

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §1.5, concerning Records of the Agency. This proposed 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 proposing the repeal of 30 TAC §305.46, concerning confidentiality of certain material. The repeal would remove 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 results of that review are concurrently published in the Rules Review section of this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULE

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

#### FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

#### PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the section is in effect, the public benefit that is anticipated to result from administering and enforcing the rule will be enhanced clarity in general commission processes. There is no anticipated economic cost to persons who are required to comply with the proposed section.

#### SMALL BUSINESS ANALYSIS

There are no anticipated adverse effects on small businesses as a result of this rulemaking. The primary purpose of this action is to clarify the commission's procedural rules by correcting statutory references and making the rule more consistent with commission practice and state records laws. Small businesses should benefit from the enhanced clarity of the rules.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 proposed rule is not subject to the Coastal Management Program.

#### PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission 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 before the 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 faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §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 (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

The proposed amendment implements TWC, §5.103 and §5.105 and TGC, §2001.004.

## 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 or a person submitting a response to a bid solicitation submits classified data or confidential information, each [Each] claim of classified data or confidentiality must be made upon submission, and each page must be stamped "confidential." [, or the material will be considered available for public review.] Confidential information may include [is] 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 [, and includes] confidential information under 5 United States Code, §552(b)(4), [18 United States Code, §1905,] 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 [The agency may return classified or confidential information to the person providing it if the person so requests and the information has served the purpose for which it was submitted].

(3) If the executive director does not agree with a claim of classified data or confidentiality [is not approved], 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 [If the person elects to withdraw the information, it will be withheld from public review until withdrawn. If the person who submitted the information is an applicant, the executive director shall not consider the information upon preparing the draft permit, and the commission and executive director shall not consider the information upon determining to grant or deny the application].

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

(7) For Texas pollutant discharge elimination system applications, information required for the permit [relating to the contents of the] application [for permit] 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) proposes an amendment to §3.2, concerning Definitions. 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 results of that review are concurrently published in the Rules Review section of this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULE

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

#### FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

#### PUBLIC BENEFIT

Mr. Grymkoski also has determined that for the first five years the section is in effect, the public benefit that is anticipated as a result of administering or enforcing the rule will be correct statutory references in certain rules. There is no anticipated economic cost to persons who are required to comply with the proposed section.

#### SMALL BUSINESS ANALYSIS

There are no economic costs to small businesses as a result of this rulemaking. The primary purpose of this action is to amend the commission's procedural rules to correct certain statutory references.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 agency-wide 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 proposed rule is not subject to the Coastal Management Program.

#### PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission 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 before the 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 faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §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 (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

The proposed amendment implements TWC, §5.103 and §5.105 and TGC, §2001.004.

## 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 [11011] -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 [d] (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 [43] 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) proposes an amendment to §5.5, concerning Composition of Advisory Committees. 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 results of that review are concurrently published in the Rules Review section of this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULE

The proposed 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.

#### FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

#### PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the section is in effect, the anticipated public benefit will be accurate statutory references in certain procedural rules. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

#### SMALL BUSINESS ANALYSIS

There are no anticipated economic costs to small businesses as a result of this rulemaking. The primary purpose of this action is to clarify the commission's procedural rules by correcting statutory references.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 proposed rule is not subject to the CMP.

#### PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission 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 before the 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 faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §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 (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking. Finally, TGC, Chapter 2110, prescribes requirements governing advisory committees and also applies.

The proposed amendment implements TWC, §5.103 and §5.105 and TGC, §2001.004 and Chapter 2110.

## CHAPTER 5

### ADVISORY COMMITTEES

#### §5.5

#### **§5.5. Composition of Advisory Committees.**

The composition of advisory committees shall comply [be in accordance] with the requirements of Texas Government Code, Chapter 2110 [Texas Civil Statutes, Article 6252-33].

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §10.4, concerning Continuance of Matter Set for a Commission Meeting. The proposed 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 proposed notice of review for this chapter is concurrently published in the Rules Review section of this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULE

The proposed 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 proposed to the section's title.

#### FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

#### PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the section is in effect, the public benefit that is anticipated to result from administering and enforcing the rule will be a more streamlined procedure for remanding certain matters to the executive director. This rule would set out by rule certain requirements of a resolution adopted by the commission on November 25, 1997, which authorized a remand of an item scheduled for a commission public meeting. As a result, there is no anticipated economic cost to persons who are required to comply with the section as proposed.

#### SMALL BUSINESS ANALYSIS

There are no anticipated adverse effects on small businesses as a result of this rulemaking. The primary purpose of this action is to set out by rule certain requirements of a resolution adopted by the commission.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 proposed rule is not subject to the Coastal Management Program.

#### PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission 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 before the 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 faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §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 (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

The proposed amendment implements TWC, §5.103 and §5.105 and TGC, §2001.004.

**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) proposes the repeal of §305.46, concerning Designation of Material as Confidential. 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 is proposing a conforming change in 30 TAC §312.11 in this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULES

The proposed repeal of §305.46 would remove 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.

#### FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

#### PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the rule is in effect, the anticipated public benefit will be the elimination of unnecessary and duplicate rules. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

#### SMALL BUSINESS ANALYSIS

There are no anticipated costs for small businesses to comply with this proposed rulemaking. The primary purpose of this action is to consolidate the commission's procedural rules and eliminate unnecessary and duplicate rules.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 proposed rule is not subject to the Coastal Management Program.

#### PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission 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 before the 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 faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The repeal is proposed under the following sections of Texas Water Code (TWC): §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 (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

The proposed repeal implements TWC, §5.103 and §5.105 and TGC, §2001.004.

**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) proposes an amendment to §312.11, concerning Permits. The amendment is necessary to correct a reference to 30 TAC §305.46, which is being concurrently proposed for repeal in this edition of the *Texas Register*. This action is part of the commission's continuing effort to consolidate its procedural rules.

#### EXPLANATION OF PROPOSED RULE

The proposed 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 is concurrently being proposed for repeal because it duplicates §1.5. The proposed 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.

#### FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

#### PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the section is in effect, the public benefit that is anticipated from these rules will be the elimination of unnecessary and duplicate rules.

There is no anticipated economic cost to persons who are required to comply with the section as proposed.

#### SMALL BUSINESS ANALYSIS

There are no anticipated costs to small businesses to comply with this rulemaking. The primary purpose of this action is to clarify the commission's procedural rules by correcting certain statutory references.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 proposed rule is not subject to the Coastal Management Program.

#### PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission 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 before the 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 faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §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 (HSC), §382.017, which establishes the commission's rulemaking authority.

The proposed amendment implements TWC, §5.103 and §5.105, and HSC, §382.017.

**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), [§305.46 of this title (relating to Designation of Material as Confidential),] and §305.47 of this title (relating to Retention of Application Data).

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