

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §19.21.

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

The purpose of the proposed 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 proposed new rule implements HB 1254.

#### SECTION DISCUSSION

The commission proposes new §19.21, Fees, in Chapter 19, Electronic Reporting. The proposed new section 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 proposed 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.

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

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

The purpose of the proposed rule is to implement HB 1254, 80th Legislature, Regular Session. The bill authorizes the commission to adjust fees as necessary to encourage electronic reporting and use of the commission's electronic document receiving system, and the proposed rule would add new §19.21, Fees, to Chapter 19 to do so. The proposed new section does not change specific fees at this time, but it will

allow other sections of the TAC to be opened in the future to amend fees for those that utilize the agency's electronic document receiving system. When the commission considers specific fee changes, pertinent sections of the TAC may be opened under separate rulemakings. When future rules are proposed, the commission will conduct a fiscal analysis of proposed fee changes.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be in compliance with state law.

The proposed rule would add new section §19.21, Fees, to Chapter 19 to adjust fees as necessary to encourage electronic reporting and use of the commission's electronic document receiving system. The proposed new section does not change specific fees at this time and will not have a fiscal impact on businesses or individuals.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. The proposed rule states that the commission may adjust fees as necessary to encourage electronic reporting and use of the commission's electronic document receiving system. The proposed new section does not change specific fees at this time and will not have a fiscal impact on small or micro-businesses.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-

business in a material way for the first five years that the proposed rule is in effect.

#### 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is 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 that 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 specific intent of this proposed 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 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 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 proposes to implement 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 proposed to be consistent with state statute. This rulemaking is not proposed solely under the general powers of the agency because it is proposed to implement Texas Water Code, §5.128(a), which authorizes the commission to adjust fees. The commission invites public comment regarding this draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rulemaking action under Texas

Government Code, §2007.043. The specific purpose of this proposed 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 proposed 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 proposed 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 proposed 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 proposed rule would not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed 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 proposed rule is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 27, 2008, at 10:00 a.m. at the Texas

Commission on Environmental Quality complex 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 John Gaete, Office of Legal Services, at (512) 239-6091. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to John Gaete, MC 205, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-050-19-PR. The comment period closes March 31, 2008. Copies of the proposed rule 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 Division, (512) 239-6085.

**SUBCHAPTER C: USE OF ELECTRONIC REPORTING**

**§19.21**

STATUTORY AUTHORITY

The new rule is proposed 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; §5.128, 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 proposed new rule implements TWC, §§5.013, 5.102, 5.103, 5.105, and 5.128.

**§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.