

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §19.21. Section 19.21 is adopted *without changes* to the proposed text as published in the February 29, 2008 issue of the *Texas Register* (33 TexReg 1739) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the adopted rule is to implement House Bill (HB) 1254 of the 80th Legislature, 2007. The bill, which became effective September 1, 2007, authorizes the commission to adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. The adopted new rule implements HB 1254.

SECTION DISCUSSION

Adopted new §19.21 will implement HB 1254 by stating that the commission may adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. Although the adopted section does not change specific fees, the inclusion of this section will serve as an advance notice that the commission may consider fee changes in the future for this purpose.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted 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 specific intent of this adopted rulemaking action is to implement HB 1254 of the 80th Legislature, 2007. The bill, which became effective September 1, 2007, authorizes the commission to adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. The adopted rulemaking is procedural in nature and does not address environmental risks or exposures. Therefore, the adopted rulemaking does not constitute a major environmental rule, and is not subject to a formal regulatory analysis.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule, 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.

This rulemaking does not meet any of the four applicability requirements in Texas Government Code, §2001.0225(a). Since there is no federal law establishing a standard for the commission's adjustment of fees to encourage electronic reporting, this rulemaking does not exceed a standard set by federal law. HB 1254 grants the commission authority to adjust fees as necessary to encourage electronic reporting and use of the commission's document receiving system, but states nothing further to establish a particular standard as to the manner in which the commission may do so. Since this rulemaking implements the bill

consistent with the legislation, it does not exceed the requirements of state law. This rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to assess fees, but is instead is consistent with state statute. This rulemaking is not adopted solely under the general powers of the agency because it is to implement Texas Water Code, §5.128(a), which authorizes the commission to adjust fees. The commission invited public comment regarding the draft regulatory impact analysis determination and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the adopted rulemaking action under Texas Government Code, §2007.043. The specific purpose of this adopted rulemaking is to implement HB 1254, which authorizes the commission to adjust fees to encourage electronic reporting and the use of the commission's electronic document receiving system. The adopted rule would substantially advance these purposes by giving notice to those who use the commission's electronic document receiving system that fees may be adjusted.

Promulgation and enforcement of the adopted rule would constitute neither a constitutional nor a statutory taking of private real property. There are no burdens imposed on private real property under this rule because the adopted rule neither relates to, nor has any impact on the use or enjoyment of private real property. Also, the rule does not result in a reduction in property value. The rule is only procedural in nature. Therefore, the adopted rule would 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 proposal is neither identified in the

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 CMP.

The commission invited comment regarding the consistency of this rulemaking and no comments were received.

PUBLIC COMMENT

The proposal was published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1739). The commission held a public hearing on March 27, 2008. The comment period closed on March 31, 2008.

The commission did not receive any comments.

SUBCHAPTER C: USE OF ELECTRONIC REPORTING
§19.21

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code (TWC), §5.013, which establishes the commission's general jurisdiction; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which allows the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; §5.105, which requires the commission to, by rule, establish and approve all general policy of the commission; HB 1254, which authorizes the commission to encourage the use of electronic reporting; and to adjust fees as necessary to encourage electronic reporting and use of the commission's document receiving system.

The adopted new rule implements TWC, §§5.013, 5.102, 5.103, 5.105, and 5.128 and HB 1254.

§19.21. Fees.

The commission may adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system.