

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §§19.1, 19.3, 19.10, 19.12, and 19.14.

The new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas State Implementation Plan and as part of a program approval application for all of the commission's federally authorized, delegated, or approved programs.

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

The purpose of the proposed rules is to implement the United States Environmental Protection Agency's (EPA) new Cross Media Electronic Reporting Rule (CROMERR) as published in the October 13, 2005, issue of the *Federal Register* (70 FR 59848 – 59889), which became effective January 11, 2006. EPA finalized CROMERR to establish the framework for federal acceptability of electronic reports from regulated entities in order to satisfy specific document submission requirements from EPA regulations. Since states are delegated or authorized to implement certain federal programs, states must seek EPA approval to accept electronic documents for environmental programs that EPA has delegated, authorized, or approved states to administer in accordance with CROMERR. CROMERR does not require that any document or report be submitted electronically and it does not require that states receive electronic documents or reports. CROMERR establishes electronic reporting as an acceptable regulatory alternative, and establishes requirements to assure that electronic documents are as legally enforceable as their paper counterparts. Where states intend to receive documents or reports electronically, CROMERR specifies criteria for their acceptable submission, in order to ensure federal enforceability. Because CROMERR impacts the commission's authorized programs, creating Chapter

19 in 30 TAC to apply to all of those programs will minimize the need to revise rules for every authorized program now and in the future if EPA amends CROMERR. The process by which the TCEQ must obtain authorization for its electronic reporting program is generally the same process the agency follows in seeking approval for its environmental permitting programs. In the case of CROMERR, however, EPA has established a streamlined process that TCEQ can use to obtain such approval. That process includes a technical paper outlining how TCEQ's electronic document receiving system, and any known future enhancements, meet the requirements of CROMERR. The application must also include certification from the Office of the Attorney General that the rules and statutes in force in Texas are adequate to meet the requirements of CROMERR. This certification cannot take place until after the TCEQ rulemaking is effective. The TCEQ has until October 17, 2007, to apply for approval to continue accepting electronic reports and applications for our authorized programs for which the agency is currently receiving electronic reporting. The EPA has 75 days to determine whether the documents are administratively complete. Once the EPA determines that Texas has an administratively complete package, they have 360 days to determine if Texas has met the requirements of CROMERR. If EPA does not respond within the time frame, the system is automatically approved. For federally authorized programs not currently utilizing an electronic receiving system, there is no deadline specified; however, these programs may not initiate such systems until the agency receives approval under CROMERR.

The rules will establish a system for authorized programs to accept electronic submittal of reports, permit applications, and other specified documents using the commission's electronic document receiving system. These rules would establish that a person, as defined in 30 TAC §3.2(25),

Definitions, who fails to comply with electronic reporting procedures will be subject to the same level of enforcement as one who fails to submit written documents as required.

#### SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, November 2004.

The commission proposes new Chapter 19, Electronic Reporting, to comply with the EPA's new CROMERR as published in the October 13, 2005, issue of the *Federal Register* (70 FR 59848 – 59889), which became effective January 11, 2006. The commission proposes the rules to define 11 terms, outline the applicability of the rules, explain the process of electronic signatures, and describe enforcement remedies for noncompliance.

#### *Subchapter A - General Provisions*

##### *§19.1. Definitions.*

Section 19.1 proposes to incorporate the definitions for: authorized program; copy of record; electronic document; electronic document receiving system; electronic signature; electronic signature agreement; electronic signature device; federal program; state program; handwritten signature; and signatory.

##### *§19.3. Applicability.*

Section 19.3 proposes to set forth the applicability of Chapter 19 to persons who submit electronic final documents to the commission to comply with regulation. This section also proposes that the chapter will apply to federally authorized programs and to state programs for which the commission has announced on its public Web site that it is accepting specified electronic documents. A person may submit documents electronically only if such announcement has been made. Electronic documents must be submitted to the commission according to the requirements of Chapter 19 and following the requirements of the commission's electronic document receiving system. The commission also proposes this rule to state that documents submitted via facsimile, magnetic, or optical media are not subject to Chapter 19, consistent with CROMERR, and are therefore exempt from the requirements of this chapter.

*Subchapter B – Electronic Reporting Requirements*

*§19.10. Use of Electronic Document Receiving System.*

Section 19.10 proposes to set forth the mandate that applicable electronic documents must be submitted according to the requirements of Chapter 19 using the commission's electronic document receiving system. It further states a person may not allow another individual to use the electronic signature device unique to his or her signature.

*§19.12. Authorized Electronic Signature.*

Section 19.12 proposes that when the electronic signature device is used to create an individual's electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. The section also proposes to set forth

the directive that a signatory will protect the electronic signature device from compromise and promptly report any evidence discovered that the device has been compromised. An electronic signature device is compromised if the code or mechanism is available for use by any other individual. It further requires that electronic documents must bear a valid electronic signature if a signature would be required by the regulatory program on the paper document. This proposal stipulates an electronic signature on an electronic document is valid if: it has been created with an electronic signature device that the signatory is uniquely entitled to use for signing; the device has not been compromised; and the signatory is authorized to sign the document. This section would establish that the signatory intended to sign the document and submit it to the commission by the presence of an electronic signature.

*§19.14. Enforcement.*

Section 19.14 proposes that an electronic signature is the legal equivalent of a handwritten signature. Section 19.14 proposes that a person is subject to appropriate penalties, fines, or other remedies under the commission rules or applicable statutes for failure to comply with a reporting requirement if the individual reports electronically and fails to comply with the applicable provisions for electronic reporting. This section states that nothing in Chapter 19 limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings.

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

Nina Chamness, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the commission or other units of state or local governments as a result of administration or enforcement of

the proposed rules. The commission proposes the rules to implement the EPA's new rule for electronic reporting. For consenting participants, the commission will use the TexasOnline Web portal to access the Texas Driver License (TDL) identity verification system to allow regulated entities to report required data electronically. The commission's costs to use TexasOnline's TDL identity verification are not expected to exceed \$5,000 per year. The commission and other units of state and local governments may see cost reductions in paper and postage costs if more reporting of data is done electronically. Any cost reductions are not expected to be significant.

The commission proposes to add Chapter 19 to 30 TAC to implement CROMERR. CROMERR impacts federally authorized programs and places several requirements on the technical design of the electronic document receiving system used for federally authorized environmental programs. Chapter 19 will be an addition to existing reporting requirements specified in other program 30 TAC chapters, and will allow for the federally authorized programs and designated state programs to accept electronic submittal of reports, permit applications, and other commission documents. The commission proposes that by adding Chapter 19 to TAC, the need for future rulemaking as other programs incorporate electronic reporting will be minimized. The commission also proposes the rules to specify that a person who fails to comply with electronic reporting procedures will be subject to the same level of enforcement as one who fails to submit written documents as required. The EPA requires the Office of the Attorney General in Texas to certify the rules and statutes in effect are adequate to meet the requirements of CROMERR. This certification cannot take place until the proposed rulemaking is complete, and is not expected to have a significant fiscal impact on the Office of the Attorney General.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be more timely and accurate reporting of environmental information which will facilitate better decision making and a more informed public.

Businesses and individuals may see reductions in paper and postage costs if more reporting of data is done electronically. Any cost reductions are not expected to be significant.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses may see reductions in paper and postage costs if more reporting of data is done electronically. Any cost reductions are not expected to be significant.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking 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

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the proposed rulemaking is not subject to

§2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Texas Government Code. A “major environmental rule” is 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 primary purpose of this proposed rulemaking action is to implement the EPA’s new CROMERR as published in the *Federal Register* on October 13, 2005. The primary goal of this proposed rulemaking is to allow the commission to establish a voluntary system for the receipt of electronic documents under the commission’s federally authorized programs and designated state programs and to provide standards of compliance and enforcement. The proposed rulemaking is procedural in nature and does not address environmental risks or exposures. Therefore, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis. The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The specific primary purpose of this proposed rulemaking is to implement the EPA’s CROMERR and provide standards of compliance and enforcement for the commission to receive electronic reports and other documents under federally authorized programs and designated state programs. Promulgation and enforcement of the proposed rules will not affect private real property, because the proposed rulemaking is related to the commission’s procedural rules, rather

than substantive requirements. Implementation of the amendments will not result in any taking of real property.

#### 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.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The proposed rules may affect owners and operators subject to the federal operating permits program. If the executive director, in the future, announces that it will accept certain reports required by operating permits electronically, owners and operators will have the option to use the commission's electronic document receiving system in lieu of submitting paper documentation.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on October 3, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality located at 12100 Park 35 Circle in Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Holly Vierk, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Holly Vierk, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www.5.tceq.state.tx.us/rules/ecomments/>. All comments should reference Rule Project Number 2006-018-019-PR. The comment period closes October 9, 2006. Copies of the proposed rules can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Ellette Vinyard, Permitting and Remediation Support, at (512) 239-6085.

**SUBCHAPTER A: GENERAL PROVISIONS**

**§19.1, §19.3**

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which allows the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; §5.128, which authorizes the commission to encourage the use of electronic reporting; §26.011, which authorizes the commission to adopt rules regulating water quality; §26.345, which authorizes the commission to adopt rules regulating petroleum storage tanks; §27.019, which authorizes the commission to adopt rules regulating underground injection wells; §28.011, which authorizes the commission to make and enforce rules for the protection of underground water; §26.040, which authorizes the commission to adopt rules necessary to implement a general permit program for water quality; and §37.002, which authorizes the commission to adopt rules for the occupational licensing and registration program; Texas Health and Safety Code, §382.017, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act; §341.031, which authorizes the commission to adopt and enforce rules regulating public drinking water and implementing the Federal Safe Drinking Water Act; §361.024, which authorizes the commission to adopt rules for the management and control of solid waste; §361.121, which requires the commission to establish an electronic reporting system for holders of permits for the land application of sludge; §371.028, which authorizes the commission to adopt rules regulating management of used oil; and §374.051, which authorizes the commission to adopt rules to administer and enforce the dry cleaner

program, and the Texas Business and Commerce Code, §43.007 (electronic document recognition), which provides legal recognition of electronic records, electronic signatures, and electronic contracts.

The proposed new sections implement Texas Water Code, §5.128, relating to electronic reporting; and CROMERR, the federal program for electronic reporting, 40 Code of Federal Regulations Parts 3, 9, 51, 60, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745, and 763.

**§19.1. Definitions.**

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Authorized program**--A federal program that the United States Environmental Protection Agency (EPA) has delegated, authorized, or approved the State of Texas to administer, or a program that the EPA has delegated, authorized, or approved the State of Texas to administer in lieu of a federal program, under other provisions of 40 Code of Federal Regulations and such delegation, authorization, or approval has not been withdrawn or expired.

(2) **Copy of record**--A true and correct copy of an electronic document received by an electronic document receiving system, which can be viewed in a human-readable format that clearly and

accurately associates all the information provided in the electronic document with descriptions or labeling of the information. A copy of record includes:

(A) all electronic signatures contained in or associated with that document;

(B) the date and time of receipt; and

(C) any other information used to record the meaning of the document or the circumstances of its receipt.

(3) **Electronic document**--Any information that is submitted in digital form to satisfy requirements of an authorized program or other designated state programs. Information may include data, text, sounds, codes, computer programs, software, or databases.

(4) **Electronic document receiving system**--A set of apparatus, procedures, software, or records used to receive electronic documents.

(5) **Electronic signature**--Any information in digital form that is included in or associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content.

(6) **Electronic signature agreement**--A document drafted by the executive director and signed by an individual with respect to an electronic signature device that the individual will use to create his or her electronic signature.

(7) **Electronic signature device**--A code or other mechanism that is used to create electronic signatures.

(8) **Federal program**--Any program administered by the United States Environmental Protection Agency under any provision of 40 Code of Federal Regulations.

(9) **State program**--Any program, other than a federal program administered by the United States Environmental Protection Agency under any provision of 40 Code of Federal Regulations, that is implemented by the commission under the Texas Water Code, Texas Health and Safety Code, and other laws of the State of Texas.

(10) **Handwritten signature**--The scripted name or legal mark of an individual, made by that individual with a marking or writing instrument such as a pen or stylus and executed or adopted with the present intention to authenticate a writing in a permanent form.

(11) **Signatory**--An individual authorized to and who signs a document using a format acceptable to the commission.

**§19.3. Applicability.**

(a) This chapter applies to:

(1) persons, as defined in §3.2 of this title (relating to Definitions), and signatories who submit official, final electronic documents to the commission to satisfy requirements of:

(A) authorized programs for which the executive director has announced on the commission's public Web site that the commission is accepting specified electronic documents; or

(B) state programs for which the executive director has announced on the commission's public Web site that the commission is accepting specified electronic documents;

(2) the commission's electronic document receiving system and other software applications implemented, revised, or modified as announced by the commission; and

(3) authorized programs and state programs for which the executive director has announced on the commission's public Web site that the commission is accepting specified electronic documents.

(b) This chapter does not apply to:

(1) documents submitted via facsimile; or

(2) electronic documents submitted via magnetic or optical media such as diskette,  
compact disc, digital video disc, or tape.

**SUBCHAPTER B: ELECTRONIC REPORTING REQUIREMENTS**

**§§19.10, 19.12, 19.14**

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which allows the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; §5.128, which authorizes the commission to encourage the use of electronic reporting; §26.011, which authorizes the commission to adopt rules regulating water quality; §26.040, which authorizes the commission to adopt rules necessary to implement a general permit program for water quality; §26.345, which authorizes the commission to adopt rules regulating petroleum storage tanks; §27.019, which authorizes the commission to adopt rules regulating underground injection wells; §28.011, which authorizes the commission to make and enforce rules for the protection of underground water; and §37.002, which authorizes the commission to adopt rules for the occupational licensing and registration program; Texas Health and Safety Code, §382.017, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act; §341.031, which authorizes the commission to adopt and enforce rules regulating public drinking water and implementing the Federal Safe Drinking Water Act; §361.024, which authorizes the commission to adopt rules for the management and control of solid waste; §361.121, which requires the commission to establish an electronic reporting system for holders of permits for the land application of sludge; §371.028, which authorizes the commission to adopt rules regulating management of used oil; and §374.051, which authorizes the commission to adopt rules to administer and enforce the dry cleaner

program, and the Texas Business and Commerce Code, §43.007 (electronic document recognition), which provides legal recognition of electronic records, electronic signatures, and electronic contracts.

The proposed new sections implement Texas Water Code, §5.128, relating to electronic reporting; and CROMERR, the federal program for electronic reporting, 40 Code of Federal Regulations Parts 3, 9, 51, 60, 70, 71, 124, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745, and 763.

**§19.10. Use of Electronic Document Receiving System.**

(a) When the executive director has announced on the commission's public Web site that it is accepting specified electronic documents, individuals who submit to the commission electronic documents to satisfy requirements of authorized programs or designated state programs must use the commission's electronic document receiving system.

(b) Authorized signatories may not allow another individual to use the electronic signature device unique to his or her signature.

**§19.12. Authorized Electronic Signature.**

(a) When the electronic signature device is used to create an individual's electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. Signatories shall:

(1) protect the electronic signature device from compromise; and

(2) report to the commission any evidence that the device has been compromised,  
within one business day of the discovery.

(b) An electronic signature device is compromised if the code or mechanism is available for  
use by any other individual.

(c) An electronic document must bear the valid electronic signature of a signatory if that  
signatory is required under the authorized program or the state program to sign the paper document for  
which the electronic document substitutes.

(d) An electronic signature on an electronic document is valid if it has been created with an  
electronic signature device that the identified signatory is uniquely entitled to use for signing that  
document; the device has not been compromised; and the signatory is an individual who is authorized to  
sign the document by virtue of his or her legal status and/or his or her relationship to the entity on  
whose behalf the signature is executed.

(e) The presence of an electronic signature on an electronic document submitted to the  
commission establishes that the signatory intended to sign the electronic document and to submit it to  
the commission to fulfill the purpose of the electronic document.

**§19.14. Enforcement.**

(a) An electronic signature on an electronic document submitted to the commission is the legal equivalent of a handwritten signature on a paper document submitted to the commission.

(b) Persons, as defined in §3.2 of this title (relating to Definitions), and signatories are subject to penalties, fines, and other remedies under commission rules or applicable statutes for failure to comply with a reporting requirement of the commission if the person or signatory reports electronically and fails to comply with the applicable provisions of this chapter, applicable statutes, commission rules, and the electronic participation agreement.

(c) Nothing in this chapter limits the use of an electronic document, copy of record, or information derived from electronic documents as evidence in enforcement proceedings.