

The Texas Natural Resource Conservation Commission (commission) proposes 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.

EXPLANATION OF PROPOSED RULES

The purpose of the repeal is to remove a Memorandum of Understanding (MOU) from the rules that is no longer needed because there are no active uranium surface mines or uranium ore milling sites and no new ones are expected in the future. Therefore, the participating state agencies have jointly agreed to elimination of this MOU. 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.

Section 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Regarding Uranium Surface Mining, Uranium Ore Milling, and Tailings Ponds and Impoundments) is proposed to be repealed.

FISCAL NOTE

Mr. Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the repeal 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. Horvath has also determined that for the first five years the repeal as proposed is in effect the public benefit anticipated will be the elimination of an MOU that is no longer needed. The proposed repeal will result in no increase in costs to affected parties. Cost savings are not anticipated to any person or business, large or small.

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).

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 rulemaking merely eliminates an MOU among state agencies that is no longer needed.

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 eliminate an 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 an agreement 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 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 98031-336-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.

STATUTORY AUTHORITY

This repeal 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 repeal 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 gives the commission 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.

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

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.