

# **Texas Commission on Environmental Quality**

## **Interoffice Memorandum**

**To:** Commissioners **Date:** December 22, 2022

**Thru:** Laurie Gharis, Chief Clerk  
Erin E. Chancellor, Acting Executive Director

**From:** Charmaine Backens, Acting Director  
Office of Legal Services

**Subject:** Docket No. 2022-0865-MIS / Non-Rule Project No. 2022-003-OTH-NR  
Highlight/Strikethrough Version of GLO-TCEQ MOA

The attached non-rulemaking adoption document for updates to the Memorandum of Agreement between the General Land Office (GLO) and the Texas Commission on Environmental Quality (TCEQ) incorrectly stated that this project was going to the Commissioner's Agenda for both proposal and adoption, and this project is scheduled to be seen at the Commissioner's Agenda for adoption only. Furthermore, the documents reference a public comment period and a public hearing date in February 2023, when there will be none held for this non-rulemaking adoption. Edited language includes highlighted corrected language with strike through of incorrect language, and includes updating proposal language such as "proposed" to "adopted" and removing reference to any public hearing or public comment period dates. The MOA update also reflects the correct citation to the rules recently adopted by the GLO. Original back-up materials for this non-rulemaking project were filed on December 21, 2022.

Attachments:  
Agenda Item Request  
Executive Summary  
Draft MOA  
cc: Chief Clerk, 7 copies

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for **Consideration of Memorandum  
of Agreement Adoption**  
~~Proposed Rulemaking~~

**AGENDA REQUESTED:** January 11, 2023

**DATE OF REQUEST:** December 21, 2022

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF  
NEEDED:** Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

**CAPTION:** **Docket No. 2022-0865-MIS.** Consideration for **adoption of**  
~~publication of, and hearing on,~~ updates to the Memorandum of Agreement  
(MOA) between the Texas Commission on Environmental Quality (TCEQ) and  
the Texas General Land Office (GLO).

The **updates** ~~proposed rulemaking~~ **will** ~~would~~ reflect the current names of the  
successor agencies by updating the name of the Texas Natural Resources  
Conservation Commission to the Texas Commission on Environmental Quality.  
Additionally, the CCC sunsetted in 2011 and passed its responsibilities on to  
GLO; the MOA update will reflect this change.

The **adopted** ~~proposed~~ amendment to the MOA **will** ~~would~~ implement the  
agreement between TCEQ and GLO for TCEQ to seek GLO review and  
certification of TCEQ rules and rule amendments that are subject to the Coastal  
Management Program in accordance with the procedures adopted by GLO (31  
TAC Sections 29.20-29.26). (Kathy Humphreys, Project Manager/Lead Attorney;  
Rule Project No. 2022-0865-MIS)

Erin E. Chancellor  
\_\_\_\_\_  
**Director**

Charmaine Backens  
\_\_\_\_\_  
**Division Deputy Director**

Gwen Ricco  
\_\_\_\_\_  
**Agenda Coordinator**

Copy to CCC Secretary? NO ☐ YES ☒

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** December 21, 2022

**Thru:** Laurie Gharis, Chief Clerk  
Toby Baker, Executive Director

**From:** Erin E. Chancellor, Director  
Office of Legal Services

**Docket No.:** 2022-0865-MIS

**Subject:** Commission Approval for Non-Rulemaking **Adoption** ~~Proposal~~  
Rule Project No. 2022-003-OTH-NR

### Background and reason(s) for the rulemaking:

The current Memorandum of Agreement (MOA), effective in 1996, is between the Texas Natural Resource Conservation Commission (TNRCC) and the Coastal Coordination Council (CCC). The CCC adopted rules to implement the Coastal Management Program (CMP), including the procedures for agency rule certification in 31 Texas Administrative Code (TAC) §§505.20-505.26. The 1996 MOA discusses agency rule certification under the CMP to facilitate cohesion between agencies. The CCC was abolished in 2011, and its responsibilities under the CMP passed to the General Land Office (GLO).

The **adopted** ~~proposed~~ updates **will** ~~would~~ update the names of the successor agencies by changing the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ) and the CCC to GLO. This MOA **will** ~~would~~ update the language and discuss how TCEQ and GLO intend to continue working together on rule certifications subject to the CMP. The **adopted** ~~proposed~~ amendment to the MOA **will** ~~would~~ implement the agreement between TCEQ and GLO for TCEQ to seek GLO review and certification of TCEQ rules and rule amendments that are subject to the CMP in accordance with the procedures adopted by GLO (31 TAC §§29.20-29.26).

### Scope of the rulemaking:

#### A.) Summary of what the rulemaking would do:

The amendment **will** ~~would~~ update the existing MOA to reflect the correct name of TCEQ and the transfer of responsibilities from the CCC to GLO.

#### B.) Scope required by federal regulations or state statutes:

Texas Coastal Management Program, Tex. Nat. Res. Code Ann. §33.201, et. seq.

#### C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

### Statutory authority:

Texas Coastal Management Program, Tex. Nat. Res. Code Ann. § 33.201, et. seq.

### Effect on the:

#### A.) Regulated community:

The update to the MOA is not expected to have any significant effect on the regulated community.

#### B.) Public:

The update to the MOA is not expected to have any significant effect on the public.

#### C.) Agency programs:

The update to the MOA is not expected to have any significant effect on agency programs.

Re: Docket No. 2022-003-OTH-NR

**Stakeholder meetings:**

No stakeholder meetings have been held, and none are planned.

**Potential controversial concerns and legislative interest:**

None.

**Will ~~Would~~ this rulemaking affect any current policies or require development of new policies?**

No.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

If this rulemaking does not go forward the MOA with GLO will have incorrect citations, potentially causing confusion for the general public and regulated entities. Alternatives might include:

1. TCEQ could choose not to update the MOA and leave the current MOA in place.
2. TCEQ could adopt an MOU by rule with the GLO to implement the CMP.

**Key points in the proposal rulemaking schedule:**

Anticipated adoption date: **January 11**, 2023

~~Anticipated *Texas Register* publication date:~~ January 27, 2022

~~Anticipated public hearing date:~~ February 27, 2022

~~Anticipated public comment period:~~ January 27, 2022 – February 28, 2022

~~Anticipated adoption date:~~ June 14, 2023

**Agency contacts:**

Kathy Humphreys, Rule Project Manager/Staff Attorney, Environmental Law Division, (512) 239-3417.

Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

**Attachments:**

Draft MOA

cc: Chief Clerk, 2 copies  
Office of the Executive Director  
Jim Rizk  
Morgan Johnson  
Krista Kyle  
Office of General Counsel  
Kathy Humphreys  
Gwen Ricco

**Memorandum of Agreement  
Between the Texas General Land Office and the  
Texas Commission on Environmental Quality for  
Certification of Agency Rules  
Subject to the Texas Coastal Management Program  
(Revised January 2023)**

**WHEREAS**, the continued effective and efficient implementation of the Texas Coastal Management Program (CMP) is in the interest of all Texans; and

**WHEREAS**, the Coastal Coordination Act (the Act, Tex. Nat. Res. Code §§ 33.201-33.210) and rules adopted by the Texas General Land Office (GLO) (31 Tex. Admin. Code §§ 29.20-29.26) allow agencies to submit their rules to the GLO for certification of consistency with the goals and enforceable policies of the CMP; and

**WHEREAS**, agencies whose rules are certified by GLO may establish, for GLO approval, thresholds that limit GLO review to unique and significant agency actions; and

**WHEREAS**, GLO review and certification of agency rules is a more effective and efficient way to ensure agency actions are consistent with the goals and enforceable policies of the CMP than GLO review of permits and other individual agency actions;

**NOW, THEREFORE, BE IT RESOLVED**, in accordance with the Act and rules adopted by GLO, the undersigned agency intends to seek GLO review and certification of its rules and rule amendments that are subject to the CMP.

**Texas General Land Office**

**Texas Commission on Environmental  
Quality**

\_\_\_\_\_  
Mark A. Havens  
Chief Clerk/Deputy Land Commissioner

\_\_\_\_\_  
  
Date: \_\_\_\_\_

Date: \_\_\_\_\_

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## **AGENDA ITEM REQUEST**

### for Proposed Rulemaking

**AGENDA REQUESTED:** January 11, 2023

**DATE OF REQUEST:** December 21, 2022

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

**CAPTION: Docket No. 2022-0865-MIS.** Consideration for publication of, and hearing on, updates to the Memorandum of Agreement (MOA) between the Texas Commission on Environmental Quality (TCEQ) and the Texas General Land Office (GLO).

The proposed rulemaking would reflect the current names of the successor agencies by updating the name of the Texas Natural Resources Conservation Commission to the Texas Commission on Environmental Quality. Additionally, the CCC sunsetted in 2011 and passed its responsibilities on to GLO; the MOA update will reflect this change.

The proposed amendment to the MOA would implement the agreement between TCEQ and GLO for TCEQ to seek GLO review and certification of TCEQ rules and rule amendments that are subject to the Coastal Management Program in accordance with the procedures adopted by GLO (31 TAC Sections 29.20-29.26). (Kathy Humphreys, Project Manager/Lead Attorney; Rule Project No. 2022-0865-MIS)

Erin E. Chancellor  
\_\_\_\_\_  
**Director**

Charmaine Backens  
\_\_\_\_\_  
**Division Deputy Director**

Gwen Ricco  
\_\_\_\_\_  
**Agenda Coordinator**

**Copy to CCC Secretary?** NO ☐ YES ☒

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** December 21, 2022

**Thru:** Laurie Gharis, Chief Clerk  
Toby Baker, Executive Director

**From:** Erin E. Chancellor, Director  
Office of Legal Services

**Docket No.:** 2022-0865-MIS

**Subject:** Commission Approval for Non-Rulemaking Proposal  
Rule Project No. 2022-003-OTH-NR

**Background and reason(s) for the rulemaking:**

The current Memorandum of Agreement (MOA), effective in 1996, is between the Texas Natural Resource Conservation Commission (TNRCC) and the Coastal Coordination Council (CCC). The CCC adopted rules to implement the Coastal Management Program (CMP), including the procedures for agency rule certification in 31 Texas Administrative Code (TAC) §§505.20-505.26. The 1996 MOA discusses agency rule certification under the CMP to facilitate cohesion between agencies. The CCC was abolished in 2011, and its responsibilities under the CMP passed to the General Land Office (GLO).

The proposed updates would update the names of the successor agencies by changing the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ) and the CCC to GLO. This MOA would update the language and discuss how TCEQ and GLO intend to continue working together on rule certifications subject to the CMP. The proposed amendment to the MOA would implement the agreement between TCEQ and GLO for TCEQ to seek GLO review and certification of TCEQ rules and rule amendments that are subject to the CMP in accordance with the procedures adopted by GLO (31 TAC §§29.20-29.26).

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking would do:**

The amendment would update the existing MOA to reflect the correct name of TCEQ and the transfer of responsibilities from the CCC to GLO.

**B.) Scope required by federal regulations or state statutes:**

Texas Coastal Management Program, Tex. Nat. Res. Code Ann. §33.201, et. seq.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None.

**Statutory authority:**

Texas Coastal Management Program, Tex. Nat. Res. Code Ann. § 33.201, et. seq.

**Effect on the:**

**A.) Regulated community:**

The update to the MOA is not expected to have any significant effect on the regulated community.

**B.) Public:**

The update to the MOA is not expected to have any significant effect on the public.

**C.) Agency programs:**

The update to the MOA is not expected to have any significant effect on agency programs.

Re: Docket No. 2022-003-OTH-NR

**Stakeholder meetings:**

No stakeholder meetings have been held, and none are planned.

**Potential controversial concerns and legislative interest:**

None.

**Would this rulemaking affect any current policies or require development of new policies?**

No.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

If this rulemaking does not go forward the MOA with GLO will have incorrect citations, potentially causing confusion for the general public and regulated entities. Alternatives might include:

1. TCEQ could choose not to update the MOA and leave the current MOA in place.
2. TCEQ could adopt an MOU by rule with the GLO to implement the CMP.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** January 11, 2022

**Anticipated *Texas Register* publication date:** January 27, 2022

**Anticipated public hearing date:** February 27, 2022

**Anticipated public comment period:** January 27, 2022 – February 28, 2022

**Anticipated adoption date:** June 14, 2023

**Agency contacts:**

Kathy Humphreys, Rule Project Manager/Staff Attorney, Environmental Law Division, (512) 239-3417.

Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

**Attachments:**

Draft MOA

cc: Chief Clerk, 2 copies  
Office of the Executive Director  
Jim Rizk  
Morgan Johnson  
Krista Kyle  
Office of General Counsel  
Kathy Humphreys  
Gwen Ricco



**Memorandum of Agreement  
Between the Texas General Land Office and the  
Texas Commission on Environmental Quality for  
Certification of Agency Rules  
Subject to the Texas Coastal Management Program  
(Revised January 2023)**

**WHEREAS**, the continued effective and efficient implementation of the Texas Coastal Management Program (CMP) is in the interest of all Texans; and

**WHEREAS**, the Coastal Coordination Act (the Act, Tex. Nat. Res. Code §§ 33.201-33.210) and rules adopted by the Texas General Land Office (GLO) (31 Tex. Admin. Code §§ 29.20-29.26) allow agencies to submit their rules to the GLO for certification of consistency with the goals and enforceable policies of the CMP; and

**WHEREAS**, agencies whose rules are certified by GLO may establish, for GLO approval, thresholds that limit GLO review to unique and significant agency actions; and

**WHEREAS**, GLO review and certification of agency rules is a more effective and efficient way to ensure agency actions are consistent with the goals and enforceable policies of the CMP than GLO review of permits and other individual agency actions;

**NOW, THEREFORE, BE IT RESOLVED**, in accordance with the Act and rules adopted by GLO, the undersigned agency intends to seek GLO review and certification of its rules and rule amendments that are subject to the CMP.

**Texas General Land Office**

**Texas Commission on Environmental  
Quality**

\_\_\_\_\_  
Mark A. Havens  
Chief Clerk/Deputy Land Commissioner

\_\_\_\_\_  
  
Date: \_\_\_\_\_

Date: \_\_\_\_\_