

The commission proposes the repeal of §70.4, concerning Annual Enforcement Report. The purpose of the proposed action is to streamline agency processes for reporting on enforcement actions. This action is also part of the commission's implementation of House Bills 1133 and 1367, 75th Legislature, 1997.

EXPLANATION OF THE PROPOSED RULES

The proposed repeal would remove current §70.4, which requires the executive director to prepare an annual report of enforcement actions for the previous fiscal year. The section was created during the commission's initial consolidation of its procedural rules and was derived from previous §337.10. The commission adopted §337.10 under its broad rule making authority on May 24, 1995.

However, recent legislative action has created a specific statutory requirement for the compilation and reporting of information on the commission's enforcement actions. House Bills 1133 and 1367, 75th Legislature, 1997, added a new §5.123 to the Texas Water Code, which requires the commission to prepare an electronic report on its enforcement actions. In accordance with statute, the commission will prepare an annual electronic report that will describe the enforcement actions for each type of regulatory program and include: the number of inspections; the number of notices of violations; the number of enforcement actions; the type of enforcement actions; the amount of penalties assessed, deferred, or collected; and any other information the commission determines is relevant. The report will be provided to the governor, lieutenant governor, and speaker of the house of representatives, and it will be made available to the general public via the commission's world wide web site. Therefore, because of the new statutory requirement, the separate requirements in current §70.4 are no longer necessary.

In addition, the repeal will streamline the development of the enforcement report and result in a report that is more accessible to the state's leadership and the general public. For example, §70.4 requires the executive director to list all inspections conducted by the commission. Since the agency conducts tens of thousands of inspections each year, the report is lengthy and resource intensive to develop. The new statute, however, requires the commission to only report numbers. Thus, the commission will be able to develop a simpler report that can be easily reproduced for the state's leadership and the public. As for the information that is required for reporting under the current §70.4, the commission will still be able to make it available on a case-by-case request, and the information could be more customized to an individual request.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeal is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the repeal.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the removal of an unnecessary regulation and the streamlining of commission processes. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency operations with regard to the development of an annual enforcement report. The rule will substantially advance these specific purposes by repealing an unnecessary regulation. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because they concern commission procedural rules. The following exception to the application of Texas Government Code, Chapter 2007, apply to this rule: The action imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the proposed rule making and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will 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.

PUBLIC HEARING

A public hearing on this proposal will be held November 3, 1997, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will

be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97158-070-AD. Comments must be received by 5:00 p.m., November 3, 1997. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §§5.103, 5.105, 5.123, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code, Health and Safety Code, and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeal implements Texas Water Code, §5.123.

CHAPTER 70 - ENFORCEMENT

SUBCHAPTER A : ENFORCEMENT GENERALLY

§70.4. Annual Enforcement Report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 17, 1997.