

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §336.12, concerning Appendix B, 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 repeal of §336.12 is adopted without changes to the proposed text as published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12193).

EXPLANATION OF ADOPTED RULE

The purpose of the repeal is to remove an obsolete Memorandum of Understanding (MOU) from the rules that is no longer needed. The continuing need for the MOU was reviewed as a result of 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. The Railroad Commission of Texas (RCT), the Texas Department of Health (TDH), and the Texas Natural Resource Conservation Commission have jointly agreed to repeal this MOU because there is no uranium surface mining, as that term is defined in §131.004(2) of the Texas Natural Resources Code, or uranium ore milling going on in Texas. Further, according to staff of the RCT, the TDH, and the TNRCC, there is little likelihood that uranium surface mining or uranium ore milling will be undertaken in Texas in the future.

SMALL BUSINESS ANALYSIS

The commission has reviewed the adopted rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no adverse economic effect on small businesses because the rulemaking only repeals a MOU that is no longer needed and does not add any new requirements.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted 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).

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. The rulemaking simply repeals MOU that is no longer needed. This benefits the state and the state agencies involved by eliminating rule requirements that are no longer needed, which, in turn, tends to allow reallocation of resources that would otherwise be spent on the MOU. Thus, not only is there an economic benefit by not having to keep track of which MOU provisions apply to each agency, but an environmental and public health benefit as well, because this allows more funds to be expended to protect the environment.

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.

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 rulemaking is to eliminate a MOU that is no longer needed. The rules will substantially advance this specific purpose by repealing §336.12 (relating to Appendix B. 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). Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they merely repeal a MOU among state agencies on their joint jurisdiction and areas of cooperation.

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 adoption is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed January 4, 1999. No comments were received.

STATUTORY AUTHORITY

This rule is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.104, which requires the commission to adopt any MOU by rule and implies MOUs shall also be repealed by rule; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule and implies MOU policy can be repealed by rule; and §26.011, which requires the commission to control the quality of water by rule.

SUBCHAPTER A : GENERAL PROVISIONS

§336.12

§336.12. Appendix B. 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.