

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §12.3, concerning Penalty and Interest on Delinquent Fees.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes this amendment to §12.3 to be consistent with the amended Texas Tax Code, §111.060 and §111.061. The proposed rules amendment would establish a variable interest rate, based on the prime rate plus one percent, in accordance with provisions of Senate Bill (SB) 1321 effective January 1, 2000. Section 12.3 was established to provide uniform and consistent requirements for the assessment of penalties and interest for the late payment of fees owed the state under the commission's jurisdiction as required by Texas Water Code, §5.235. By establishing centralized provisions in §12.3, any further changes in the Tax Code would require that the agency amend only one section of its rules. SB 1321 and Texas Tax Code, §111.060 and §111.061, establish a variable interest rate, based on the prime rate plus one percent, effective January 1, 2000.

SECTION BY SECTION ANALYSIS

Section 12.3 is proposed to be amended by deleting the existing language in subsection (c) "The yearly interest rate on all delinquent fees required under this title is 12%" and replacing it with "The yearly rate on all delinquent fees required under this title is the prime rate plus 1.0%, as published in the Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday."

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations Division, has determined that for the first five-year period the revisions as proposed are in effect, there will be no fiscal implications for state or local governments as a result of administration or enforcement of the proposed amendments.

Enforcement of the rules will not result in an increase in workload for commission staff.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed revisions are in effect the public benefit anticipated from enforcement of and compliance with the rules will be enhanced in that delinquent fee payers would be assessed interest based on the prime rate plus one percent, as of the first day of each calendar year. Costs to the fee entities resulting from the late payment assessment would depend on the effective rate and dollar amount of delinquent fees. There are no new reporting requirements, no regulatory incentive or flexibility, and no affect on environmental performance. It is anticipated the next adjustment in interest rates will be less than 12%.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

The rules are not anticipated to impose any new costs on individuals, small businesses, or micro-businesses.

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 it is not subject to §2001.0225

because it does not meet the definition of “major environmental rule” as defined in that statute. The rules establish the yearly interest rate on all delinquent fees to be in accordance with the interest rate in the amended Texas Tax Code and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. In addition, the proposed rulemaking is not a major environmental rule because it does not meet any of the four applicability requirements of a “major environmental rule” defined in Chapter 2001.0225(a) of the Texas Government Code. More particularly, it is specifically authorized by §5.235 which allows the executive director to charge and collect fees prescribed by law. The proposed rules amendment would establish a variable rate, based on the prime rate plus one percent (in accordance with provisions of SB 1321, the Texas Tax Code, §111.060 and §111.061) and does not exceed this express requirement of state law. There is no federal law or federal delegation agreement specifically applicable to interest rates charged on delinquent fees owed the state.

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 specific purpose of the rulemaking is to amend §12.3 to allow the yearly interest rate on all delinquent fees to be in accordance with those established in the amended Texas Tax Code. The proposed rules amendment would establish a variable interest rate, based on the prime rate plus one percent, in accordance with provisions of SB 1321, 76th Legislature. The previous interest rate of 12 percent per annum will be replaced by the prime interest rate as published in the Wall Street Journal plus one percent. This annual adjustment in interest rates will more closely parallel the real cost of money. The proposed amendment

is not an environmental law, but is an administrative change to collection rates imposed for non-payment of a delinquent fee. Imposition of interest on delinquent fees is inherent to all governments. Promulgation and enforcement of these rules will not burden private real property because the rule applies only to monetary obligations or debts owed the state in the nature of fees. Therefore, this amendment will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC, §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC, §505.11. Therefore, the proposed rules are not subject to the CMP.

PUBLIC HEARING

A public hearing on this proposal will be held January 18, 2000, at 10:00 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 prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Bettie Bell, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 99052-012-AD. Comments must be received by 5:00 p.m., January 31, 2000. For further information, please contact, Perry Walters, Office of Administrative Services, Financial Administration, MC 214, P.O. Box 13087, Austin, TX 78711-3087, telephone 512-239-0368, fax 512-239-0371.

STATUTORY AUTHORITY

Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412; and Texas Tax Code §§111.060 and 111.061.

The proposed amendment implements SB 1321, 76th Legislature, Regular Session.

§12.3. Penalty and Interest on Delinquent Fees.

(a) - (b) (No change.)

(c) The yearly interest rate on all delinquent fees required under this title is the prime rate plus one percent, as published in the *Wall Street Journal* on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday. [The yearly interest rate on delinquent fees required under this title is 12%.]

(d) (No change.)