

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §1.5, concerning Records of the Agency, with changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 48). This action is necessary to correct statutory references; to clarify the rule; and to make the rule more accurately reflect the requirements of the Public Information Act, records retention laws, and agency practice.

In addition, the commission is concurrently adopting the repeal of 30 TAC §305.46, concerning confidentiality of certain material. The repeal removes requirements that essentially duplicate those in §1.5. This action is published in this edition of the *Texas Register*.

The commission has also conducted its review of the rules in 30 TAC Chapter 1, as required by the General Appropriations Act, Article IX, §167. The adopted notice of review is concurrently published in the Rules Review section of this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The amendments to §1.5 result from the commission's review of Chapter 1. That review showed the need to delete an inaccurate statutory reference from the current rules and to clarify them. In addition, the commission determined that it was necessary to update the rules to more accurately reflect the Texas Public Information Act, records retention laws, and commission practices.

The changes are made to subsection (d), concerning the confidentiality of information. The subsection provides requirements governing the designation of confidential information. The commission proposed

to amend subsection (d)(1) to clarify that the provisions concerning marking of information claimed to be confidential apply only to permit applicants and persons submitting information to the commission in response to a bid solicitation. As discussed in the ANALYSIS OF TESTIMONY in this preamble, the commission has further revised the adopted rule in response to comments to provide that the requirement concerning marking of information claimed to be confidential also applies to a person making a claim of confidentiality under Texas Health and Safety Code, §382.041(a). Other changes to subsection (d)(1) are to delete language concerning availability of the information, as other subsections of the rule address handling of open records requests; and to delete an unnecessary reference to 18 United States Code, §1905. In addition, language concerning the handling of open records requests is added to subsection (d)(2) and (3). The new language lays out conditions under which the executive director would request disclosure determinations from the attorney general. Language concerning the return or withdrawal of information is deleted to make the rule more clearly consistent with state records retention laws (Texas Government Code, Chapter 441, Subchapter L). Other changes are to clarify the language of the rule.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns internal commission practices. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004,

which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas Water Code, §5.103, requires the commission to adopt rules to carry out its powers, and §5.105 requires the commission to adopt policy by rule.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make minor corrections to statutory references, to add provisions that reflect agency practice concerning certain open records requests, and to make the rule more clearly consistent with state records laws. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns only procedural requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the 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, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and general agency operations. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the comment period closed on February 1, 1999. No oral comments were received at the public hearing. Written comments were received from Baker & Botts, on behalf of the Texas Industry Project (TIP); BP Amoco Corporation (Amoco); the Texas Chemical Council (TCC); and the Texas Oil and Gas Association (TXOGA).

ANALYSIS OF TESTIMONY

TIP commented that the proposed change to the provisions in §1.5(d)(1), concerning marking of documents claimed to be confidential does not clarify these provisions, but rather narrows the existing rule and might “limit the class of persons or type of information that can be considered confidential.” In particular, TIP expressed concern that information submitted to the commission in connection with the agency's air programs might not be kept confidential as a result of the rule change. TIP noted that the Texas Clean Air Act, Texas Health and Safety Code, §382.041, does not limit information that may be claimed to be confidential to information submitted by permit applicants. TIP also suggested that the proposed rule change might prevent companies from making claims of confidentiality under §552.110 of the Public Information Act, Texas Government Code, Chapter 552.

Amoco and TCC also expressed concern that the proposed change to §1.5(d)(1) might prevent businesses from claiming confidentiality for certain types of information submitted in connection with the agency's air programs. Amoco and TCC suggested that the commission delete the proposed new language in §1.5(d)(1), concerning marking of information claimed to be confidential.

TXOGA commented that the proposed change to §1.5(d)(1) “would limit claims of confidentiality to permit applicants and persons responding to a bid solicitation” and would prevent claims of confidentiality for information submitted in connection with agency inspection and emissions inventory processes. TXOGA also suggested that the commission delete the proposed new language in §1.5(d)(1), concerning marking of information claimed to be confidential.

The commission agrees with these comments in part. As an initial matter, the commission notes that the proposed changes to §1.5(d)(1) do not limit the class of persons who may make a claim of confidentiality for information submitted to the agency. As the first sentence of that subsection states, any person who submits information to the commission may request that the information be designated as confidential. The proposed changes to the rule are simply to specify the circumstances under which information that is claimed to be confidential must be marked as such. The commission agrees that Health and Safety Code, §382.041(a) (Texas Clean Air Act) does not apply only to permit applicants. Any information that is claimed to be confidential under that section must be identified as confidential when it is submitted to the agency. Therefore, the commission has revised the adopted §1.5(d)(1) to include assertions of confidentiality under Health and Safety Code, §382.041(a) in the provision requiring marking of information claimed to be confidential.

TIP commented that the provisions allowing a person to request that information submitted to the agency be returned are not inconsistent with records retention laws and should be kept in the rule.

Amoco and TCC also noted that the commission had proposed to delete these provisions. TXOGA

commented that it is appropriate to allow a person to withdraw information that has been submitted to the commission, but that “has not and will not be considered by the agency in determining the outcome of (an) application, bid, etc.” TXOGA therefore requested that the commission retain the provisions in the rule concerning the withdrawal of information.

The commission disagrees with these comments and accordingly has made no changes to the proposed rule in response. Once information has been submitted to the commission, it becomes part of the agency's records. State agency records may not be destroyed or otherwise disposed of except as allowed by state records retention laws (see Texas Government Code, §441.187 (state agency record may only be destroyed if allowed by agency's approved records retention schedule or if allowed by the Texas State Library and Archives Commission) and §441.191 (state record may not be transferred out of state custody without the consent of the Texas State Library and Archives Commission)). The commission does not believe that these statutory provisions allow the withdrawal of a record that has been submitted to the agency in connection with the transaction of official agency business and is, therefore, a “state record” for purposes of the records retention laws (see Texas Government Code, §441.180(11) (defining “state record”)).

Amoco and TCC expressed concern that the commission's rule does not provide “due process” to allow a person claiming that submitted information is confidential “to rebut a determination by TNRCC or the attorney general that the information is not confidential.” TXOGA commented that it did not object to the proposed changes to §1.5(d)(2) and (3) concerning requests for an attorney general opinion as to whether information claimed to be confidential must be disclosed, but requested that the rule be revised

to state what appeal is available if the attorney general determines that information subject to an open records request is not protected from disclosure.

The commission has made no changes to the rule in response to these comments. As described in the proposed changes to §1.5(d)(2) and (3), if the commission receives a Public Information Act request for information that is claimed to be confidential, the commission does not make the final determination as to whether that information must be disclosed. The Public Information Act, Texas Government Code, §552.304 and §552.305(b), allows any person to submit arguments to the attorney general as to whether information should be released. Any available appeals of attorney general determinations under the Public Information Act are governed by the Act and other law. Therefore, the commission does not believe it is appropriate to address this issue in its rules.

Amoco and TCC suggested that the commission “take a more affirmative role in determining confidentiality of information” when the agency receives an open records request. Amoco and TCC further suggested that if there continues to be disagreement as to whether information is confidential, the person submitting the information and the commission should attempt to resolve the disagreement through discussions with the attorney general.

The commission has made no changes to the rule in response to these comments. Again, if the commission receives a Public Information Act request for information that is claimed to be confidential, the commission will comply with the Act. The Public Information Act specifies the procedures that must be followed in responding to information requests, and as noted previously,

allows any person to submit arguments to the attorney general as to whether particular information is subject to disclosure.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

CHAPTER 1

PURPOSE OF RULES, GENERAL PROVISIONS

§1.5

§1.5. Records of the Agency.

(a) - (c) (No change.)

(d) Confidentiality of information.

(1) A person submitting information to the agency may request that the information be designated as classified data of the federal government, or as confidential. When an applicant, a person making a claim of confidentiality under Texas Health and Safety Code, §382.041(a), or a person submitting a response to a bid solicitation submits classified data or confidential information, each claim of classified data or confidentiality must be made upon submission, and each page must be stamped "confidential." Confidential information may include information relating to trade secrets, secret processes, or economics of operation, or information that if made public would give any advantage to competitors or bidders. It may also include confidential information under 5 United States Code, §552(b)(4), and special rules cited in 40 Code of Federal Regulations, §§2.301-2.309; provided, however, that the composition of any defined waste subject to the jurisdiction of the commission may not be regarded as confidential information.

(2) If the commission or executive director agrees with the designation, the agency will not provide the information for public inspection. If the agency receives an open records request for the information, the executive director will submit a request to the Texas attorney general as provided in subsection (b) of this section for a determination as to whether the information must be disclosed.

(3) If the executive director does not agree with a claim of classified data or confidentiality, the person submitting the information will be notified. If the agency receives an open records request for the information, and the person submitting the information continues to assert a claim of confidentiality, the executive director may submit a request to the Texas attorney general as provided in subsection (b) of this section for a determination as to whether the information must be disclosed.

(4) - (6) (No change.)

(7) For Texas pollutant discharge elimination system applications, information required for the permit application will not be considered confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(8) (No change.)

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §3.2, concerning Definitions, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 50). The text of the rule will not be republished. The purpose of this action is to correct and update statutory references within some of the commission's existing definitions.

The commission has also conducted its review of the rules in 30 TAC Chapter 3 as required by the General Appropriations Act, Article IX, §167. The adopted notice of review is concurrently published in the Rules Review section of this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The commission's review of the rules in Chapter 3 showed the necessity of correcting statutory references. The amendments to §3.2, concerning Definitions, correct statutory references in the definitions of "EPCRA," "NEPA," and "SDWA." In addition, the commission made minor formatting changes to conform with *Texas Register* requirements.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission definitions with agencywide application. In

addition, the adoption of such rules is expressly required by Texas Water Code, §5.103, which requires the commission to adopt rules to carry out its powers, and §5.105, which requires the commission to adopt policy by rule.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make minor corrections to statutory references. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the 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, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and general agency definitions. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

CHAPTER 3

DEFINITIONS

§3.2

§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) **APA** - The Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

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

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

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

(6) **Chairman** - The chairman of the commission.

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

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

(9) **Commissioner** - A member of the commission.

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

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

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

(13) **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.

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

(15) **EPCRA** - The Emergency Planning and Community Right-To-Know Act, 42 United States Code §§11001 - 11050 (1986).

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

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

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

(19) **General counsel** - The general counsel of the commission, or any authorized individual designated by the general counsel to act in his or her place.

(20) **Judge** - A SOAH administrative law judge.

- (21) **NEPA** - The National Environmental Policy Act, 42 United States Code §§4321-4370e (1969, as amended).
- (22) **Open Meetings Act** - Texas Open Meetings Act, Texas Government Code, Chapter 551.
- (23) **Party** - Each person named or admitted as a party in a contested case.
- (24) **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.
- (25) **Person** - An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.
- (26) **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.
- (27) **PPA** - Pollution Prevention Act, 42 United States Code §§13101-13109 (1990).

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

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

(30) **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.

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

(32) **SARA** - Superfund Amendments and Reauthorization Act, Public Law Number 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).

(33) **SDWA** - Safe Drinking Water Act, 42 United States Code §§300f-300j-26 (1974, as amended).

(34) **SOAH** - The State Office of Administrative Hearings.

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

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

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

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

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §5.5, concerning Composition of Advisory Committees, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 52). The text of the rule will not be republished. This action is necessary to correct a statutory reference in the commission's rules.

The commission has also conducted its review of the rules in 30 TAC Chapter 5, as required by the General Appropriations Act, Article IX, §167. The adopted notice of review is concurrently published in the Rules Review section of this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The amendment to §5.5 changes the statutory reference to reflect the recodification of Vernon's Texas Civil Statutes, Article 6252-33, as Texas Government Code, Chapter 2110, by Senate Bill 898, 75th Legislature, 1997. The need for this minor modification was identified during the course of the commission's review of Chapter 5.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by Texas Government Code, Chapter 2110, which prescribes requirements

for state agency advisory committees; and Texas Water Code, §5.103 and §5.105, which require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make a minor correction to a statutory reference. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of these rules because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the 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, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and the composition of agency advisory committees. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking. Finally, Texas Government Code, Chapter 2110, prescribes requirements governing advisory committees and also applies.

CHAPTER 5

ADVISORY COMMITTEES

§5.5

§5.5. Composition of Advisory Committees.

The composition of advisory committees shall comply with the requirements of Texas Government Code, Chapter 2110.

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §10.4, concerning Continuance of Matter Set for a Commission Meeting, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 53). The text of the rule will not be republished. The amendment is recommended as a result of the commission's review of Chapter 10, as required by the General Appropriations Act, Article IX, §167. The adopted notice of review for this chapter is concurrently published in the Rules Review section of this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The amendment to §10.4 authorizes the commission's general counsel to remand a matter from a commission public meeting to the executive director at the request of the executive director or the public interest counsel. This modification would set out in rule certain provisions of a commission resolution from November 25, 1997, which authorized a remand of an item scheduled for a commission public meeting. The resolution is not well known or easily available to the public. Therefore, the commission determined the need to put this provision in its rules. A conforming change is also made to the section's title.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a

major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Texas Water Code, §5.103 and §5.105, which require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency processes. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the 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, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and the conduct of certain actions. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

CHAPTER 10

COMMISSION MEETINGS

§10.4

§10.4. Continuance or Remand of Matter Set for a Commission Meeting.

(a) - (c) (No change.)

(d) The general counsel may remand a matter from the commission's agenda to the executive director if the executive director or the public interest counsel requests a remand.

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §305.46, concerning Designation of Material as Confidential, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 91). The repeal will not be republished.

The repeal is necessary to remove requirements that are duplicated in the commission's general procedural rules, and this action is part of the commission's continuing effort to consolidate its procedural rules.

In addition to this action, the commission adopts a conforming change in 30 TAC §312.11 in this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The repeal of §305.46 removes requirements that duplicate those in 30 TAC §1.5(d), concerning Records of the Agency. This action is part of the commission's ongoing effort to reorganize, clarify, and consolidate its procedural rules. By consolidating these rules, the commission hopes to eliminate any conflicting procedural requirements and unwarranted non-statutory differences within its rules.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major

environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas Water Code, §5.103 and §5.105, require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency processes. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the 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, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed repeal.

STATUTORY AUTHORITY

The repeal is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

CHAPTER 305

CONSOLIDATED PERMITS

SUBCHAPTER C : APPLICATION FOR PERMIT

§305.46

§305.46. Designation of Material as Confidential.

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §312.11, concerning Permits, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 92). The text of the rule will not be republished.

The amendment is necessary to correct a reference to 30 TAC §305.46. The commission is concurrently adopting the repeal of that section in this edition of the *Texas Register*. This action is part of the commission's continuing effort to consolidate its procedural rules.

EXPLANATION OF ADOPTED RULE

The amendment to §312.11 removes the reference to §305.46, concerning Designation of Material as Confidential, and replaces it with a reference to 30 TAC §1.5, concerning Records of the Agency. Section 305.46 has been repealed because it duplicates §1.5. The amendment is necessary to ensure that the correct reference is made in the commission's rules. This action is part of the commission's ongoing effort to reorganize, clarify, and consolidate its procedural rules. By consolidating these rules, the commission hopes to eliminate any conflicting procedural requirements and unwarranted non-statutory differences within its rules.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major

environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas Water Code, §5.103 and §5.105, require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency processes. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the 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, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

CHAPTER 312

SLUDGE USE, DISPOSAL, AND TRANSPORTATION

SUBCHAPTER A : GENERAL PROVISIONS

§312.11

§312.11. Permits.

(a) (No change.)

(b) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit to dispose of or incinerate sewage sludge is subject to the permit application procedures of §1.5(d) of this title (relating to Records of the Agency), §305.42(a) of this title (relating to Application Required), §305.43 of this title (relating to Who Applies), §305.44 of this title (relating to Signatories to Applications), §305.45 of this title (relating to Contents of Application for Permit), and §305.47 of this title (relating to Retention of Application Data).

(c) - (e) (No change.)