

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §11.1 and §11.3 with changes to the proposed text as published in the May 23, 2008 issue of the *Texas Register* (33 TexReg 4123) and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 3560, 80th Legislature, 2007, relates to the transfer of the powers and duties of the Texas Building and Procurement Commission to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. This rule is necessary to update the Texas Commission on Environmental Quality rules to reflect this transfer of responsibilities.

SECTION BY SECTION DISCUSSION

Administrative changes are adopted throughout the rules to be consistent with Texas Register requirements and agency guidelines.

The adopted amendment to §11.1, Historically Underutilized Business Program and §11.3, Bid Opening and Tabulation, changes the name of the referenced agency from the Texas Building and Procurement Commission to Texas Comptroller of Public Accounts, Texas Procurement and Support Services.

In adopted §11.1, the opening paragraph relating to the commission adopting by reference the rules of the Texas Comptroller of Public Accounts is now designated as subsection (a) and an old Texas Register reference was removed and replaced with the effective date and publication reference of the transfer to the

Texas Comptroller of Public Accounts, Texas Procurement and Support Services. Added is subsection (b) that references Texas Government Code, §2161.003.

In adopted §11.3(a), references to 1 TAC §113.5(b) and an old Texas Register citation are deleted and replaced with the effective date and publication reference of the transfer to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. Adopted subsection (c), relating to the location of copies of the rule, is removed.

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 rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent of the adopted rulemaking is to implement HB 3560 and to update agency names and references to the rules. The changes are not expressly to protect the environment and reduce risks to human health and the environment.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these rules is to implement legislation and to update agency names and correct references to rules. The adopted rules will

substantially advance this stated purpose. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period and no comments were received.

PUBLIC COMMENT

An opportunity to provide public comment was offered at a public hearing in Austin on June 16, 2008. The comment period closed on June 23, 2008. No oral or written comments were received.

SUBCHAPTER A: HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

§11.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas, including TCEQ general rulemaking authority under Texas Health and Safety Code, §382.017.

The adopted amendment implements House Bill 3560, 80th Legislature, 2007.

§11.1. Historically Underutilized Business Program.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services in 34 TAC §§20.11 - 20.22 and §§20.26 - 20.28 (relating to Historically Underutilized Business Program), transferred effective September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237).

(b) The adoption of this rule is required by Texas Government Code, §2161.003, 76th Legislature, 1999.

SUBCHAPTER C: BID OPENING AND TABULATION

§11.3

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas, including TCEQ general rulemaking authority under Texas Health and Safety Code, §382.017.

The adopted amendment implements House Bill 3560, 80th Legislature, 2007.

§11.3. Bid Opening and Tabulation.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services in 34 TAC §20.35(b) (relating to Bid Submission, Bid Opening, and Tabulation), transferred effective September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237).

(b) The adoption of this rule is required by Texas Government Code, §2156.005(d), 75th Legislature, 1997.