

The Texas Commission on Environmental Quality (commission) proposes amendments to §20.9, Submission of Documents and §20.15, Petition for Adoption of Rules. The commission also proposes the repeal of §20.19, Working Committees and Groups.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed amendments and repeal are as a result of the quadrennial review of this chapter (Rule Log Number 2002-014-020-AD) which was published in the August 23, 2002 issue of the *Texas Register* (27 TexReg 7997).

SECTION BY SECTION DISCUSSION

Proposed §20.9, Submission of Documents, is reworded to clarify the deadline for the submission of documents to the executive director. This is necessary for a clearer understanding of document submission requirements.

Proposed §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...."

Proposed §20.19, Working Committees and Groups, would be repealed.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

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

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

The proposed rules are intended to update Chapter 20 by changing the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality." Additionally, the proposed rules are intended to revise and clarify the section relating to the submission of documents to the executive director. The document submission language proposed for revisions under this rulemaking is intended to clarify when written documents may be submitted to the executive director. Last, the commission intends to repeal the working groups language that is currently addressed in Chapter 20 because it is already more appropriately addressed in Chapter 5. No significant fiscal implications are anticipated for any unit of state or local government due to implementation of the proposed rules.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be a clearer understanding of document submission requirements.

The proposed rules are intended to update Chapter 20 by changing the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality." Additionally, the proposed rules are intended to revise and clarify the section relating to the submission of documents to the executive director. The document submission language proposed for revisions under this rulemaking is intended to clarify when written documents may be submitted to the executive director. Last, the commission intends to repeal the working groups language that is currently addressed in Chapter 20, because it is already more appropriately addressed in Chapter 5. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementing the proposed rules, which are intended to update Chapter 20 by changing the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality." Additionally, these proposed rules are intended to revise and clarify the section relating to the submission of documents to the executive director. The document submission language proposed for revisions under this rulemaking is intended to clarify when written documents may be submitted to

the executive director. Last, the commission intends to repeal the working groups language that is currently addressed in Chapter 20, because it is already more appropriately addressed in Chapter 5. No significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

Staff reviewed the proposed 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 proposed rules 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 proposed amendment

to §20.9 clarifies the deadline for the submission of comments and §20.19 is repealed because this language addresses an issue that is better addressed in another chapter. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules affect the commission's administrative procedures. Therefore, these proposed 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 proposed rules do not meet the definition of major environmental rule. The commission invites public comment regarding the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Staff conducted a takings impact assessment for these proposed rules in accordance with Texas Government Code, Chapter 2007. The principal intent of this proposal 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 proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed rules 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 proposed rules. Therefore, the proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that the rules are 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 they affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP. The commission invites public comment regarding the consistency of the proposed rules with the CMP.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 17, 2002 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

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 should reference Rule Log Number 2002-060-020-AD. Comments must be received by 5:00 p.m., December 23, 2002. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

§20.9, §20.15

STATUTORY AUTHORITY

The amendments are proposed 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.

The amendments implement TWC, §5.103 and §5.105.

§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 [, provided that the commission may grant additional time for submission of additional documents].

§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 [Texas Natural Resource Conservation Commission], P.O. Box 13087, Austin, Texas 78711-3087, and shall comply with the following requirements:

(1) - (3) (No change.)

(b) - (c) (No change.)

§20.19

STATUTORY AUTHORITY

The repeal is proposed 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.

The repeal implements TWC, §5.103 and §5.105.

§20.19. Working Committees and Groups.