 are adopted *without changes* to the proposal as published in the November 22, 2002 issue of the Texas Register (27 TexReg 10895) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted amendments and repeal are a result of the quadrennial review of this chapter (Rule Log Number 2002-014-020-AD) which was adopted in the January 3, 2003 issue of the *Texas Register* (28 TexReg 374).

SECTION BY SECTION DISCUSSION

Adopted §20.9, Submission of Documents, is reworded to amend the deadline for the submission of documents to the executive director to the time of the public meeting or the end of the comment period, whichever is later. This is necessary for a clearer understanding of document submission requirements.

Adopted §20.15, Petition for Adoption of Rules, includes an update of the agency's name. During the 77th Legislature, 2001, 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. HB 2912, §18.01(a), 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. . . .”

Section 20.19, Working Committees and Groups, is repealed. This is necessary to remove rule language that is already more appropriately addressed in 30 TAC Chapter 5, Advisory Groups.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

Staff reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action 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 principal intent of these changes is to amend Chapter 20 due to the name change of the agency from the “Texas Natural Resource Conservation Commission” to the “Texas Commission on Environmental Quality” and to revise administrative practices of the agency. The adopted amendment to §20.9 clarifies the deadline for the submission of comments and §20.19 is repealed because this language is already more appropriately addressed in another chapter. The changes are not specifically intended to protect the environment or reduce risks to human health. The changes affect the

commission's administrative procedures. Therefore, these adopted rules will not 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 commission concludes that these changes do not meet the definition of major environmental rule.

The commission invited public comment regarding the draft regulatory impact analysis determination. No comments were received regarding the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Staff conducted a takings impact assessment for these changes in accordance with Texas Government Code, Chapter 2007. The principal intent of this rulemaking is to amend Chapter 20 due to the name change of the agency from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and to revise and repeal sections relating to the commission's administrative procedures. The changes would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the changes only revise or repeal some of the commission's administrative procedures, and do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the adopted rules. Therefore, the changes will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it 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 (CMP), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the changes are not subject to the CMP.

The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

PUBLIC COMMENT

The commission held a public hearing on December 17, 2002. The comment period closed on December 23, 2002 and no comments were received.

§20.9, §20.15

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state.

§20.9. Submission of Documents.

Written documents may be submitted to the executive director no later than the time of the hearing or by 5:00 p.m. on the last day of the comment period, whichever is later.

§20.15. Petition for Adoption of Rules.

(a) Any person may petition the commission to request the adoption of a rule. Petitions shall be submitted in writing to: Executive Director, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, and shall comply with the following requirements:

- (1) each rule requested must be submitted by separate petition;
- (2) each petition must state the name and address of the petitioner;

(3) each petition shall include:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;

(C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(b) A petition may be denied for failure to comply with the requirements of subsection (a) of this section.

(c) Within 60 days after submission of a petition, the commission shall consider the petition and shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the APA.

§20.19

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state.

§20.19. Working Committees and Groups.