

The Texas Natural Resource Conservation Commission (commission) proposes new §10.10, concerning Commission Meetings. Other changes to agency procedural rules in Chapter 3 are proposed concurrently.

#### EXPLANATION OF PROPOSED RULE

The rule concerns the filing of amicus curiae briefs, and is intended to assist the general counsel with the management of commission meetings. Currently, there is no agency guidance on how to file an amicus curiae brief. Therefore, law firms, associations, and others on occasion file amicus curiae briefs just days before a case will be considered at a commission agenda meeting. Typically, the briefs cover issues that have been covered by the parties in the case. When a person files an amicus curiae brief at the last moment, the parties often will complain that the brief was filed late or that there is no opportunity to respond to it.

The proposed changes will set procedure on how to file an amicus curiae brief, and set a procedure by which the parties in the case may request the opportunity to respond. The proposed new §10.10, concerning Commission Meetings, will allow an amicus curiae to file a written brief concerning a matter scheduled for a commission meeting no later than nine days before the scheduled commission meeting at which the commission will consider the matter. The written brief shall not exceed 20 pages in length. Generally, there is no opportunity to file a reply to an amicus curiae brief. However, the new section will set procedure on how to request authority to file a reply.

In addition to the proposed new §10.10, the commission is concurrently proposing changes to §3.2,

concerning Definitions, which will define an “amicus curiae.”

#### 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 allow an amicus curiae to file a written brief concerning a matter scheduled for a commission meeting at which the commission will consider the matter. Promulgation and enforcement of the rule will not affect private real property which is the subject of the rule because the changes concern 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. 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 new section 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 new section implements Texas Water Code, §5.103.

**§10.10. Amicus Curiae Briefs.**

(a) This section applies to an amicus curiae who files a written brief to assist the commission's deliberation concerning a matter scheduled for a commission meeting. Except as provided in subsection (b) of this section, a person must request that the general counsel issue a written authorization to file a brief and the general counsel must issue such authorization before the person files the brief.

(b) This subsection applies to matters scheduled for a commission meeting that concern an application or enforcement matter. An amicus curiae may file a written brief concerning such matters scheduled for a commission meeting and the amicus curiae is not required to obtain the general counsel's prior authorization to file.

(1) The brief shall not exceed 20 pages in length and may contain argument or legal authority to assist the commission's deliberation. Any brief shall be filed no later than nine days before the scheduled commission meeting at which the commission will consider the matter, and shall explain the amicus curiae's interest in the outcome of the matter.

(2) There is no opportunity to file a reply to an amicus curiae brief. However, the executive director, public interest counsel, applicant, or other person may request an exception to this paragraph and request authority to file a reply. Any request should be addressed to the general counsel and should identify any harm that would result from not granting the request, and must identify new issues raised by the amicus curiae brief. The commission or the general counsel may grant an exception to this subsection and allow the filing of a reply.

(c) All documents submitted under this section shall be filed and served according to §1.10 and §1.11 of this title (relating to Document Filing Procedures and Service on Judge, Parties, and Interested Persons).