

The Texas Commission on Environmental Quality (commission or TCEQ) adopts an amendment to §1.10.

Section 1.10 is adopted *with changes* as published in the August 22, 2008 issue of the *Texas Register* (33 TexReg 6726) and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

This rulemaking is necessary to update the Texas Commission on Environmental Quality (TCEQ) rule to reflect the number of copies required to be filed in the Office of the Chief Clerk for all documents to be considered at a commission meeting. Currently, 11 copies are required. Decreasing the number of required copies to seven or fewer, as prescribed by the Chief Clerk or General Counsel, will reduce the amount of paper necessary for commission meeting filings and significantly reduce waste.

SECTION DISCUSSION

The commission amends §1.10(d), Document Filing Procedures, to change the number of copies required for consideration at a commission meeting from 11 to seven or fewer, as prescribed by the Chief Clerk or General Counsel. The commission also amends §1.10(g) to define the acronym "SOAH" as "State Office of Administrative Hearings."

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code, §2001.001, *et seq.*, 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 §2001.0225. 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 intent of the adopted rulemaking is to decrease the number of copies of documents to be considered at a commission meeting as well as define the acronym "SOAH" as "State Office of Administrative Hearings." The changes are not expressly to protect the environment and reduce risks to human health and the environment. Therefore, the commission concludes that the adopted rule does not constitute a major environmental rule.

Furthermore, the adopted rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rule does not exceed a federal standard because there are no federal standards regulating the number of copies for commission meetings. The adopted rule does not exceed state law requirements because there are no state laws governing this area. Also, the adopted rule does not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and

an agency or representative of the federal government to implement a state and federal program regarding commission meeting filings. And finally, though this rule is being adopted under the general powers of the agency, it is not a major environmental rule, and would not trigger the fourth applicability requirement.

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 the adopted rule and performed an assessment of whether this adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rule is to update the number of copies required for consideration at a commission meeting as well as define the acronym "SOAH" as "State Office of Administrative Hearings." The adopted rule will substantially advance this stated purpose. Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden 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 regulation. In other words, this rule would not constitute a statutory or constitutional taking because there are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rule and found that it is not identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified

in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is 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 written public comments was offered. The comment period closed on September 22, 2008. No comments were received.

§1.10

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105 concerning General Policy.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, and 5.105.

§1.10. Document Filing Procedures.

(a) All documents to be considered in a commission meeting or by judges in contested cases shall be filed with the chief clerk. Hearing requests and responses shall also be filed with the chief clerk.

(b) If a docket number has been assigned, it should appear on the first page of all filed documents.

(c) Documents shall be filed by United States mail, facsimile, or hand delivery. If a person files a document by facsimile, he or she must file with the chief clerk the appropriate number of copies by mail or hand delivery within three days.

(d) The original or one copy of a document shall be filed, except for documents to be considered at a commission meeting. For documents to be considered at a commission meeting, seven copies or fewer, as prescribed by the Chief Clerk or General Counsel, shall be filed.

(e) The time of filing is upon receipt by the chief clerk as evidenced by the date stamp affixed to the document by the chief clerk, or as evidenced by the date stamp affixed to the document or envelope by the commission mail room, whichever is earlier.

(f) The chief clerk shall accept all documents presented for filing. The chief clerk's acceptance is not a determination that a document meets filing deadlines or other requirements.

(g) If the requirements of this section are not followed, the commission, or a judge in a State Office of Administrative Hearings (SOAH) proceeding, may choose not to consider the documents. In the absence of a waiver under subsection (h) of this section, the commission may choose not to consider documents filed within two days of a commission meeting.

(h) The judge may waive one or more of the requirements of this section, or impose additional filing requirements in SOAH proceedings. The commission or general counsel may waive one or more of the requirements of this section, or impose additional filing requirements for commission meetings.

(i) This section does not apply to offers of evidence during a hearing.