

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §11.202.

Section 11.202 is adopted *without change* to the proposed text as published in the August 19, 2016, issue of the *Texas Register* (41 TexReg 6158) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

Senate Bill (SB) 20 (84th Texas Legislature, 2015) added Texas Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and submit information to the agencies' governing bodies.

Section Discussion

The commission adopts new §11.202, Enhanced Contract Monitoring, to incorporate this reference now required by statute. The adopted new rule establishes a procedure to ensure that all TCEQ contracts are assessed to determine the level and type of contract monitoring required. The adopted new rule requires the executive director, or his designee, to use risk assessment criteria to identify certain contracts for enhanced contract and performance monitoring. TCEQ's Procurements and Contracts Section, Financial Administration Division, currently maintains internal agency operating procedures for the risk-based assessment of contracts as well as the agency's Contract

Management Handbook. The adopted new rule also requires regular reporting to the executive director on contracts identified for enhanced monitoring. The executive director shall notify the commission of serious issues or risks with those contracts.

Final Regulatory Impact Determination

The commission reviewed the adopted new rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted new rule is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule." The intent of the adopted rulemaking is to conform to Texas Government Code, §2261.253(c). The changes are not expressly to protect the environment and reduce risks to human health and environment.

The commission invited public comment regarding the new rule concerning Enhanced Contract Monitoring during the public comment period. No comments were received during the public comment period.

Takings Impact Assessment

The commission evaluated the adopted new rule and assessed whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of adopted new §11.202 is to conform to Texas Government Code, §2261.253(c). Promulgation and enforcement of this adopted new rule would be neither a statutory nor a

constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission offered a public hearing on September 13, 2016. The comment period closed on September 19, 2016. The commission did not receive any comments on this rulemaking.

SUBCHAPTER E: CONTRACTS MONITORING ROLES AND RESPONSIBILITIES

§11.202

Statutory Authority

The new rule is adopted under Texas Water Code (TWC), TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas.

The adopted new rule implements Texas Government Code, §2261.253(c), as added by Senate Bill 20.

§11.202. Enhanced Contract Monitoring.

(a) Pursuant to Texas Government Code, §2261.253, the commission shall assess each contract to determine appropriate contract and performance monitoring requirements.

(b) The executive director or his designee shall ensure that risk assessment factors are used to determine when enhanced contract or performance monitoring is required for a contract. The criteria for evaluating risk include:

- (1) the total contract amount;
- (2) the funding source(s);
- (3) the scope and complexity of the goods or services;
- (4) the risk of fraud, waste, or abuse; and
- (5) the importance of the work to the agency's mission or infrastructure.

(c) Contracts shall be monitored in accordance with the agency's policies and Contract Management Handbook.

(d) The executive director will receive regular reports on contracts identified for enhanced monitoring, and where serious issues or risks are identified, the executive director shall notify the commission.

(e) This section does not apply to a memorandum of understanding, memorandum of agreement, interagency contract, inter-local agreement, intergovernmental contract or contract for which there is not a cost.