

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. 2022-1527-RUL.** Consideration for publication of, and hearing on, proposed amended Section 5.3 and new Section 5.15 of 30 TAC Chapter 5, Advisory Committees and Groups.

The proposed rulemaking would establish in rule the dates on which seven advisory committees are abolished to comply with Texas Gov't Code, Section 2110.008. The proposed rulemaking renews the existence of the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The proposed rulemaking would abolish these advisory committees on December 31, 2032. (Don Redmond; Rule Project No. 2023-006-005-LS)

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.: 2022-1527-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 5, Advisory Committee and Groups
Establishing dates of abolishment in rule for advisory committees
Rule Project No. 2023-006-005-LS

Background and reason(s) for the rulemaking:

This proposed rulemaking would add and amend rules in 30 Texas Administrative Code (TAC) Chapter 5 to specify the dates on which various advisory committees are abolished to conform with Texas Government Code (TGC), Chapter 2110. During Sunset review, Sunset Commission staff recommended that the agency renew advisory committees through a rulemaking process. TGC, §2110.008 provides that an advisory committee is automatically abolished on the fourth anniversary date of its creation unless the state agency has established, by rule, a different date on which the advisory committee will automatically be abolished.

This rulemaking proposes to continue the existence of seven advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. These advisory committees should continue to exist because they continue to serve the purpose of providing advice to the agencies. The proposed rule specifies December 31, 2032, as the date of abolishment for these advisory committees. Advisory committees that are subject to a statutory duration or excluded from the applicability of TGC, Chapter 2110 are not included in this proposed rule.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The proposal would amend 30 TAC §5.3, Creation and Duration of Advisory Committees Created by the Commission, to provide that advisory committees created by the commission are to be abolished according to the requirements of TGC, §2110.008 unless the advisory committee is required to remain in effect without abolishment under a state or federal law or a different date for abolishment is established under new §5.15. The proposal would create new §5.15, Duration of Advisory Committees, to establish the duration of advisory committees. New subsection (b) establishes an abolishment date of December 31, 2032, for the following advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee.

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

The proposed rulemaking is not required by federal regulations. Texas Water Code (TWC), §5.107 authorizes the commission to create advisory committees. The proposed rules implement TGC, §2110.008, which allows an agency to designate the date of an advisory committee's abolishment

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by rule if the committee's duration is not already determined by another statute. The advisory committee may continue in existence if the rule providing its abolishment date is amended. If an agency does not designate a date by rule, the committee is automatically abolished by statute four years after its creation.

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

The proposed rule implements state statutes and Sunset Recommendation 1.6 to continue the existence of advisory committees by rule to conform to the requirements of TGC, §2110.008.

Statutory authority:

TWC, §5.013, General Jurisdiction of Commission; TWC, §5.102, General Powers; and TWC, §5.103, Rules; Texas Health and Safety Code (THSC), §361.017, Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; and THSC, §361.024, Rules and Standards.

Effect on the:

A.) Regulated community:

The proposed rules are administrative and do not establish any new requirements for the regulated community. The proposed rule would renew and continue the existence through December 31, 2032, for: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. These advisory committees would continue to provide advice to the agency.

B.) Public:

The public would benefit from the commission's continued receipt of advice from the advisory committees' business, environmental and technical expertise and experience with respect to matters in the commission's jurisdiction.

C.) Agency programs:

Agency programs will continue to work with the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. No changes in duties or workload are expected to agency programs as a result of the proposed rule changes.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

Public Involvement Plan

Significant public interest in this proposed rulemaking is not expected. A specific public involvement plan has not been developed. The public will have the opportunity to submit comments and attend the public hearing.

Alternative Language Requirements

The agenda item announcement for proposal and adoption at the Commissioners' Agenda Meeting and the agency webpage requesting comments on the proposed rules will be provided in English

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and Spanish. The public will have an opportunity to request additional communication accommodations, including live translation services, for the public hearing.

Potential controversial concerns and legislative interest:

The proposed rulemaking is not expected to be controversial.

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

No changes to current policies or development of new policies or workload are required. Agency programs that work with advisory committees would need to track the abolition date for the advisory committee and prepare for future rulemaking, if necessary, to extend the abolition date.

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

If the proposed rulemaking does not go forward, agency advisory committees that do not have an established date of abolishment could be abolished by operation of TGC, §2110.008. This could affect: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee.

If this rulemaking does not go forward as scheduled and the four watermaster advisory committees are abolished by operation of TGC, §2110.008, the commission would be out of compliance with TWC, §§11.3261, 11.4531, and 11.557 which require the watermaster programs to establish the watermaster advisory committees. In addition, if the rule schedule is not met it may inhibit the watermaster programs from spending the watermaster fund beginning in Fiscal Year 2024 pursuant to TWC, §11.3291. TWC, §11.3291 states the watermaster fund shall be used to pay expenditures when recommended by the watermaster advisory committee, and water right holders would not be able to petition an advisory committee to conduct a referendum on the continuation of a program pursuant to TWC, §11.559.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: January 11, 2023

Anticipated *Texas Register* publication date: January 27, 2023

Anticipated public hearing date: February 27, 2023

Anticipated public comment period: January 27, 2023 to February 28, 2023

Anticipated adoption date: June 14, 2023

Agency contacts:

Don Redmond, Staff Attorney/Rule Project Manager, Environmental Law Division, (512) 239-0612
Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

Attachments:

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Don Redmond
Gwen Ricco
Tammy Mitchell

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §5.3; and new §5.15.

Background and Summary of the Factual Basis for the Proposed Rules

This proposed rulemaking implements the requirements of Texas Government Code, Chapter 2110 with respect to establishing in rule the date on which an advisory committee is abolished.

During Sunset review, Sunset Commission staff recommended that the agency renew advisory committees created by the commission through a rulemaking process. Texas Government Code, §2110.008 provides that an advisory committee is automatically abolished on the fourth anniversary date of its creation unless the state agency has established, by rule, a different date on which the advisory committee will automatically be abolished. In consideration of the Sunset review recommendation, the commission determined that seven advisory committees that do not have dates for abolishment currently established in statute or rule should continue in existence because they continue to serve the purpose of providing advice to the agency. This rulemaking proposes to continue the existence of those seven advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The proposed rule specifies December 31,

2032, as the date of abolishment for these advisory committees. Advisory committees that are subject to a statutory duration or excluded from the applicability of Texas Government Code, Chapter 2110 are not included in this proposed rule.

Section by Section Discussion

The commission proposes to amend §5.3 to provide that advisory committees created by the commission are to be automatically abolished according to the requirements of Texas Government Code, §2110.008 unless the advisory committee is required to remain in effect without abolishment under a state or federal law, or a different date for abolishment is established under §5.15. An advisory committee that is subject to a requirement under a state or federal law to remain in effect without abolishment or an advisory committee that is not subject to Texas Government Code, §2110.008 is not subject to abolishment under §5.3 or §5.15.

The commission proposes new §5.15 to establish the duration of advisory committees under subchapter B. New subsection (a) provides that the advisory committees listed in subsection (b) are renewed and continue to exist with the abolishment date established for the listed advisory committee. New subsection (b) establishes an abolishment date of December 31, 2032, for the following advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster

Advisory Committee. The commission expects that future rulemaking may add to the list of advisory committees or amend the date of abolishment for any advisory committee.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Deputy Director in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be clear communication with the public on the duration of the advisory committees and improved compliance with the Texas Government Code, Section 2110.008. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an

increase or decrease in fees paid to the agency. The proposed rulemaking does amend an existing regulation by clarifying the abolishment date for certain advisory committees. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not a major environmental rule because it is not anticipated to adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state since the proposed rulemaking addresses procedural requirements for the abolishment of advisory committees. Likewise, there will be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state from the revisions because the changes

are not substantive. The rulemaking addresses procedural requirements for establishing the dates on which listed advisory committees are to be abolished.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is proposing this rulemaking to continue advisory committees and establish the dates on which the advisory committees will be abolished. There are no standards set by federal law that are exceeded by the proposed rules.

Second, the proposed rulemaking does not exceed a requirement of state law because Texas Government Code Chapter 2110 authorizes a state agency to establish, by rule, the date on which an advisory committee is to be abolished.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government,

where the delegation agreement or contract is to implement a state and federal program. There is no applicable delegation agreement or contract addressing the duration requirements for advisory committees.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by Texas Water Code, §5.103 which provides specific authority to adopt rules and §5.107 which authorizes the commission to create advisory committees.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to continue the existence of listed advisory committees and establish the date on which the advisory committees are to be abolished. The proposed rulemaking substantially advances these stated purposes by proposing rules that continue the existence of the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource

Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee and establish the date of December 31, 2032, on which these committees will be abolished.

The commission's analysis indicates that the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in real property because the proposed 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. The proposed rules are procedural, addressing the requirements for advisory committees, and do not affect real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the

contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on February 27 at 2:00 p.m. in Building E, room 201S at the commission's central office located at 12100 Park 35 Circle. 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 be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, February 23, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, February 24, 2023, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

<https://teams.microsoft.com/l/meetup->

[join/19%3ameeting_ZmMyZTk0ZTAzM2YwOC00OWZkLWI4NTEtNjVhNjhjZDg5OGY0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%7d](https://tceq.commentinput.com/join/19%3ameeting_ZmMyZTk0ZTAzM2YwOC00OWZkLWI4NTEtNjVhNjhjZDg5OGY0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%7d)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2023-006-005-LS. The comment period closes on February 28, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Don Redmond, Environmental Law Division, at (512) 239-0612.

SUBCHAPTER B: ADVISORY COMMITTEES

§5.3, §5.15

Statutory Authority

The proposed amendment and new rule are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment and new rule implement TWC, §5.107 and Texas Government Code, Chapter 2110.

§5.3. Creation and Duration of Advisory Committees Created by the Commission.

Except as otherwise provided by law, advisory committees created by the commission shall be created by commission resolution. An advisory committee shall be automatically abolished in accordance with Texas Government Code, §2110.008(b), as amended, unless the advisory committee is required to remain in effect without

abolishment under state or federal law, or a different date is designated under §5.15 of this chapter (relating to Duration of Advisory Committees).

§5.15. Duration of Advisory Committees.

(a) The advisory committees listed in section (b) are renewed with the expiration dates noted for each advisory committee and continue to be subject to the rules in this subchapter.

(b) List of advisory committees renewed by rule:

(1) Brazos Watermaster Advisory Committee, authorized by Tex. Water Code §11.4531, expires on December 31, 2032.

(2) Concho River Watermaster Advisory Committee, authorized by Tex. Water Code §11.557, expires on December 31, 2032.

(3) Irrigator Advisory Council, authorized by Tex. Occ. Code ch. 1903, Subch. D, expires on December 31, 2032.

(4) Municipal Solid Waste Management and Resource Recovery Advisory Council, authorized by Tex. Health & Safety Code §§363.041-046, expires on December 31, 2032.

(5) Rio Grande Watermaster Advisory Committee, authorized by Tex. Water Code §11.3261, expires on December 31, 2032.

(6) South Texas Watermaster Advisory committee, authorized by Tex. Water Code §11.3261, expires on December 31, 2032.

(7) Water Utility Operating Licensing Advisory Committee, authorized by Tex. Water Code §5.107, expires on December 31, 2032.