

The Texas Commission on Environmental Quality (commission) adopts the repeal of §7.105 *without change* to the proposal as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1401) and the proposal will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEAL

In 1998, the General Land Office and the commission entered into a memorandum of understanding regarding the governance and funding of the Galveston Bay Estuary Program. The memorandum of understanding is currently incorporated into commission rules. At the time that the agencies entered into the memorandum of understanding, the 75th Legislature funded the Galveston Bay Estuary Program through the General Land Office's Coastal Protection Fund; however, the program was administered by the commission. The following biennium, the 76th Legislature funded the Galveston Bay Estuary Program directly through the commission, and that remains the case today. Additionally, that legislature clarified the roles and responsibilities of both agencies for estuary programs and designated the commission as the lead entity by enacting Texas Water Code (TWC), §§5.601 - 5.609.

SECTION DISCUSSION

Section 7.105, Adoption of Memoranda of Understanding between the Texas General Land Office and the Texas Natural Resource Conservation Commission, is an administrative agreement between the commission and the General Land Office. The memorandum of understanding has been cancelled by a mutual agreement consistent with the memorandum of understanding between the General Land Office and the commission. The rulemaking repeals obsolete text that remains in the Texas Administrative Code.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted repeal is not subject to Texas Government Code, §2001.0225, because it does not meet the criteria for 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 specific intent of the adopted rulemaking is to repeal obsolete text that remains in the Texas Administrative Code. Therefore, it is not anticipated that the adopted repeal will 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 the adopted repeal does not meet the definition of a major environmental rule.

Furthermore, even if the adopted repeal did meet the definition of a major environmental rule, the adopted repeal is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 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.

In this case, the adopted repeal does not meet any of these requirements. First, there are no applicable federal standards that this rulemaking would address. Second, the adopted repeal does not exceed an express requirement of state law but instead implements the statutory requirement of TWC, §§5.601 - 5.609, which designates the commission as the lead agency for estuary program implementation in the state. Third, there is no delegation agreement that would be exceeded by the adopted repeal because none relates to this subject matter area. Fourth, the commission proposes the repeal under TWC, §5.104, which authorizes the commission to enter into a memorandum of understanding with any other state agency, and not solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted repeal and performed an assessment of whether the adopted repeal constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rulemaking is to repeal obsolete text that remains in the Texas Administrative Code. The adopted repeal would substantially advance this stated purpose.

Promulgation and enforcement of the adopted repeal would be neither a statutory nor a constitutional taking of private real property because the adopted repeal does not affect real property.

In particular, there are no burdens imposed on private real property and the adopted repeal would eliminate an unnecessary and obsolete rule. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted repeal will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

PUBLIC COMMENT

A public hearing was not held on this rulemaking. The public comment period closed on April 11, 2005. No comments were received.

CHAPTER 7: MEMORANDA OF UNDERSTANDING

§7.105

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.104, which authorizes the commission to enter into a memorandum of understanding with any other state agency; and TWC, §§5.601 - 5.609, which designates the commission as the lead agency for estuary program implementation in the state.

The adopted repeal implements TWC, §§5.601 - 5.609.

§7.105. Adoption of Memoranda of Understanding between the Texas General Land Office and the Texas Natural Resource Conservation Commission.