

The Texas Natural Resource Conservation Commission (commission) proposes new §7.105, concerning Memoranda of Understanding (MOU) between the commission and the Texas General Land Office (GLO).

EXPLANATION OF PROPOSED RULE

The MOU is proposed 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 proposed 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 GLO to the commission and that supervision of the GBEP be through the commission. The proposed MOU also clarifies that the term “jointly administer” means 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.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the section as proposed is in effect, there are no significant fiscal implications for state or local governments as a result of enforcement or administration of the section. Under the statutory authority for the memorandum of understanding, up to \$750,000 per year is provided to the commission for the joint administration of the GBEP. The adoption of the proposed section will have implications for the procedures under which funds for the program are managed, however, the section as proposed will have no direct effect on the costs of the commission, the GLO or units of local government.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be more efficient coordination of activities by the commission and GLO related to administration of the GBEP and more cost-effective management of the funds appropriated from the Coastal Protection Account in the General Revenue Fund. There are no anticipated economic costs to persons, including any small business, required to comply with the section as proposed.

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 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.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log No. 97173-007-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, fax (512) 239-5687. Written comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*. For further information concerning this proposal, please contact Marilyn Browning, Galveston Bay Estuary Program Manager, Water Quality Division, (281) 332-9937.

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.

There are no other rules, codes, or statutes that will be affected by this proposal.

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 Advisory 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) The GLO and the commission shall each designate one person to represent them 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.

(1) The GLO and the commission shall submit to mediation or any other agreed form of alternative and appropriate dispute resolution whenever they cannot agree on expenditures from appropriated funds.

(2) The GLO and the commission shall submit to mediation or any other agreed form of alternative and appropriate dispute resolution after the 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.

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

(4) This MOU may be terminated by either agency upon at least 30 days notice.

(5) 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

The Texas Natural Resource Conservation Commission (commission) proposes the amendment of §305.521 relating to adoption of Memoranda of Understanding by Reference between the commission and the Texas General Land Office (GLO).

EXPLANATION OF PROPOSED RULE

Proposed amendments to §305.521 (a)(4) is 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.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the section as proposed is in effect, there are no significant fiscal implications for state or local governments as a result of enforcement or administration of the section. Under the statutory authority for the memorandum of understanding, up to \$750,000 per year is provided to the commission for the joint administration of the GBEP. The adoption of the proposed section will have implications for the procedures under which funds for the program are managed, however, the section as proposed will have no direct effect on the costs of the commission, the GLO or units of local government.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will

be more efficient coordination of activities by the commission and GLO related to administration of the GBEP and more cost effective management of the funds appropriated from the Coastal Protection Account in the General Revenue Fund. There are no anticipated economic costs to persons, including any small business, required to comply with the section as proposed.

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 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.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log No. 97173-007-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, fax (512) 239-5687. Written comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*. For further information concerning this proposal, please contact Marilyn Browning, Galveston Bay Estuary Program Manager, Water Quality Division, (281) 332-9937.

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.

There are no other rules, codes, or statutes that will be affected by this proposal.

CHAPTER 305

SUBCHAPTER N : MEMORANDUM OF UNDERSTANDING

§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. [; and]

[(4) the memorandum of understanding (effective August 16, 1995) between the Texas General Land Office and the Texas Natural Resource Conservation Commission, which concerns the joint administration and implementation of the Galveston Bay Program.]

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