

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
For Proposed Rulemaking

**AGENDA REQUESTED:** May 14, 2014

**DATE OF REQUEST:** April 25, 2014

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Michael Parrish, (512) 239-2548

**CAPTION: Docket No. 2013-1626-RUL.** Consideration for publication of, and hearing on, proposed new Sections 101.600 - 101.602 of 30 TAC Chapter 101, General Air Quality Rules.

The proposed rulemaking would implement Senate Bill (SB) 1756, 83rd Legislature, 2013, Regular Session, providing TCEQ with the authority to accept a surcharge from the applicant to cover the expenses incurred by expediting the processing of an application.

The proposed rulemaking would allow the applicant to pay a surcharge to request the expedited processing of an application filed under 30 TAC Chapter 106, 116, or 122 where the applicant has demonstrated that the purpose of the application will benefit the state or local economy. (Becky Southard, Booker Harrison) (Rule Project No. 2013-042-101-AI)

Steve Hagle, P.E.  
\_\_\_\_\_  
**Deputy Director**

Michael Wilson, P.E.  
\_\_\_\_\_  
**Division Director**

Michael Parrish  
\_\_\_\_\_  
**Agenda Coordinator**

**Copy to CCC Secretary? NO YES X**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 25, 2014

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Steve Hagle, P.E., Deputy Director  
Office of Air

**Docket No.:** 2013-1626-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 101, General Air Quality Rules  
SB 1756, Expedited Permitting Program  
Rule Project No. 2013-042-101-AI

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

Historically, the rules of the Texas Commission on Environmental Quality (TCEQ, commission, or agency) and its predecessor agencies have not specifically provided for the expedited processing of applications. While there are existing mechanisms to accelerate the review of an application, those mechanisms have been implemented through business practices, not through rule.

Senate Bill (SB) 1756 adds a new section to the Texas Health and Safety Code (THSC), Chapter 382, Texas Clean Air Act (TCAA), which provides TCEQ the authority to accept a surcharge from the applicant to cover the expenses incurred by expediting the processing of an application.

New THSC, §382.05155, Expedited Processing of Application, allows applicants to request, and the executive director may grant, expedited processing of applications if the applicant demonstrates the purpose of the application will benefit the state or local economy. This new section allows the commission to authorize the use of overtime or contract labor to process expedited applications, and to add a surcharge to cover expenses incurred by the expediting process. THSC, §382.05155 specifies that the overtime or contract labor used to process expedited applications is not included in the calculation of the number of full-time equivalent commission employees. Applicants must still comply with all applicable federal and state requirements, including existing public notice requirements.

### **Scope of the rulemaking:**

The commission interprets the THSC, §382.05155 to only apply to an application filed under Title 30 Texas Administrative Code (TAC) Chapter 106, 116, or 122. This proposed rulemaking will provide applicants with the option to pay a surcharge to request the expedited processing of an application where the applicant has demonstrated that the purpose of the application will benefit the state or local economy. Also, the executive director may expedite the processing of the application if it is determined that by expediting the processing it will benefit the economy of Texas. The proposed rulemaking is a new subchapter in 30 TAC Chapter 101.

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**A.) Summary of what the rulemaking will do:** This proposed rulemaking will add 30 TAC Chapter 101, Subchapter J, Expedited Permitting, new §101.600, Applicability; §101.601, Surcharge; and §101.602, Public Notice, to provide applicants with an option to pay a surcharge to cover expenses incurred by TCEQ's expedited processing of applications.

**B.) Scope required by federal regulations or state statutes:** Applicants requesting expedited processing must comply with all applicable federal and state requirements, including the existing public notice requirements. The proposed rulemaking does not change applicable federal, state, and regulatory requirements, including public notice, submission of public comment, and the opportunity for a public hearing or contested case hearing.

**C.) Additional staff recommendations that are not required by federal rule or state statute:** None.

**Statutory authority:**

The rulemaking is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also proposed under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.05155, Expedited Processing of Application, which authorizes the commission to develop a process for expediting applications and charging a surcharge; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which requires an applicant for a permit issued under THSC, §382.0518 to publish notice of intent to obtain a permit. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules, and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

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The proposed rulemaking implements SB 1756, 83rd Legislature, 2013, THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05155, and 382.056; and Texas Government Code §2001.004 and §2001.006.

**Effect on the:**

**A.) Regulated community:** Applicants will be given the option to pay a surcharge to expedite the processing of applications filed under 30 TAC Chapter 106, 116, or 122. The commission anticipates no adverse fiscal impact to the regulated community, because the applicant can choose whether or not to make an expedited request.

**B.) Public:** The proposed rulemaking is not expected to directly affect the general public. When public notice is required for an application filed under 30 TAC Chapter 106, 116, or 122, and the applicant has opted to pay a surcharge, the public will be informed through the current public notice process that it will be processed under the proposed Subchapter J. The public notice, comment period, and contested case hearing process will not be affected by the proposed rulemaking. All emissions activities must be authorized through current permitting methods, which ensure protection of public health and the environment.

**C.) Agency programs:** The proposed rulemaking will have an effect on agency programs, including permit processing, human resource workloads, and employee compensation. However, the commission may add a surcharge to an application fee in an amount sufficient to cover the expenses incurred by the expedited process, including overtime, contract labor, and other costs, so the commission does not anticipate a significant fiscal impact to agency programs.

**Stakeholder meetings:** In order to expedite the rulemaking, the commission has not planned any stakeholder meetings. The commission will provide an appropriate period of time for public comment (at least 30 days), and will hold a hearing on the proposed rules. The commission will also provide updates on key milestones on the agency website.

**Potential controversial concerns and legislative interest:**

Some of the regulated community may have the general perception of unfairness if some applicants have the ability to pay to get a permit faster, while others may not have the financial ability to do so. However, the surcharge collected for expedited applications under proposed §101.600 will be used to cover additional resources needed to expedite the processing of an application, including overtime, contract labor, and other expenses. Therefore, applications expedited with additional resources under Subchapter J should not delay the review of an application without a surcharge payment, because those projects will be worked with current resources.

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**Will this rulemaking affect any current policies or require development of new policies?** Yes. Although the expedited process will be based on the current permitting process, the agency will develop new policies and procedures to implement the surcharge procedures.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?** Without this rulemaking, the agency would not be able to completely fulfill the requirements of the bill or the intent of the legislature. Alternatives to this rulemaking include using existing expedited processing mechanisms that have previously been implemented through business practices.

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

**Anticipated proposal date:** May 14, 2014

**Anticipated *Texas Register* publication date:** May 30, 2014

**Anticipated public hearing date (if any):** June 24, 2014

**Anticipated public comment period:** May 30, 2014-June 30, 2014

**Anticipated adoption date:** October 22, 2014

**Agency contacts:**

Becky Southard, Rule Project Manager, (512) 239- 1638, Air Permits Division

Booker Harrison, Staff Attorney, (512) 239-4113

Derek Baxter, Texas Register Coordinator, (512) 239-2613

**Attachment:**

SB 1756

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Tucker Royall  
John Bentley  
Office of General Counsel  
Becky Southard  
Derek Baxter

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) proposes new §§101.600 - 101.602.

### **Background and Summary of the Factual Basis for the Proposed Rules**

Senate Bill (SB) 1756, 83rd Legislature, 2013, amended the Texas Health and Safety Code (THSC), Chapter 382, Texas Clean Air Act (TCAA), to provide TCEQ with the authority to accept a surcharge from the applicant to cover the expenses incurred by expediting the processing of an application. THSC, §382.05155, Expedited Processing of Application, allows applicants to request, and the executive director may grant, expedited processing of applications. The commission interprets THSC, §382.05155 to only apply to an application filed under 30 TAC Chapter 106, 116, or 122. The applicant must demonstrate that the purpose of the application will benefit the state or local economy and the executive director may expedite the processing of the application if it is determined that by expediting the processing it will benefit the economy of Texas. THSC, §382.05155 allows the commission to authorize the use of overtime or contract labor to process expedited applications, and to add a surcharge to cover expenses incurred by the expediting process. THSC, §382.05155 specifies that the overtime or contract labor used to process expedited applications is not included in the calculation of the number of full-time equivalent commission employees. Applicants must still comply with all applicable federal and state requirements, including the existing public notice requirements. These requirements will continue to include the opportunity,

where applicable, to submit comments, and request a public meeting, a notice and comment hearing, or a contested case hearing. In addition, when public notice is required, and the applicant pays a surcharge, the published notice must indicate that the application is being processed in an expedited manner.

### **Section by Section Discussion**

#### *§101.600, Applicability*

The commission proposes new §101.600, to establish that owners and operators may request expedited processing of applications filed under 30 TAC Chapter 106, 116, or 122, and to establish the standard the executive director must use to determine whether an application may be processed under this section. Proposed new §101.600(a) requires the owner or operator to demonstrate that the application and project will benefit the economy of Texas. Proposed new §101.600(b) provides that the executive director may expedite the processing of an application if the executive director determines that expediting it will benefit the economy of Texas. In addition to this determination, proposed subsection (b) provides that the executive director must have the available financial and physical resources for this purpose. The number of applications that can be expedited will depend upon available permitting resources, such as availability of qualified personnel (commission employees or contract labor), office space, or computers. For the 2014 - 2015 biennium, the commission appropriation for the program is limited by Appropriation Rider authorized by General Appropriations Act,

Article IX, §18.57 (83rd Legislature, 2013). This rider limits the amount appropriated for this program to an amount not to exceed \$955,000 in fiscal year 2014 and not to exceed \$897,000 in fiscal year 2015. Expending the appropriation authorized under this rider is contingent on the agency collecting revenue from the expedited permit program.

*§101.601, Surcharge*

The commission proposes new §101.601 to provide for the executive director to add a surcharge for processing expedited applications and to provide for a refund or additional charge when applicable. Proposed new §101.601(a) requires this surcharge to be added in an amount sufficient to cover expenses incurred by expediting the processing of an application. Proposed new §101.601(b) requires applicants to pay a surcharge at the time an application, filed under 30 TAC Chapter 106, 116, or 122, is submitted or is under review. Only after the surcharge is received will TCEQ begin expediting the processing of the application. Proposed new §101.601(c) allows the executive director to collect additional surcharge(s) from an applicant to cover the expenses of expediting the application above the original surcharge amount. The requirement that the executive director include a surcharge to cover the expenses of expediting an application is statutory. Once a request for expedited permitting is received, the executive director will evaluate the resources necessary to expedite the processing of each application. The commission has included this provision allowing for

additional surcharge(s) to meet the intent of the statute if additional surcharge is necessary to cover expenses incurred by expediting the application. Proposed new §101.601(d) states that the executive director may refund any unused portion of the surcharge.

*§101.602, Public Notice*

The commission proposes new §101.602 to specify that for expedited applications where the applicant pays a surcharge, any required public notice, including that described in 30 TAC Chapters 39, 55, and 122, must also include a statement that the application is being processed in an expedited manner.

**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 rules are in effect, no significant fiscal implications are anticipated for the agency since any increase in agency revenue would be used to offset any additional agency costs. The proposed rules are not anticipated to have fiscal implications for other units of state or local government unless they request an expedited application review. Those that request the expedited process would be required to pay a surcharge. Surcharge amounts will vary based on the type and complexity of the application.

The proposed rules implement the requirements of SB 1756, 83rd Legislature, 2013, to develop a process to expedite applications filed under 30 TAC Chapter 106, 116, or 122. THSC, §382.05155 allows the commission to authorize the use of overtime or contract labor to process expedited applications, and to add a surcharge to cover expenses incurred by the expediting process if the owner or operator demonstrates that the purpose of the application will benefit the state or local economy. The 83rd Legislature, 2013, granted the agency the authority to spend up to \$955,000 in fiscal year 2014 and up to \$897,000 in fiscal year 2015 for the purpose of expediting applications, contingent upon the agency collecting sufficient revenue from the expedited permit program. The specific amount for the surcharge will vary based on the type and complexity of the application, but any surcharge amount must cover the agency's cost to expedite an application. Owners or operators would still be required to comply with all applicable federal and state requirements including public notice requirements.

The proposed rules would not have a significant fiscal impact for the agency since the amount of surcharge revenues are expected to offset any increased costs to process expedited requests. Surcharge fees would cover the expenses for the use of overtime, contract labor, and other costs when an expedited process is requested and approved. Other state agencies or units of local government would not experience any significant fiscal impacts since they are not expected to request an expedited process unless it would be beneficial for them to pay the surcharge.

### **Public Benefits and Costs**

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be in compliance with state law for an expedited process for applications filed under 30 TAC Chapter 106, 116, or 122 that demonstrate a benefit for the state or local economy.

The proposed rules would not have a significant fiscal impact on individuals or large businesses. All owners or operators would have a choice to request to use the expedited process for their application filed under 30 TAC Chapter 106, 116, or 122 and pay a surcharge. Owners or operators are not expected to make this expedited request unless it would be beneficial for them to pay the amount of the surcharge. The specific amount for the surcharge will vary based on the type and complexity of the application.

### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses since those that choose to expedite their application filed under 30 TAC Chapter 106, 116, or 122 and pay a surcharge are not expected to do so unless it would be economically beneficial for them to do so. The specific amount for the surcharge will vary based on the type and complexity of the application.

### **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 rules are required by state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

### **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 rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

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 specific purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to implement SB 1756 by developing a process to expedite the processing of an application filed under 30 TAC Chapter 106, 116, or 122.

Additionally, even if the rules met the definition of a major environmental rule, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed new rules were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382 (also known as the TCAA), and the Texas Water Code, which are cited in the Statutory Authority section of

this preamble, and is specifically required by state law. Further, the rules do not exceed a standard set by federal law or 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. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

### **Takings Impact Assessment**

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking

under the Texas Government Code, §2007.043. The specific purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to implement SB 1756 by developing a process to expedite the application process.

The proposed rules will not create any additional burden on private real property. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory

Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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 public hearing on this proposal in Austin on June 24, 2014, at 10:00 a.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.

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. Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Derek Baxter, 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.texas.gov/rules/ecomments/>*. File size restrictions may apply to

comments being submitted via the eComments system. All comments should reference

Rule Project Number 2013-042-116-AI. The comment period closes June 30, 2014.

Copies of the proposed rulemaking can be obtained from the commission's Web site at

*[http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html)*. For further information,

please contact Becky Southard, Operational Support Section, Air Permits Division, at

(512) 239-1638.

**SUBCHAPTER J: EXPEDITED PERMITTING**  
**§§101.600 - 101.602**

**Statutory Authority**

The new rules are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.05155, concerning Expedited Processing of Application,

which authorizes the commission to develop a process for expediting applications and charging a surcharge; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which requires an applicant for a permit issued under THSC, §382.0518 to publish notice of intent to obtain a permit. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules, and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed rulemaking implements Senate Bill 1756 (83rd Legislature, 2013), THSC, §§382.002, 382.011, 382.012, 382.051, 382.05155, and 382.056; and Texas Government Code, §2001.004 and §2001.006.

**§101.600. Applicability.**

(a) An owner or operator may request the expedited processing of an application filed under Chapter 106, 116, or 122 of this title (relating to Permits by Rule; Control of Air Pollution by Permits for New Construction or Modification; and Federal Operating Permits Program, respectively) if the applicant demonstrates that the purpose of the application will benefit the economy of Texas.

(b) Subject to the availability of commission resources for expediting permit applications, the executive director may expedite the processing of an application filed under Chapter 106, 116 or 122 of this title if the executive director determines that expediting it will benefit the economy of Texas.

**§101.601. Surcharge.**

(a) The executive director may add a surcharge for an expedited application filed under Chapter 106, 116, or 122 of this title (relating to Permits by Rule; Control of Air Pollution by Permits for New Construction or Modification; and Federal Operating Permits Program, respectively) in an amount sufficient to cover the expenses incurred by expediting it, including overtime, contract labor, and other costs.

(b) Any surcharge will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) or TCEQ and delivered with the application to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3088. Applications filed under Chapter 106, 116, or 122 of this title as described in this subchapter will not be considered for expedited processing until the surcharge is received.

(c) If the cost of processing an expedited application under this subchapter

exceeds the collected surcharge amount, the executive director may assess and collect additional surcharge(s) from the applicant to cover the additional costs of expediting the permit. The executive director will not grant final approval under Chapter 106, 116, or 122 of this title if an outstanding surcharge amount is due.

(d) The executive director may refund any unused portion of the surcharge.

**§101.602. Public Notice.**

When existing public notice requirements must be met and the applicant pays a surcharge as described in §101.601 of this chapter (relating to Surcharge), the applicable public notice must indicate that the application is being processed in an expedited manner.



AN ACT

relating to the expedited processing of certain applications for permits under the Clean Air Act; authorizing a surcharge.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.05155 to read as follows:

Sec. 382.05155. EXPEDITED PROCESSING OF APPLICATION.

(a) An applicant, in a manner prescribed by the commission, may request the expedited processing of an application filed under this chapter if the applicant demonstrates that the purpose of the application will benefit the economy of this state or an area of this state.

(b) The executive director may grant an expedited processing request if the executive director determines that granting the request will benefit the economy of this state or an area of this state.

(c) The expediting of an application under this section does not affect a contested case hearing or applicable federal, state, and regulatory requirements, including the notice, opportunity for a public hearing, and submission of public comment required under this chapter.

(d) The commission by rule may add a surcharge to an application fee assessed under this chapter for an expedited application in an amount sufficient to cover the expenses incurred

1 by the expediting, including overtime, contract labor, and other  
2 costs.

3 (e) The commission may authorize the use of overtime or  
4 contract labor to process expedited applications. The overtime or  
5 contract labor authorized under this section is not included in the  
6 calculation of the number of full-time equivalent commission  
7 employees allotted under other law.

8 (f) The commission may pay for compensatory time, overtime,  
9 or contract labor used to implement this section.

10 (g) A rule adopted under this section must be consistent  
11 with Chapter 2001, Government Code. A rule adopted under this  
12 section regarding notice must include a provision to require an  
13 indication that the application is being processed in an expedited  
14 manner.

15 SECTION 2. As soon as practicable after the effective date  
16 of this Act, the Texas Commission on Environmental Quality shall  
17 adopt rules necessary to implement Section 382.05155, Health and  
18 Safety Code, as added by this Act.

19 SECTION 3. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2013.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1756 passed the Senate on April 22, 2013, by the following vote: Yeas 29, Nays 2; and that the Senate concurred in House amendment on May 20, 2013, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1756 passed the House, with amendment, on May 17, 2013, by the following vote: Yeas 137, Nays 3, three present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor