

The Texas Commission on Environmental Quality (commission or TCEQ) proposes an amendment to §1.10.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

This proposed rulemaking is necessary to update the Texas Commission on Environmental Quality (TCEQ) rules to reflect the number of copies required to be filed in the Office of the Chief Clerk for all documents to be considered at a commission meeting. Currently, 11 copies are required. Decreasing the number of required copies to seven or less, as prescribed by the Chief Clerk or General Counsel, will reduce the amount of paper necessary for commission meeting filings and significantly reduce waste.

SECTION DISCUSSION

The proposed amendment to §1.10(d), Document Filing Procedures, would change the number of copies required for consideration at a commission meeting from 11 to seven or less, as prescribed by the Chief Clerk or General Counsel. The proposed amendment to §1.10(g) would define the acronym "SOAH" as "State Office of Administrative Hearings."

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule.

The proposed rule will generate savings for the agency and other governmental entities because fewer copies of documentation will be required for commission meetings.

The proposed rule would amend §1.10 to decrease the number of hard copies that entities or individuals are currently required to file in the Office of the Chief Clerk. The proposed rule would decrease the number of hard copies from 11 to seven or less, as prescribed by the Chief Clerk or General Counsel. The reduction in the number of required copies is expected to generate some savings for governmental entities, although the amount of savings is not anticipated to be significant. The amount of savings will depend on the cost of paper, the number of pages to be copied, and the number of requests submitted for commission action. The agency expects to reduce the amount of waste generated from excess documentation, but the amount of waste reduction is not expected to generate a material amount of savings. The additional proposed amendment to §1.10(g) that defines the acronym "SOAH" as "State Office of Administrative Hearings" is administrative in nature and would have no fiscal implications.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be less generation of paper waste and a reduced impact on the environment.

The proposed rule will generate some cost savings for businesses and individuals submitting copies of documents to the agency because the agency will only require seven copies or less, as prescribed by the Chief Clerk or General Counsel, of documentation to be provided for commission action instead of 11. The amount of cost savings will depend on the cost of paper, the number of pages to be copied, and the number of requests submitted for commission ruling.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. Small and micro-businesses should experience the same cost savings as those experienced by other entities or individuals submitting copies of documents to be considered at a commission meeting.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has 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 that the proposed rule is in effect. The proposed rule is expected to generate savings for entities or individuals submitting copies of documents to be considered at a commission meeting, although the amount of these savings is not anticipated to be significant.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code, §2001.001, *et seq.*, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in §2001.0225. A "major environmental rule" means 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 intent of the proposed rulemaking is to decrease the number of copies of documents to be considered at a commission meeting as well as define the acronym "SOAH" as "State Office of Administrative Hearings." The changes are not expressly to protect the environment and reduce risks to human health and the environment. Therefore, the commission concludes that the proposed rule does not constitute a major environmental rule. The commission invites public comment on the draft regulatory impact analysis determination.

Furthermore, the proposed rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rule does not exceed a federal standard because there are no federal standards regulating the number of copies for commission meetings. The proposed rule does not exceed state law requirements because there are no state laws governing this area. Also, the proposed rule does not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding commission meeting filings. And finally, though this rule is being proposed under the general powers of the agency, it is not a major environmental rule, and would not trigger the fourth

applicability requirement.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed an assessment of whether this proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to update the number of copies required for consideration at a commission meeting as well as define the acronym "SOAH" as "State Office of Administrative Hearings." The proposed rule will substantially advance this stated purpose. Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden 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 regulation. In other words, this rule would not constitute a statutory or constitutional taking because there are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is not 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 proposed rule is not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-018-001-AS. The comment period closes September 22, 2008.

Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact LaDonna Castañuela, Chief Clerk's Office, (512) 239-3300.

§1.10

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules, and TWC, §5.105 concerning General Policy.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103, and 5.105.

§1.10. Document Filing Procedures.

(a) All documents to be considered in a commission meeting or by judges in contested cases shall be filed with the chief clerk. Hearing requests and responses shall also be filed with the chief clerk.

(b) If a docket number has been assigned, it should appear on the first page of all filed documents.

(c) Documents shall be filed by United States mail, facsimile, or hand delivery. If a person files a document by facsimile, he or she must file with the chief clerk the appropriate number of copies by mail or hand delivery within three days.

(d) The original or one copy of a document shall be filed, except for documents to be considered at a commission meeting. For documents to be considered at a commission meeting, seven [11] copies or less, as prescribed by the Chief Clerk or General Counsel, shall be filed.

(e) The time of filing is upon receipt by the chief clerk as evidenced by the date stamp affixed to the document by the chief clerk, or as evidenced by the date stamp affixed to the document or envelope by the commission mail room, whichever is earlier.

(f) The chief clerk shall accept all documents presented for filing. The chief clerk's acceptance is not a determination that a document meets filing deadlines or other requirements.

(g) If the requirements of this section are not followed, the commission, or a judge in a State Office of Administrative Hearings (SOAH) [SOAH] proceeding, may choose not to consider the documents. In the absence of a waiver under subsection (h) of this section, the commission may choose not to consider documents filed within two days of a commission meeting.

(h) The judge may waive one or more of the requirements of this section, or impose additional filing requirements in SOAH proceedings. The commission or general counsel may waive one or more of the requirements of this section, or impose additional filing requirements for commission meetings.

(i) This section does not apply to offers of evidence during a hearing.