

The Texas Natural Resource Conservation Commission (commission) adopts new §7.105, concerning Memoranda of Understanding (MOU) between the commission and the Texas General Land Office (GLO), with changes to the proposed text as published in the October 3, 1997 issue of the *Texas Register* (22 TexReg 9851).

EXPLANATION OF ADOPTED RULE

The MOU is adopted in response to House Bill 1, Article VI, Rider 11 from the 75th Legislature (1997). Texas Water Code, §5.104 requires the commission to adopt by rule any MOU between the commission and any other state agency.

The MOU sets forth the coordination of program responsibility and procedural mechanisms relating to the rider which renewed the funding mechanism for the Galveston Bay Estuary Program (GBEP) by providing funds in the amount of \$750,000 per year for two years to be transferred from the GLO to the commission and that supervision of the GBEP be through the commission. The MOU also clarifies that the term “jointly administer” requires that the GLO and the commission, in consultation with the Galveston Bay Council, an advisory council, shall not agree to any program, policy, or expenditure of resources without determining that the program, policy, or expenditure is cost-effective and an appropriate method for ensuring the restoration, maintenance, or enhancement of the natural resources in and around Galveston Bay.

A typographical error to §7.105(a) was corrected. In §7.105(b)(1), the name of the advisory council has been corrected to match the resolution that created the body. In §7.105(b)(2), a comma was added, and a typographical error was corrected. Section 7.105(b)(3) was modified to clarify that the person designated by each agency will represent only that agency. Section 7.105(c)(1) was deleted because this section applied specifically to disputes relating to expenditures from appropriated funds. Section 7.105(c)(2) was renumbered and changed to make it applicable to all disputes, including disputes relating to expenditures from appropriated funds. Section 7.105(d)(4) was deleted and the text combined with §7.105(d)(2). The last paragraph was renumbered to accommodate this deletion.

REGULATORY IMPACT ANALYSIS

A Regulatory Impact Analysis under §2001.0225 of the Texas Government Code is not required for this rule because this rule is not a “major environmental rule.” “A major environmental rule” is defined in §2001.0225 of the Government Code as 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 of a sector of the state.” The rule creates a framework for communications between the commission and the GLO for issues that arise relating to the management of the Galveston Bay Estuary Program and is a prerequisite for the transfer of funds from the GLO to the commission for implementation of the Galveston Bay Plan. These rules do not in a material way relate to risks to human health from environmental exposure, or 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.

Additionally, full regulatory impact analysis is not applicable to these rules because these amendments do not exceed a standard set by federal law, do not exceed an express requirement of state law, do not 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, and are not adopted solely under the general powers of the agency instead of under a specific state law. This rule implements state law and is specifically required by state law in §5.104 of the Texas Water Code and House Bill 1, Article VI, Rider 11 of the General Appropriations Act of the 75th Texas Legislature.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to adopt an MOU between the commission and the GLO. This MOU will define the roles of both agencies and will provide for procedural mechanisms for jointly administering the GBEP. The MOU will not burden private real property as it does not propose any substantive regulations impacting private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program. The proposed rule does not govern any of the actions that must be subject to the goals and policies of the Program, pursuant to 31 TAC §505.11.

COMMENTS

The proposed rule was published in the October 3, 1997 issue of the *Texas Register* (22 TexReg 9851), with a 30-day comment period which closed on November 3, 1997. No comments were received; however, contract negotiations between the commission and the GLO resulted in several typographical or text changes described above.

LEGAL AUTHORITY

The new section is proposed under the Water Code, §5.103, which authorizes the commission to adopt rules as necessary for the performance of its functions, and Water Code, §5.104, which requires the commission to adopt by rule any MOU between the commission and any other state agency.

MEMORANDA OF UNDERSTANDING

§7.105

§7.105. Adoption of Memoranda of Understanding between the Texas General Land Office and the Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas General Land Office (GLO) and the Texas Natural Resource Conservation Commission (commission), which sets forth the coordination of program responsibility and procedural mechanisms for the Galveston Bay Estuary Program (GBEP).

(1) Whereas, §5.104 of the Texas Water Code authorizes the commission to enter into a memorandum of understanding with any other state agency;

(2) Whereas, the 75th Legislature passed the Texas General Appropriations Act for 1998-99 and in Rider 11 directed an appropriation from the Coastal Protection Fund to implement the GBEP;

(3) Whereas, the commissioner of the GLO, pursuant to Texas Natural Resource Code, Chapter 40, is responsible for expenditures from the Coastal Protection Fund;

(4) Whereas, the Water Quality Act of 1987, §320, established the Galveston Bay National Estuary Program, now being implemented through the GBEP, a division of the commission;

(5) Whereas, the GBEP was established to develop a Comprehensive Conservation and Management Plan for Galveston Bay which is known as the Galveston Bay Plan;

(6) Whereas, the purposes of the Galveston Bay Plan are addressing threats to Galveston Bay arising from pollution, development, and overuse, and enhancing ecosystem-based management of Galveston Bay;

(7) Whereas, the Galveston Bay Plan's initiatives and implementation goals, and other Water Quality Act programs are generally within the existing jurisdiction of the commission, and the Texas Legislature has authorized the commission to broadly exercise its role in the management of aquatic and marine ecosystems, consistent with the comprehensive approach of the Galveston Bay Plan;

(8) Whereas, the 75th Legislature specifically directed that the GLO and the commission enter into a MOU to implement and to jointly administer the GBEP;

(9) Therefore, the GLO and the commission agree to the following provisions.

(b) Administration.

(1) The GLO and the commission, in consultation with the Galveston Bay Council, shall jointly administer the GBEP.

(2) For the purpose of this MOU, “jointly administer” means that the GLO and the commission, in consultation with the Galveston Bay Council, an advisory council, shall not agree to any program, policy or expenditure of resources without determining that the program, policy or expenditure is cost effective and an appropriate method for ensuring the restoration, maintenance or enhancement of the natural resources in and around Galveston Bay.

(3) Each agency shall designate one person to represent the designating agency for the purpose of interagency coordination and decision-making related to the GBEP.

(4) The GLO and the commission shall make good faith efforts to achieve consensus regarding the programs, policies and expenditures related to the implementation and administration of the GBEP.

(c) Dispute Resolution.

The GLO and the commission shall submit to mediation or any other agreed form of alternative and appropriate dispute resolution after a matter has been referred to senior policy personnel in each agency without reaching agreement.

(d) Term of Agreement.

(1) This MOU shall be effective on the date of the last person signing the MOU.

(2) The term of this MOU shall be from the effective date until termination. This MOU may be terminated by either agency upon at least 30 days written notice.

(3) This MOU may be amended at any time by written concurrence of the signatories.

(4) Nothing in this MOU shall be construed to require either the GLO or the commission to perform any act in excess of its statutory authority.

This agency hereby certifies that the rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 22, 1997.

The Texas Natural Resource Conservation Commission (commission) adopts the amendment of §305.521 relating to adoption of Memoranda of Understanding by Reference between the commission and the Texas General Land Office (GLO). Section 305.521 is adopted without changes as published in the October 3, 1997 issue of the *Texas Register* (22 TexReg 9853).

EXPLANATION OF ADOPTED RULE

Amendments to §305.521(a)(4) are being done, in part, to relocate the MOU agreement between the commission and GLO to §7.105 in concurrent rulemaking. Chapter 7 of the commission rules is where all MOUs are to be eventually contained.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to adopt an MOU between the commission and the GLO. This MOU will define the roles of both agencies and will provide for procedural mechanisms for jointly administering the GBEP. The MOU will not burden private real property as it does not propose any substantive regulations impacting private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program (CMP).

The proposed rule does not govern any of the actions that must be subject to the goals and policies of the CMP, pursuant to 31 TAC §505.11.

LEGAL AUTHORITY

The amendment is adopted under the Water Code, §5.103, which authorizes the commission to adopt rules as necessary for the performance of its functions, and Water Code, §5.104 which requires the commission to adopt by rule any MOU between the commission and any other state agency.

CHAPTER 305

SUBCHAPTER N : MEMORANDUM OF UNDERSTANDING

§305.521

§305.521. Adoption of Memoranda of Understanding by Reference.

The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Legal Division, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

(1) the memorandum of understanding (effective April 1, 1989) between the Texas Department of Health, the Texas Air Control Board, and the Texas Water Commission, which concerns the regulation and management of municipal sewage sludge;

(2) the memorandum of understanding between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of non-hazardous wastewater that contains radioactive constituents; and

(3) the memorandum of understanding (effective February, 1992) between the Texas Department of Transportation and the Texas Water Commission, which concerns primarily the assessment of water quality impacts resulting from certain transportation projects.

This agency hereby certifies that the rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 22, 1997.