

The commission proposes an amendment to §55.25, concerning Public Comment Processing. The purpose of the proposed action is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for federally authorized underground injection control (UIC), Texas Pollutant Discharge Elimination System (TPDES), and Resource Conservation and Recovery Act (RCRA) permit programs.

EXPLANATION OF THE PROPOSED RULE

The proposed amendment adds a new subsection (b) to §55.25, which provides for consideration of and written response to public comments by the decision maker on permitting actions in the UIC and RCRA programs, and in the TPDES program upon delegation. The amendment provides procedures for the content and timing of commission responses. It also authorizes the executive director to call and conduct public meetings in response to public comment and provides requirements governing those hearings.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced public input on certain

federally authorized permit programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section 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 establish a system for the commission's consideration of and response to public comments on applications and draft permits for certain federally authorized permit programs. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action fulfills an obligation mandated by federal law, advances the health and safety purpose, and 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 rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, 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 September 8, 1997, at 2:00 p.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 97159-080-AD. Comments must be received by 5:00 p.m., September 8, 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 amendment is proposed under Texas Water Code, §§5.103, 5.105, 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 and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 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.

SUBCHAPTER B: HEARINGS REQUESTS, PUBLIC COMMENT

§55.25

§55.25. Public Comment Processing.

(a) The chief clerk shall deliver or mail to the executive director, the public interest counsel, the director of the Office of Public Assistance, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents timely filed with the chief clerk in response to public notice of an application.

(b) This subsection applies to applications concerning hazardous waste facilities, underground injection wells, or Texas Pollutant Discharge Elimination System (TPDES) permits. It applies to an application only when the commission has federal authorization to manage the permitting program under which the application is evaluated.

(1) Before an application is approved, the executive director shall prepare a response to all significant public comment on the draft permit raised during the public comment period. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes. The executive director shall make the response available to the public.

(A) If the application is acted on by the commission under §50.13 of this title (relating to Action on Application) or §55.27(a)(1) of this title (relating to Commission Action on Hearing Request), the executive director's response to public comment shall be made available to the public and filed with the chief clerk at least ten days before the commission acts on the application. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title (relating to Action by the Executive Director), the response to public comment should be made no later than the time of the executive director's action on the application.

(2) The executive director may call and conduct public meetings in response to public comment. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law. If a contested case hearing is held on the application, the public meeting shall be conducted as part of the preliminary hearing under §80.105 of this title (relating to Preliminary Hearings), unless the executive director specifies a different time and place for the public meeting. The public comment period shall automatically be extended to the close of any public meeting. Public notice of the meeting shall be given as required by commission rule. A tape recording or written transcript of the public meeting shall be made available to the public.

(3) Any person who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under this subsection, and failed to participate in the public hearing held under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.19 of this title (relating to Notice of Commission Action, Motion for Rehearing) or §55.27 of this title (relating to Commission Action on Hearing Request) or §80.271 of this title (relating to Motion for Rehearing) or may file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration) only to the extent of the changes from the draft permit to the final permit decision.

(c) [b] This subsection applies to applications other than those under subsection (b) of this section. The commission may designate an agency office to process public comment under this subsection.

(1) The designated office may evaluate and respond to public comment, other than timely hearing requests, when appropriate.

(A) If the application and timely hearing requests are considered by the commission, the designated office should prepare any response to public comment no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title [(relating to Action by the Executive Director)], any response to public comment should be made no later than the time of the executive director's action on the application.

(2) The designated office shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The applicant shall attend any such public meeting held by the designated office. When the designated office holds a public meeting it shall respond to public comment either by giving an immediate oral response or by preparing a written response. The response shall be made available to the public.

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 July 9, 1997.

The commission proposes amendments to §§80.105, 80.109, 80.115, 80.127, 80.251, 80.271, and 80.273, as well as new §80.254 and §80.274, concerning public participation and motions for rehearing. The purpose of the proposed action is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for federally authorized underground injection control (UIC), Texas Pollutant Discharge Elimination System (TPDES), and Resource Conservation and Recovery Act (RCRA) permit programs and to respond to recent legislative action.

EXPLANATION OF THE PROPOSED RULES

The proposed amendment to §80.105, concerning Preliminary Hearings, provides that a preliminary hearing is required for an enforcement matter under federally authorized UIC or TPDES permit programs. This will provide an opportunity for persons seeking to intervene to seek party status in an enforcement proceeding concerning these federally authorized programs.

The proposed amendment to §80.109, concerning Designation of Parties, provides that the parties to a contested enforcement case may include any other party granted permissive intervention by the State Office of Administrative Hearings (SOAH) administrative law judge in an enforcement proceeding concerning a UIC or TPDES permit under specified conditions.

The proposed amendment to §80.115, concerning Rights of Parties, provides that only the executive director may seek to amend or add to the violations alleged in the initiating petition in an enforcement proceeding.

The proposed amendment to §80.127, concerning Evidence, requires the executive director to make copies of all public comment received during the public comment period on a proposed RCRA, UIC, or TPDES permit or amendment part of the record. It also requires the executive director's responses to public comments to be placed in the record. The amendment also allows all other parties to a RCRA, TPDES, or UIC permit proceeding to enter into the record written responses to comments received into the record by a judge during a preliminary hearing or submitted by persons not designated as parties during a hearing.

The proposed amendment to §80.251, concerning Judge's Proposal for Decision, provides that if a proposal for decision in a permitting case for a federally authorized RCRA, TPDES, or UIC program is adverse to a party, the decision must include proposed changes to the draft permit recommended by the judge in response to public comment.

The proposed new §80.254, concerning Settlement of Enforcement Cases, provides for an agreed settlement between the executive director and the respondent of an enforcement case. The section requires the executive director and the respondent to submit the settlement to the judge, and it requires the judge to submit the proposed agreement to the commission for consideration. The new section also requires the judge to provide time to a dissenting party to file comments, and provides for the commission's consideration of those comments. The section allows the commission, after notice and opportunity for comment, to either approve or disapprove the agreement, or remand it to SOAH for a hearing. This will provide for notice and comment on proposed settlements and for settlements by fewer than all the parties to an enforcement proceeding, with commission approval.

The proposed amendments to §80.271, concerning Motion for Rehearing, and §80.273, concerning Decision Final and Appealable, make conforming changes to provide for proposed new §80.274.

Proposed new §80.274, concerning Motion for Rehearing Not Required in Certain Cases, provides that if all parties to a contested case agree, the date for filing a motion for rehearing can be shortened, not to exceed 20 days beyond the order date. This change is in response to Senate Bill 637, 75th Legislature, 1997.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced public input on certain federally authorized permit programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules

is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for certain federally authorized permit programs and respond to recent legislative action. The rules will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to these rules: the action fulfills an obligation mandated by federal law, advances the health and safety purpose, and 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 rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

PUBLIC HEARING

A public hearing on this proposal will be held September 8, 1997, at 2:00 p.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 97159-080-AD. Comments must be received by 5:00 p.m., September 8, 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 amendments are proposed under Texas Water Code, §§5.103, 5.105, 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 and other laws of Texas and to establish and approve all general policy of the commission; and under Texas Government Code, §2001.144 and §2001.145.

The proposed amendments implement Texas Water Code, §§5.103, 5.105, 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.

SUBCHAPTER C: HEARING PROCEDURES

§§80.105, 80.109, 80.115, 80.127

§80.105. Preliminary Hearings.

(a) After the required notice has been issued, the judge shall convene a preliminary hearing to consider the jurisdiction of the commission over the proceeding. A preliminary hearing is not required in an enforcement matter, except in those under federally authorized underground injection control (UIC) or Texas Pollutant Discharge Elimination System (TPDES) programs.

(b) - (d) (No change.)

§80.109. Designation of Parties.

(a) (No change.)

(b) Parties.

(1) - (5) (No change.)

(6) The parties to a contested enforcement case include:

(A) the respondent(s); [, and]

(B) any other parties authorized by statute; and [.]

(C) in proceedings alleging a violation of or failure to obtain a UIC or TPDES permit, or a state permit for the same discharge covered by a National Pollutant Discharge Elimination System (NPDES) permit that has been assumed by the state under NPDES authorization, any other party granted permissive intervention by the judge. In exercising discretion whether to permit intervention, the judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(7) - (8) (No change.)

(c) - (d) (No change.)

§80.115. Rights of Parties.

(a) A party has the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all pleadings, motions, replies, and other filed documents, receive copies of all notices issued by the commission concerning the proceeding to which the person is a party, and, as directed by the judge, otherwise fully participate as a party in the proceeding. In an enforcement proceeding, no party except the executive director may seek to amend or add to the violations alleged in the petition that initiated the case.

(b) (No change.)

§80.127. Evidence.

(a) General admissibility of evidence.

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The Texas Rules of Civil Evidence, as applied in nonjury civil cases in the district courts of this state, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The judge shall give effect to the rules of privilege recognized by law.

(2) Testimony will be received only from witnesses called by a party or the judge. The judge may allow or request testimony from any person whose position is not adequately represented by any party, subject to cross-examination by all parties. Such testimony shall only be allowed at the judge's discretion. All parties shall have an opportunity to conduct discovery of such person.

(3) Testimony offered by any witness shall be under oath.

(b) Stipulation. Evidence may be stipulated by agreement of all parties. The judge and commission will determine the weight, if any, to be accorded stipulated evidence.

(c) Prefiled testimony and exhibits. The judge may require or allow parties to prepare their direct testimony in written form if the judge determines that a proceeding will be expedited and that the interests of the parties will not be prejudiced substantially. The judge may require the parties to file and serve their direct testimony and exhibits before the beginning of the hearing. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be admitted into evidence as if read or presented orally, upon the witness' being sworn and identifying the same as a true and accurate record of what the testimony would be if given orally. The witness shall be subject to cross-examination, and the prepared testimony shall be subject to objection.

(d) Exhibits.

(1) Exhibits of a documentary character shall not exceed 8 1/2 by 11 inches unless they are folded to the required size. Maps and drawings which are offered as exhibits shall be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(2) Each exhibit offered shall be tendered for identification and placed in the record. Copies shall be furnished to the judge, each of the parties, and the hearings reporter, unless the judge rules otherwise.

(3) If an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all

objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the objection to the exclusion of the exhibit.

(e) Official notice.

(1) The judge may take official notice of all facts judicially cognizable. In addition, the judge may take official notice of any generally recognized facts within the specialized knowledge of the commission.

(2) The judge shall notify all parties of any material officially noticed, including any memoranda or data prepared by the executive director and relied upon by the commission in prior proceedings. All parties shall be afforded an opportunity to contest any material so noticed.

(f) Public comment. In Resource Conservation and Recovery Act, underground injection control, and Texas Pollutant Discharge Elimination System permit cases for which the commission has permitting authority by authorization from the federal government, the executive director shall place into the record copies of all public comment on the application received by the commission during the public comment period and copies of the executive director's responses. All parties to the proceeding may also put into the record written responses to public comments received into the record by the judge under this subsection or under §80.105 or §80.111 of this title (relating to Preliminary Hearings and Persons Not Parties).

(g) [(f)] Invoking the “rule.” At the request of any party, and subject to the discretion of the judge, witnesses may be placed under “the rule” as provided by, and subject to the conditions of, Texas Rule of Civil Procedure 267 and Texas Rule of Evidence 613.

The 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 July 9, 1997.

SUBCHAPTER F: POST HEARING PROCEDURES

§§80.251, 80.254, 80.271, 80.273, 80.274

The amendments and new sections are proposed under Texas Water Code, §§5.103, 5.105, 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 and other laws of Texas and to establish and approve all general policy of the commission; and under Texas Government Code, §2001.144 and §2001.145.

The proposed amendments and new sections implement Texas Water Code, §§5.103, 5.105, 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.

§80.251. Judge's Proposal for Decision.

(a) (No change.)

(b) Proposal for decision: adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal and, in underground injection control, Texas Pollutant Discharge Elimination System, and

Resource Conservation and Recovery Act permitting cases for which the commission's permitting authority is authorized by the federal government, proposed changes to the draft permit recommended by the judge in response to public comment, as well as findings of fact and conclusions of law which support the proposal. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(c) (No change.)

§80.254. Settlement of Enforcement Cases.

Where the executive director and the respondent have reached an agreed settlement of an enforcement case, they shall submit the settlement agreement to the judge in writing. The judge shall forward the proposed settlement agreement to the commission for consideration. If there is a party to the case that dissents from the proposed settlement, the judge shall give such party a reasonable time to file comments, and shall forward all timely filed comments to the commission together with the proposed settlement. After any required public notice and opportunity for comment on proposed settlements and consideration of the record, the commission may either approve the proposed settlement, or disapprove it and remand the case to SOAH for hearing.

§80.271. Motion for Rehearing.

(a) Filing motion. A [Except as provided by the APA, a] motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

(1) - (4) (No change.)

(b) - (e) (No change.)

§80.273. Decision Final and Appealable.

Except as provided in §80.274 of this title (relating to Motion for Rehearing not Required in Certain Cases), in [In] the absence of a timely motion for rehearing, a decision or order of the commission is final on the expiration of the period for filing a motion for rehearing. If a party files a motion for rehearing, a decision or order of the commission is final and appealable on the date of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law.

§80.274. Motion for Rehearing not Required in Certain Cases.

(a) When APA, §2001.144(a)(3) or (4) applies, a commission order is final as specified in the APA, a motion for rehearing is not required, and §80.271 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable) do not apply.

(b) The commission may issue an order that is final under APA, §2001.144(a)(4) if all parties agree to the specified date in writing or on the record, and if the specified date is not before the date the order is signed or later than the 20th day after the date the order was rendered. For purposes of this subsection, the order is rendered on the date the chief clerk mails the decision or order by first-class mail to the parties. The commission is not required to issue an order under APA, §2001.144(a)(4) even when requested by all parties. When the parties request, and the commission agrees, to issue a final order under APA, §2001.144(a)(4), each party shall thereby waive any allegations of error not in the party's exceptions to the proposal for decision, reply to exceptions, or discussed as an issue in the judge's proposal for decision.

The 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 July 9, 1997.

The commission proposes the repeal of §305.106, concerning Response to Comments. The purpose of the repeal is to remove duplicative requirements concerning responses to comments on draft permits and to complete the repeal of Chapter 305, Subchapter E.

EXPLANATION OF THE PROPOSED RULE

The proposed repeal will eliminate public comment procedures that are duplicative to those contained in §55.25, concerning Public Comment Processing. The repeal will also complete the repeal of Chapter 305, Subchapter E, which was begun during the commission's revisions of the procedural rules. Additionally, the commission is concurrently proposing amendments to §55.25.

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 enhanced consistency within the commission's procedural requirements. 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 remove duplicative requirements and increase the consistency of the commission's procedural requirements. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action significantly advances the health and safety purpose and 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 rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, 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 September 8, 1997, at 2:00 p.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 97159-080-AD. Comments must be received by 5:00 p.m., September 8, 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, 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 and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeal implements Texas Water Code, §§5.103, 5.105, 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.

SUBCHAPTER E : ACTIONS, NOTICE, AND HEARING

§305.106

§305.106. Response to Comments.

The 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 July 9, 1997.