

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §3.2, concerning Definitions. Other changes to agency procedural rules in Chapter 10 are proposed concurrently.

EXPLANATION OF PROPOSED RULE

The proposed amendment to §3.2, concerning Definitions, will define an “amicus curiae” as a person who has no right to appear in a particular matter scheduled for a commission meeting but who wishes to submit argument or legal authority to assist the commission’s deliberation. An amicus curiae does not include the executive director, the public interest counsel, and does not include in a particular case the applicant, the respondent, or a person granted party status under 30 TAC Chapter 80, concerning Contested Case Hearings.

The rules project contains all of the definitions in Chapter 3, not just the definition of “amicus curiae.” The purpose of this is to number the individual definitions as is required by new rules adopted by the Secretary of State. The commission proposes only the addition of one definition and does not make any changes to the other definitions.

In addition to the proposed amendment of §3.2, the commission is concurrently proposing changes to Chapter 10, concerning Commission Meetings, which will add a new §10.10 to allow an amicus curiae to file a written brief concerning a matter scheduled for a commission meeting.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has 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 effective operation of the public meetings of the commission and assurance that relevant issues of interest to the public related to the commission's deliberation are identified. There are no significant economic costs anticipated for any person, including any small business, required to comply with the section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225 and has 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 the Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

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 the rule change is to add a definition of “amicus curiae.” Promulgation and enforcement of this rule amendment will not affect private real property which is the subject of the rule because the change concerns commission procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission 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 (CMP), nor will it 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 April 14, 1998, at 2:00 p.m. in Room 2210 of 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 will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205,

P.O. Box 13087, Austin, Texas 78711-3087 or by fax at (512) 239-4808. All comments must be received by Monday, April 20, 1998, and should reference Rule Log Number 98007-010-AD.

Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Richard O'Connell, Office of General Counsel, (512) 239-5528.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which authorizes the commission to adopt reasonable procedural rules to be followed in commission hearings.

The proposed amendment implements Texas Water Code, §5.103.

§3.2. Definitions.

The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency - The commission, executive director, and their staffs.

(2) Amicus curiae - A person who has no right to appear in a particular matter scheduled for a commission meeting but who wishes to submit argument or legal authority to assist the commission's deliberation. An amicus curiae does not include the executive director, the public interest counsel, and does not include in a particular case the applicant, the respondent, or a person granted party status under Chapter 80 of this title (relating to Contested Case Hearings).

(3) APA - The Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

(4) Applicant - A person who submits an application to the commission.

(5) Application - A petition or written request to the commission for an order, permit, license, registration, standard exemption, or other approval.

(6) CERCLA (Superfund) - Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code §§9601-9675 (1980, as amended).

(7) Chairman - The chairman of the commission.

(8) Chief clerk - The chief clerk of the commission or any authorized individual designated by the chief clerk to act in his or her place.

(9) Commission - The Texas Natural Resource Conservation Commission. In these rules, the term "commission" means the commissioners acting in their official capacity.

(10) Commissioner - A member of the commission.

(11) Contested case - A proceeding subject to the contested case requirements of the APA.

(12) CWA - Clean Water Act, Federal Water Pollution Control Act, 33 United States Code §§1251-1387 (1977, as amended).

(13) Enforcement action - An action, initiated by the executive director, seeking an enforcement order.

(14) Enforcement order - Any commission order enforcing or directing compliance with any provisions; whether of statutes, rules, regulations, permits or licenses, or orders; which the commission is entitled by law to enforce or with which the commission is entitled by law to compel compliance.

(15) EPA - The United States Environmental Protection Agency, the Administrator of the EPA, or his/her designee.

(16) EPCRA - The Emergency Planning and Community Right-To-Know Act, 42 United States Code §§11011-11050 (1986).

(17) Executive director - The executive director of the commission, or any authorized individual designated to act for the executive director.

(18) FCAA - The Federal Clean Air Act, 42 United States Code §§7401-7671q (1970, as amended).

(19) FIFRA - The Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §§135-136y (1972, as amended).

(20) General counsel - The general counsel of the commission, or any authorized

individual designated by the general counsel to act in his or her place.

(21) Judge - A SOAH administrative law judge.

(22) NEPA - The National Environmental Policy Act, 42 United States Code §§4321-4370d (1969, as amended).

(23) Open Meetings Act - Texas Open Meetings Act, Texas Government Code, Chapter 551.

(24) Party - Each person named or admitted as a party in a contested case.

(25) Permit - Written permission from the commission, including a license or other authorization, to engage in a business or occupation, to perform an act (such as to build, install, modify, or operate a facility), or to engage in a transaction, which would be unlawful absent such permission.

(26) Person - An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(27) Pleadings - Written allegations filed by parties concerning their respective claims, such as applications, protests, complaints, claims, petitions, executive director preliminary reports, answers, motions, and other similar documents, including those submitted by the executive director and the public interest counsel.

(28) PPA - Pollution Prevention Act - 42 United States Code §§13101-13109 (1990).

(29) Protestant - Any person opposing, in whole or in part, an application.

(30) Public Information Act - Texas Public Information Act, Texas Government Code, Chapter 552.

(31) Public interest counsel - The public interest counsel of the commission, or any

authorized individual designated by the public interest counsel to act in his or her place.

(32) RCRA - The Resource Conservation and Recovery Act, 42 United States Code §§6901-6991i (1976, as amended).

(33) SARA - Superfund Amendments and Reauthorization Act, Pub. L. No. 99-499, 100 Stat. 1613 (codified as amended in scattered sections of 10 United States Code, 26 United States Code, and 42 United States Code) (1986).

(34) SDWA - Safe Drinking Water Act, 43 United States Code §§300f-300j-26 (1974, as amended).

(35) SOAH - The State Office of Administrative Hearings.

(36) TCAA - The Texas Clean Air Act, Texas Health and Safety Code, Chapter 382.

(37) TRCA - The Texas Radiation Control Act, Texas Health and Safety Code, Chapter 401.

(38) TSCA - Toxic Substances Control Act, 15 United States Code §§2601-2692 (1976, as amended).

(39) TSWDA - The Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361.