

The Texas Natural Resource Conservation Commission (commission) proposes new §7.119, concerning the Memorandum of Understanding between Railroad Commission of Texas, Texas Department of Health, and Texas Natural Resource Conservation Commission Regarding Uranium Surface Mining, Uranium Ore Milling, and Tailings Ponds and Impoundments.

EXPLANATION OF PROPOSED RULES

The primary purpose of new rule §7.119 is to reflect the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the Texas Department of Health (TDH) by Senate Bill (SB) 1857, 75th Legislature, 1997, in an updated Memorandum of Understanding (MOU) and in related actions.

New §7.119 is proposed to adopt by reference TDH rule 25 Texas Administrative Code (TAC) §289.102, Memorandum of Understanding between Railroad Commission of Texas, Texas Department of Health, and the Texas Natural Resource Conservation Commission Regarding Uranium Surface Mining, Uranium Ore Milling, and Tailings Ponds and Impoundments, which is a new section updating the MOU regarding language related to the transfer of the source material and by-product disposal jurisdiction to the TDH. The full text of the updated MOU is concurrently proposed for adoption in Texas Department of Health rule 25 TAC §289.102. An amended §336.12 is also concurrently proposed that will cite the new §7.119 adoption by reference of the updated MOU and state where to obtain a copy of the MOU.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the new rule section as proposed is in effect, there will be no significant fiscal implications for state government. There are also no fiscal implications for units of local government.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the new rule section as proposed is in effect the public benefit anticipated will be a clearer understanding among the state agencies on their jurisdictions and on areas of cooperation. The proposed rule section will result in no increase in costs to affected parties. Significant cost savings are not anticipated to any person or business, large or small.

ECONOMIC ANALYSIS FOR SMALL BUSINESS

The commission has reviewed the proposed rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no economic effect on small businesses because the proposed rulemaking only reflects the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the TDH by SB 1857, 75th Legislature, 1997.

DRAFT REGULATORY IMPACT ANALYSIS

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

Although this rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rulemaking because it does not 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.

In addition, this rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rule MOU assists the state in the implementation of federal rules.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The primary purpose of the rules is to reflect the transfer of the source material licensing and by-product disposal jurisdiction from the commission to the TDH by SB 1857, 75th Legislature, 1997 in an updated understanding among the state agencies and in related actions. The rules will substantially advance this specific purpose by updating an MOU, adopting it by reference, and transferring the complete text of the updated MOU to TDH rule 25 TAC §289.102. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they merely pertain to an

understanding among state agencies on their joint jurisdiction and on areas of cooperation. The updated understanding places no requirements on the regulated community.

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, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposal is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Bettie Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments must be received by _____, 1998 and should reference Rule Log Number 98031-007-WS. 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 Kathy Vail at (512) 239-6637. The agencies that are parties to the understanding plan to review and respond to comments jointly.

STATUTORY AUTHORITY

This new section is proposed under the Texas Water Code, §5.104, and Texas Health and Safety Code,

§361.016 and §401.069, which requires the commission to adopt by rule any MOU or a revision to an MOU. The new section is also proposed under the Texas Radiation Control Act, Texas Health and Safety Code §§401.011, 401.051, and 401.412, and Texas Water Code §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances and to protect water in the state.

The new section implements the Texas Water Code and Texas Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§7.119. Memorandum of Understanding between Railroad Commission of Texas, Texas Department of Health, and Texas Natural Resource Conservation Commission Regarding Uranium Surface Mining, Uranium Ore Milling, and Tailings Ponds and Impoundments.

The Memorandum of Understanding between Railroad Commission of Texas, Texas Department of Health, and Texas Natural Resource Conservation Commission regarding Uranium Surface Mining, Uranium Ore Milling, and Tailings Ponds and Impoundments is adopted by reference as in complete text in Texas Department of Health rule 25 TAC §289.102 (relating to Memorandum of Understanding between Railroad Commission of Texas, Texas Department of Health, and Texas Natural Resource Conservation Commission Regarding Uranium Surface Mining, Uranium Ore Milling, and Tailings Ponds and Impoundments). If a copy of this document cannot be obtained from the Internet, a copy can be requested from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.