

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** March 3, 2016

**DATE OF REQUEST:** February 12, 2016

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Sherry Davis, (512) 239-2141

**CAPTION: Docket No. 2015-1715-RUL.** Consideration of the adoption of amended Section 35.29 of 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Section 55.255 of 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; and the proposed repeal of Section 80.271 of 30 TAC Chapter 80, Contested Case Hearings.

The adoption would implement Senate Bill 1267, 84th Texas Legislature, 2015, Regular Session, relating to the procedures for providing notice of the commission's decisions or orders and the procedures and timelines concerning motions for rehearing. The proposed rules were published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9484). (Janis Hudson) (Rule Project No. 2016-008-055-LS)

Caroline Sweeney  
\_\_\_\_\_  
**Deputy Director**

Robert Martinez  
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**Division Director**

Sherry L. Davis  
\_\_\_\_\_  
**Agenda Coordinator**

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

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** February 12, 2016

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

**From:** Caroline Sweeney, Deputy Director  
Janis Hudson, Attorney  
Office of Legal Services

**Docket No.:** 2015-1715-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 35, Emergency and Temporary Orders and Permits; Temporary  
Suspension or Amendment of Permit Conditions  
Chapter 55, Requests for Reconsideration and Contested Case Hearings;  
Public Comment  
Chapter 80, Contested Case Hearings  
SB 1267: Commission Action on Hearing Requests  
Rule Project No. 2016-008-055-LS

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

Senate Bill (SB) 1267, passed by the 84th Texas Legislature, amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timelines of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing of agency decisions, and the procedures for judicial review of agency decisions.

Rulemaking was necessary to implement several changes in the APA; most of those changes were proposed by the commission on August 5, 2015, and were adopted on December 9, 2015. The amendments to §35.29(e) and §55.255(e) and the repeal of §80.271 are also needed to implement SB 1267. Specifically, the time period for filing a motion for rehearing will now begin on the date that the commission's decision or order is signed or as otherwise provided by the APA.

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

#### **A.) Summary of what the rulemaking will do:**

Section 55.255(e) is adopted to update procedures for providing notice of the commission's decisions or orders and the procedures and timelines concerning motions for rehearing to ensure consistency with the APA. This section applies to water rights, radioactive materials licensing, and districts applications for which a CCH opportunity is available.

Section 35.29(e) is adopted to update a cross-reference to §80.272. Section 80.271 is repealed because it is obsolete with the adoption of amendments to §80.272 on December 9, 2015.

Re: Docket No. 2015-1715-RUL

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

There is no federal law that will be implemented by this rulemaking, and the rulemaking does not affect the United States Environmental Protection Agency approval or delegation of any permitting programs.

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

None.

**Statutory authority:**

SB 1267 (84th Texas Legislature, 2015); Texas Water Code, §§5.013, 5.102, 5.103, 5.105, 5.115, 11.132, 11.134, and 49.011; and Texas Water Code, Chapter 5, Subchapter L. Additional relevant sections are Texas Health and Safety Code, §401.114; and Texas Government Code, §§2001.004, 2001.006, 2001.142, 2001.143, 2001.144, and 2001.146.

**Effect on the:**

The adopted rulemaking does not affect persons not previously affected, and there will be no fiscal impact on any of the following groups.

**A.) Regulated community:**

All applicants for air quality; water quality; municipal solid waste; industrial and hazardous waste; and underground injection control, water rights permits, radioactive materials licensing, districts, and temporary and emergency orders whose applications receive requests for or are subject to a CCH will be subject to changes in procedures for motions for rehearing.

**B.) Public:**

Those who submit hearing requests regarding applications for air quality; water quality; municipal solid waste; industrial and hazardous waste; and underground injection control, water rights permits, radioactive materials licensing, districts, and temporary and emergency orders will be subject to changes regarding motions for rehearing.

**C.) Agency programs:**

The Office of the Chief Clerk will have somewhat different procedures regarding the timeline concerning motions for rehearing.

**Stakeholder meetings:**

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

**Public comment:**

None.

**Significant changes from proposal:**

None.

Re: Docket No. 2015-1715-RUL

**Potential controversial concerns and legislative interest:**

None.

**Does 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?**

The consequences of not going forward with this rulemaking would be that the Texas Commission on Environmental Quality's (TCEQ) rules would conflict with the changes to the APA in SB 1267, and existing commission rules, which would cause confusion for the public and the regulated community. For this reason, there are no alternatives to rulemaking. The rulemaking to implement SB 1267 is to ensure that TCEQ rules are consistent with the APA.

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

***Texas Register* proposal publication date:** December 25, 2015

**Anticipated *Texas Register* adoption publication date:** March 18, 2016

**Anticipated effective date:** March 24, 2016

**Six-month *Texas Register* filing deadline:** June 27, 2016

**Agency contacts:**

Janis Hudson, Rule Project Manager, Environmental Law Division, (512) 239-0466  
Sherry Davis, Texas Register Coordinator, (512) 239-2141

**Attachments**

SB 1267

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Erin Chancellor  
Stephen Tatum  
Jim Rizk  
Office of General Counsel  
Janis Hudson  
Sherry Davis

AN ACT

relating to contested cases conducted under the Administrative Procedure Act.

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

SECTION 1. Section 2001.052, Government Code, is amended to read as follows:

Sec. 2001.052. CONTENTS OF NOTICE. (a) Notice of a hearing in a contested case must include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short, plain statement of the factual matters asserted.

(b) If a state agency or other party is unable to state factual matters in detail at the time notice under this section is served, an initial notice may be limited to a statement of the issues involved. On timely written application, a more definite and detailed statement of the facts shall be furnished not less than seven [~~three~~] days before the date set for the hearing. In a proceeding in which the state agency has the burden of proof, a state agency that intends to rely on a section of a statute or rule

1 not previously referenced in the notice of hearing must amend the  
2 notice to refer to the section of the statute or rule not later than  
3 the seventh day before the date set for the hearing. This  
4 subsection does not prohibit the state agency from filing an  
5 amendment during the hearing of a contested case provided the  
6 opposing party is granted a continuance of at least seven days to  
7 prepare its case on request of the opposing party.

8 (c) In a suit for judicial review of a final decision or  
9 order of a state agency in a contested case, the state agency's  
10 failure to comply with Subsection (a)(3) or (b) shall constitute  
11 prejudice to the substantial rights of the appellant under Section  
12 2001.174(2) unless the court finds that the failure did not  
13 unfairly surprise and prejudice the appellant or that the appellant  
14 waived the appellant's rights.

15 SECTION 2. Section 2001.054, Government Code, is amended by  
16 adding Subsections (c-1) and (e) to read as follows:

17 (c-1) A state agency that has been granted the power to  
18 summarily suspend a license under another statute may determine  
19 that an imminent peril to the public health, safety, or welfare  
20 requires emergency action and may issue an order to summarily  
21 suspend the license holder's license pending proceedings for  
22 revocation or other action, provided that the agency incorporates a  
23 factual and legal basis establishing that imminent peril in the  
24 order. Unless expressly provided otherwise by another statute, the  
25 agency shall initiate the proceedings for revocation or other  
26 action not later than the 30th day after the date the summary  
27 suspension order is signed. The proceedings must be promptly

1 determined, and if the proceedings are not initiated before the  
2 30th day after the date the order is signed, the license holder may  
3 appeal the summary suspension order to a Travis County district  
4 court. This subsection does not grant any state agency the power to  
5 suspend a license without notice and an opportunity for a hearing.

6 (e) In a suit for judicial review of a final decision or  
7 order of a state agency brought by a license holder, the agency's  
8 failure to comply with Subsection (c) shall constitute prejudice to  
9 the substantial rights of the license holder under Section  
10 2001.174(2) unless the court determines that the failure did not  
11 unfairly surprise and prejudice the license holder.

12 SECTION 3. Sections 2001.141(a), (b), and (e), Government  
13 Code, are amended to read as follows:

14 (a) A decision or order of a state agency that may become  
15 final under Section 2001.144 that is adverse to any [a] party in a  
16 contested case must be in writing and signed by a person authorized  
17 by the agency to sign the agency decision or order [~~stated in the~~  
18 ~~record~~].

19 (b) A decision or order that may become final under Section  
20 2001.144 must include findings of fact and conclusions of law,  
21 separately stated.

22 (e) If a party submits under a state agency rule proposed  
23 findings of fact or conclusions of law, the decision or order shall  
24 include a ruling on each proposed finding or conclusion.

25 SECTION 4. Section 2001.142, Government Code, is amended to  
26 read as follows:

27 Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS.

1 (a) A state agency shall notify each party to ~~[in]~~ a contested case  
2 ~~[shall be notified either personally or by first class mail]~~ of any  
3 decision or order of the agency in the following manner:

4 (1) personally;

5 (2) if agreed to by the party to be notified, by  
6 electronic means sent to the current e-mail address or telecopier  
7 number of the party's attorney of record or of the party if the  
8 party is not represented by counsel; or

9 (3) by first class, certified, or registered mail sent  
10 to the last known address of the party's attorney of record or of  
11 the party if the party is not represented by counsel.

12 (b) When a decision or order ~~[On issuance]~~ in a contested  
13 case ~~[of a decision]~~ that may become final under Section [2001.144](#) is  
14 signed or when an order ruling on a motion for rehearing is signed,  
15 a state agency shall deliver or send a copy of the decision or order  
16 to each party in accordance with Subsection (a). The state agency  
17 shall keep a record documenting the provision of the notice  
18 provided to each party in accordance with Subsection (a) ~~[by first~~  
19 ~~class mail to the attorneys of record and shall keep an appropriate~~  
20 ~~record of the mailing. If a party is not represented by an attorney~~  
21 ~~of record, the state agency shall send a copy of the decision or~~  
22 ~~order by first class mail to the party and shall keep an appropriate~~  
23 ~~record of the mailing].~~

24 (c) If an adversely affected party or the party's attorney  
25 of record does not receive the notice required by Subsections (a)  
26 and (b) or acquire actual knowledge of a signed decision or order  
27 before the 15th day after the date the decision or order is signed,

1 a period specified by or agreed to under Section 2001.144(a),  
2 2001.146, 2001.147, or 2001.176(a) relating to a decision or order  
3 or motion for rehearing begins, with respect to that party, on the  
4 date the party receives the notice or acquires actual knowledge of  
5 the signed decision or order, whichever occurs first. The period  
6 may not begin earlier than the 15th day or later than the 90th day  
7 after the date the decision or order was signed [~~A party or attorney~~  
8 ~~of record notified by mail under Subsection (b) is presumed to have~~  
9 ~~been notified on the third day after the date on which the notice is~~  
10 ~~mailed].~~

11 (d) To establish a revised period under Subsection (c), the  
12 adversely affected party must prove, on sworn motion and notice,  
13 that the date the party received notice from the state agency or  
14 acquired actual knowledge of the signing of the decision or order  
15 was after the 14th day after the date the decision or order was  
16 signed.

17 (e) The state agency must grant or deny the sworn motion not  
18 later than the date of the agency's governing board's next meeting  
19 or, for a state agency without a governing board with  
20 decision-making authority in contested cases, not later than the  
21 10th day after the date the agency receives the sworn motion.

22 (f) If the state agency fails to grant or deny the motion at  
23 the next meeting or before the 10th day after the date the agency  
24 receives the motion, as appropriate, the motion is considered  
25 granted.

26 (g) If the sworn motion filed under Subsection (d) is  
27 granted with respect to the party filing that motion, all the

1 periods specified by or agreed to under Section 2001.144(a),  
2 2001.146, 2001.147, or 2001.176(a) relating to a decision or order,  
3 or motion for rehearing, shall begin on the date specified in the  
4 sworn motion that the party first received the notice required by  
5 Subsections (a) and (b) or acquired actual knowledge of the signed  
6 decision or order. The date specified in the sworn motion shall be  
7 considered the date the decision or order was signed.

8 SECTION 5. The heading to Section 2001.143, Government  
9 Code, is amended to read as follows:

10 Sec. 2001.143. TIME OF [~~RENDERING~~] DECISION.

11 SECTION 6. Sections 2001.143(a) and (b), Government Code,  
12 are amended to read as follows:

13 (a) A decision or order that may become final under Section  
14 2001.144 in a contested case should [~~must~~] be signed [~~rendered~~] not  
15 later than the 60th day after the date on which the hearing is  
16 finally closed.

17 (b) In a contested case heard by other than a majority of the  
18 officials of a state agency, the agency or the person who conducts  
19 the contested case hearing may extend the period in which the  
20 decision or order may be signed [~~issued~~].

21 SECTION 7. Section 2001.144, Government Code, is amended to  
22 read as follows:

23 Sec. 2001.144. DECISIONS OR ORDERS; WHEN FINAL. (a) A  
24 decision or order in a contested case is final:

25 (1) if a motion for rehearing is not filed on time, on  
26 the expiration of the period for filing a motion for rehearing;

27 (2) if a motion for rehearing is filed on time, on the

1 date:

2 (A) the order overruling the motion for rehearing  
3 is signed [~~rendered~~]; or

4 (B) the motion is overruled by operation of law;

5 (3) if a state agency finds that an imminent peril to  
6 the public health, safety, or welfare requires immediate effect of  
7 a decision or order, on the date the decision or order is signed,  
8 provided that the agency incorporates in the decision or order a  
9 factual and legal basis establishing an imminent peril to the  
10 public health, safety, or welfare [~~rendered~~]; or

11 (4) on:

12 (A) the date specified in the decision or order  
13 for a case in which all parties agree to the specified date in  
14 writing or on the record; or

15 (B) [~~7~~] if the agreed specified date is [~~not~~]  
16 before the date the decision or order is signed, the date the  
17 decision or order is signed [~~or later than the 20th day after the~~  
18 ~~date the order was rendered~~].

19 (b) If a decision or order is final under Subsection (a)(3),  
20 a state agency must recite in the decision or order the finding made  
21 under Subsection (a)(3) and the fact that the decision or order is  
22 final and effective on the date signed [~~rendered~~].

23 SECTION 8. Section 2001.145(b), Government Code, is amended  
24 to read as follows:

25 (b) A decision or order that is final under Section  
26 2001.144(a)(2), (3), or (4) is appealable.

27 SECTION 9. Section 2001.146, Government Code, is amended by

1 amending Subsections (a), (b), (c), (e), and (f) and adding  
2 Subsections (g), (h), and (i) to read as follows:

3 (a) A motion for rehearing in a contested case must be filed  
4 by a party not later than the 25th [~~20th~~] day after the date [~~on~~  
5 ~~which~~] the decision or order that is the subject of the motion is  
6 signed, unless the time for filing the motion for rehearing has been  
7 extended under Section 2001.142, by an agreement under Section  
8 2001.147, or by a written state agency order issued under  
9 Subsection (e). On filing of the motion for rehearing, copies of  
10 the motion shall be sent to all other parties using the notification  
11 procedures specified by Section 2001.142(a) [party or the party's  
12 attorney of record is notified as required by Section 2001.142 of a  
13 decision or order that may become final under Section 2001.144].

14 (b) A party must file with the state agency a reply, if any,  
15 to a motion for rehearing [must be filed with the state agency] not  
16 later than the 40th [~~30th~~] day after the date [~~on which the party or~~  
17 ~~the party's attorney of record is notified as required by Section~~  
18 ~~2001.142 of~~] the decision or order that is the subject of the motion  
19 is signed, or not later than the 10th day after the date a motion for  
20 rehearing is filed if the time for filing the motion for rehearing  
21 has been extended by an agreement under Section 2001.147 or by a  
22 written state agency order under Subsection (e). On filing of the  
23 reply, copies of the reply shall be sent to all other parties using  
24 the notification procedures specified by Section 2001.142(a) [ex  
25 order that may become final under Section 2001.144].

26 (c) A state agency shall act on a motion for rehearing not  
27 later than the 55th [~~45th~~] day after the date [~~on which the party or~~

1 ~~the party's attorney of record is notified as required by Section~~  
2 ~~2001.142 of]~~ the decision or order that is the subject of the motion  
3 is signed [~~that may become final under Section 2001.144]~~ or the  
4 motion for rehearing is overruled by operation of law.

5 (e) A state agency may, on its own initiative or on the  
6 motion of any party for cause shown, by written order extend the  
7 time for filing a motion or reply or taking agency action under this  
8 section, provided that the agency extends the time or takes the  
9 action not later than the 10th day after the date the period for  
10 filing a motion or reply or taking agency action expires. An[~~r~~  
11 ~~except that an]~~ extension may not extend the period for agency  
12 action beyond the 100th [~~90th~~] day after the date [~~on which the~~  
13 ~~party or the party's attorney of record is notified as required by~~  
14 ~~Section 2001.142 of]~~ the decision or order that is the subject of  
15 the motion is signed [~~that may become final under Section~~  
16 ~~2001.144]~~.

17 (f) In the event of an extension, a motion for rehearing is  
18 overruled by operation of law on the date fixed by the order or, in  
19 the absence of a fixed date, the 100th day [~~90 days~~] after the date  
20 [~~on which the party or the party's attorney of record is notified as~~  
21 ~~required by Section 2001.142 of]~~ the decision or order that is the  
22 subject of the motion is signed [~~that may become final under Section~~  
23 ~~2001.144]~~.

24 (g) A motion for rehearing must identify with particularity  
25 findings of fact or conclusions of law that are the subject of the  
26 complaint and any evidentiary or legal ruling claimed to be  
27 erroneous. The motion must also state the legal and factual basis

1 for the claimed error.

2 (h) A subsequent motion for rehearing is not required after  
3 a state agency rules on a motion for rehearing unless the order  
4 disposing of the original motion for rehearing:

5 (1) modifies, corrects, or reforms in any respect the  
6 decision or order that is the subject of the complaint, other than a  
7 typographical, grammatical, or other clerical change identified as  
8 such by the agency in the order, including any modification,  
9 correction, or reformation that does not change the outcome of the  
10 contested case; or

11 (2) vacates the decision or order that is the subject  
12 of the motion and provides for a new decision or order.

13 (i) A subsequent motion for rehearing required by  
14 Subsection (h) must be filed not later than the 20th day after the  
15 date the order disposing of the original motion for rehearing is  
16 signed.

17 SECTION 10. Section 2001.176(a), Government Code, is  
18 amended to read as follows:

19 (a) A person initiates judicial review in a contested case  
20 by filing a petition not later than the 30th day after the date ~~on~~  
21 ~~which~~ the decision or order that is the subject of complaint is  
22 final and appealable. In a contested case in which a motion for  
23 rehearing is a prerequisite for seeking judicial review, a  
24 prematurely filed petition is effective to initiate judicial review  
25 and is considered to be filed:

26 (1) on the date the last timely motion for rehearing is  
27 overruled; and

1           (2) after the motion is overruled.

2           SECTION 11. The changes in law made by this Act to Chapter  
3 2001, Government Code, apply only to an administrative hearing that  
4 is set by the State Office of Administrative Hearings, or another  
5 state agency conducting an administrative hearing, on or after the  
6 effective date of this Act. A hearing set before the effective date  
7 of this Act, or any decision issued or appeal from the hearing, is  
8 governed by the law in effect when the hearing was set, and the  
9 former law is continued in effect for that purpose.

10          SECTION 12. This Act takes effect September 1, 2015.

S.B. No. 1267

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

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

I hereby certify that S.B. No. 1267 passed the Senate on May 6, 2015, by the following vote: Yeas 31, Nays 0.

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

I hereby certify that S.B. No. 1267 passed the House on May 22, 2015, by the following vote: Yeas 140, Nays 0, two present not voting.

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

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §35.29.

The amendment is adopted *without change* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9484) and will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rule**

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule

Project No. 2015-018-080-LS).

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts the amendment to §55.255 and the repeal of §80.271, which will complete the rulemaking necessary to implement SB 1267.

### **Section Discussion**

The commission adopts an updated a cross-reference in §35.29 from §80.271, which is concurrently adopted for repeal, to §80.272. Section 80.272, was amended by the commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications.

In addition to the adopted amendment, various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

### **Final Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of 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 adopted amendment to §35.29 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it is procedural in nature and implements changes made to the APA in SB 1267 by revising a cross-reference in a commission rule regarding a CCH for emergency and temporary order applications.

The rulemaking is procedural in nature and does not 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.

As defined in the Texas Government Code, §2001.0225 only 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 powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted amendment to §35.29 is procedural in nature and implements changes made to the APA in SB 1267 regarding commission action on requests for CCH. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment revises a rule regarding commission action on requests for CCH and is procedural in nature. The primary purpose of the adopted rulemaking is to update a cross-reference to a rule that implemented changes made to the APA in SB 1267. Promulgation and

enforcement of the adopted rulemaking will not burden private real property. The adopted rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

### **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 the amendment affect any action or 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 held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

**SUBCHAPTER C: GENERAL PROVISIONS**  
**§35.29**

**Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, Chapter 5, Subchapter L, concerning Emergency and Temporary Orders, which authorizes the commission to issue and hold hearings regarding emergency and temporary orders. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.142, concerning Notification of Decisions and Orders, which prescribes requirements for the notification of decisions and orders of a state agency; Texas Government Code, §2001.143, concerning Time of Decision, which concerns when

a decision in a contested case becomes final; Texas Government Code, §2001.144, concerning Decisions or Orders; When Final, which provides the time at which decisions in contested cases are final; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted amendment implements TWC, §5.504; Texas Government Code, §2001.004; and Senate Bill 1267 (84th Texas Legislature, 2015).

**§35.29. Procedures for a Hearing.**

(a) Hearings before the commission under this chapter shall be conducted in accordance with Chapter 10 of this title (relating to Commission Meetings). Contested case hearings shall be conducted under the Texas Administrative Procedure Act (APA) [APA] and Chapter 80 of this title (relating to Contested Case Hearings).

(b) If a contested case hearing is requested on the application, and the commission grants the request, the commission shall either conduct the contested case hearing or remand the matter to the State Office of Administrative Hearings (SOAH) [SOAH].

(c) The commission or judge may, consistent with the requirements of the APA, reduce the time periods specified in the commission's rules governing contested case hearings.

(d) For any hearing on a temporary or emergency order, the following procedures will apply:

(1) parties will be designated by the commission or judge. To be designated as a party, the person seeking party status must show a justiciable interest. For each hearing under this section, the applicant, the public interest counsel, and the executive director are parties by rule;

(2) the testimony of all witnesses will be under oath, with an opportunity for questioning by the commission or judge and cross-examination by the other parties;

(3) other parties to the hearing will be given an opportunity to present rebuttal evidence and testimony;

(4) the applicant will have the burden of proving its need for an emergency or temporary order, and will have the right to open and close the evidentiary parts of the

hearing. The fact that an emergency order was issued without a hearing, standing alone, will not constitute evidence of the need for such authorization; and

(5) the commission or judge will have the right to limit the number of witnesses; to limit the time for direct questioning or cross-examination of a witness; to refuse illustrative and documentary evidence; and to limit argument.

(e) If a hearing request is denied, the procedures contained in §80.272 [§80.271] and §80.273 of this title (relating to Motion for Rehearing; and Decision Final and Appealable) apply.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §55.255.

The amendment is adopted *without change* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9491) and will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rule**

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule

Project No. 2015-018-080-LS).

In corresponding rulemaking published in this issue of the *Texas Register*, the commission adopts the amendment to §35.29 and to repeal §80.271, which will complete the rulemaking necessary to implement SB 1267.

### **Section Discussion**

#### *§55.255, Commission Action on Hearing Request*

The adopted amendment to §55.255(e) is to implement SB 1267, Section 9. SB 1267, Section 9, which amends Texas Government Code, §2001.146, changes the date for filing a motion for rehearing from within 20 days after notification to not later than the 25 days after the commission's decision or order is signed. However, the deadline may be extended under prescribed sections of the APA. On December 9, 2015, the commission adopted similar changes to §55.211(f) and §80.272.

In addition to the adopted amendment, the adoption also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms and rule structure. These changes are non-substantive and generally not specifically discussed in this preamble.

### **Final Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of 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 adopted amendment to §55.255 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it is procedural in nature and implements changes made to the APA in SB 1267 by revising a rule regarding commission action on requests for CCH.

The rulemaking is procedural in nature and does not 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.

As defined in the Texas Government Code, §2001.0225 only 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 powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted amendment to §55.255 is procedural in nature and implements changes made to the APA in SB 1267 regarding commission action on requests for CCH. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment revises a rule regarding commission action on requests for CCH and is procedural in

nature. The primary purpose of the adopted rulemaking is to implement changes made to the APA in SB 1267. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

### **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 the amendment affect any action or 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 held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

**SUBCHAPTER G: REQUESTS FOR CONTESTED CASE HEARING AND  
PUBLIC COMMENT ON CERTAIN APPLICATIONS**

**§55.255**

**Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; TWC, §5.115, concerning Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications; TWC, §11.132, concerning Notice, which provides opportunity for contested case hearing on water rights applications; TWC, §11.134, concerning Action on Application, which authorizes the commission to grant or deny an application for water rights; TWC, §49.011, concerning Notice Applicable to Creation of a District by the Commission, which authorizes the commission to act on districts applications under TWC, Chapters 36, 50, 51, 54, 55, 58, 65, and 66; and Texas Health and Safety Code, §401.114, concerning Notice and Hearing, which authorizes the commission to grant or renew a radioactive waste disposal license. Additional relevant

sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted amendment implements Texas Government Code, §2001.146, and Senate Bill 1267 (84th Texas Legislature, 2015).

**§55.255. Commission Action on Hearing Request.**

(a) The determination of the validity of a hearing request is not, in itself, a contested case subject to the Texas Administrative Procedure Act (APA) [APA]. The commission will evaluate the hearing request at the scheduled commission meeting, and may:

(1) determine that a hearing request does not meet the requirements of this subchapter, and act on the application;

(2) determine that the hearing request does not meet the requirements of this subchapter, and refer the application to a public meeting to develop public comment before acting on the application;

(3) determine that a hearing request meets the requirements of this subchapter, and direct the chief clerk to refer the application to the State Office of Administrative Hearings (SOAH) [SOAH] for a hearing; or

(4) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the APA.

(b) A request for a contested case hearing shall be granted if the request is:

(1) made by the applicant or the executive director; or

(2) made by an affected person if the request:

(A) complies with the requirements of §55.251 of this title (relating to Requests for Contested Case Hearing, Public Comment);

(B) is timely filed with the chief clerk; and

(C) is pursuant to a right to hearing authorized by law[;].

(c) The commission may refer an application to SOAH if there is no hearing request complying with this subchapter, if the commission determines that a hearing would be in the public interest.

(d) A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(e) If all requests for contested case hearing [hearings request] are denied, [the procedures contained in] §80.272 of this title (relating to Motion for Rehearing) applies

[apply]. A motion for rehearing in such a case must be filed not later than 25 [no earlier than, and no later than 20] days after[, ] the date that [the person or his attorney of record is notified of] the commission's final decision or order [on the application] is signed, unless the time for filing the motion for rehearing has been extended under Texas Government Code, §2001.142 and §80.276 of this title (relating to Request for Extension to File Motion for Rehearing), by agreement under Texas Government Code, §2001.147, or by the commission's written order issued pursuant to Texas Government Code, §2001.146(e). If the motion is denied under §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable), the commission's decision is final and appealable under Texas Water Code, §5.351, [or] Texas Health and Safety Code, §401.341, or under the APA.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §80.271.

The proposed repeal was published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9494).

### **Background and Summary of the Factual Basis for the Adopted Rule**

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS). The applicable rule, §80.272, was amended by the

commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission adopts the amendments to §35.29 and §55.255, which will complete the rulemaking necessary to implement SB 1267.

### **Section Discussion**

Section 80.271 is adopted for repeal because the changes adopted by the commission on December 9, 2015, to §80.272 make §80.271 obsolete.

### **Final Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of 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 adopted repeal of §80.271 is not specifically intended to protect

the environment or reduce risks to human health from environmental exposure. Rather, §80.271 is obsolete.

The rulemaking is procedural in nature and does not 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.

As defined in the Texas Government Code, §2001.0225 only 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 powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted repeal of §80.271 is necessary to complete the implementation of SB 1267 by removing an obsolete rule. The repealed rule, §80.271, is procedural in nature and does not directly impact the cost of CCHs. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of

the law described in the Statutory Authority section of this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The primary purpose of the adopted rulemaking is to repeal an obsolete rule, §80.271. This is necessary to complete the implementation of SB 1267. Section 80.271 is procedural in nature and does not directly impact the cost of CCHs. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted repeal of §80.271 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

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

The commission reviewed the adopted repeal of §80.271 and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or

(4), nor will the repeal affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule repeal 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 held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

**SUBCHAPTER F: POST HEARING PROCEDURES**  
**§80.271**

**Statutory Authority**

The repeal is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.142, concerning Notification of Decisions and Orders, which prescribes requirements for the notification of decisions and orders of a state agency; Texas Government Code, §2001.143, concerning Time of Decision, which concerns when a decision in a contested case becomes final; Texas Government Code, §2001.144, concerning Decisions or Orders; When Final, which provides the time at which

decisions in contested cases are final; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted repeal implements Texas Government Code, §2001.004, and Senate Bill 1267 (84th Texas Legislature, 2015).

**[\$80.271. Motion for Rehearing.]**

[(a) Any decision in an administrative hearing before the commission that occurs before September 1, 1999 is subject to this section.]

[(b) Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. For purposes of this section, a party or attorney of record is presumed to have been notified on the third day after the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:]

[(1) the name and representative capacity of the person filing the motion;]

[(2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;]

[(3) the date of the decision or order; and]

[(4) a concise statement of each allegation of error.]

[(c) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order.]

[(d) Ruling on motion for rehearing.]

[(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.]

[(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.]

[(e) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the date the party is notified of the decision or order.]

[(f) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party is notified of the decision or order.]

(b) Limitation, suspension, or cancellation of certificate. The commissioner will limit, suspend, or cancel an approved PEO's certificate of approval if the commissioner finds that the approved PEO or its plan or trust do not meet the requirements of applicable Insurance Code provisions or this subchapter.

(c) Notice of limitation; commissioner's hearing. The commissioner will issue a written notice to an approved PEO stating the basis for a limitation under subsection (b) of this section. If within 30 days of receiving a notice of limitation the approved PEO submits a written request for review by the commissioner, the commissioner will schedule a hearing under Insurance Code Chapter 40, at which the approved PEO will be given an opportunity to show compliance with this subchapter. Hearings described in this subchapter will be conducted as required by Government Code Chapter 2001, concerning Administrative Procedure; Insurance Code Chapter 40, concerning Department Rules and Procedures; TDI's and State Office of Administrative Hearing's rules of procedure; and any other applicable law and regulations.

(d) Notice of suspension or cancellation. The commissioner will issue a written notice of suspension or of intent to cancel to an approved PEO stating the basis for the suspension or cancellation under subsection (b) of this section.

(e) Hearing request in contested case. An approved PEO may submit a written request to the commissioner for a hearing at the State Office of Administrative Hearings under Government Code Chapter 2001, Administrative Procedure; within 30 days of receiving notice that its certificate of approval:

(1) remains limited after a commissioner's hearing under subsection (c) of this section,

(2) is suspended under subsection (d) of this section, or

(3) will be canceled under subsection (d) of this section.

(f) At that hearing the approved PEO will be given an opportunity to show compliance with this subchapter.

§13.583. Cancellation of Certificate of Approval.

(a) Plan termination. If the commissioner determines that an approved PEO's certificate of approval should be canceled, the approved PEO must terminate its health benefit plan in compliance with §13.580 of this title (relating to Withdrawal from Market). The approved PEO must file its withdrawal plan within 30 days of receiving the commissioner's written notice of suspension.

(b) Cancellation of certificate of approval. When an approved PEO has fulfilled all requirements of its approved withdrawal plan, the commissioner will cancel the approved PEO's certificate of approval.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 14, 2015.

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Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: January 24, 2016

For further information, please call: (512) 676-6584



## TITLE 30. ENVIRONMENTAL QUALITY

# PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 35. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS

### SUBCHAPTER C. GENERAL PROVISIONS

#### 30 TAC §35.29

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §35.29.

#### Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking is proposed to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS).

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend §55.255 and repeal §80.271, which will complete the rulemaking necessary to implement SB 1267.

#### Section Discussion

The commission proposes to update a cross-reference in §35.29 from §80.271, which is concurrently proposed for repeal, to §80.272. Section 80.272, was amended by the commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications.

In addition to the proposed amendment, various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

#### Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, 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 for other units of state or local government. The proposed rule is procedural in nature and does not directly impact the cost of CCHs.

The proposed rule would implement SB 1267 adopted by the 84th Texas Legislature (2015). SB 1267 amends the APA, codified in the Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of a CCH and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 TAC Chapters 1, 50, 55, 70, and 80. The proposed amendment to §35.29 is necessary to complete the implementation of SB 1267. Specifically, the proposed amendment to §35.29 updates a cross-reference to another commission rule. The proposed rule is procedural in nature and does not directly impact the cost of CCHs for emergency and temporary orders.

#### Public Benefits and Costs

Mr. Horvath has 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 would be compliance with state law and provide greater clarity for the public and also for applicants for emergency or temporary orders and for which a CCH is held on those applications.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rule.

The proposed amendment to §35.29 is necessary to complete the implementation of SB 1267. Specifically, the proposed amendment to §35.29 updates a cross-reference to another commission rule. The proposed rule amendment is procedural in nature and does not directly impact the cost of CCHs for emergency and temporary orders.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule would have the same effect on a small business as it does on a large business. The proposed amendment is procedural in nature and does not directly impact the cost of CCHs. It is not known how many applicants would be small or micro-businesses.

#### 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 is necessary to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rule is 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of 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 amendment to §35.29 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it is procedural in nature and implements changes made to the APA in SB 1267 by revising a cross-reference in a commission rule regarding a CCH for emergency and temporary order applications.

The rulemaking is procedural in nature and does not 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.

As defined in the Texas Government Code, §2001.0225 only 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 powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendment to §35.29 is procedural in nature and implements changes made to the APA in SB 1267 regarding commission action on requests for CCH. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

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 an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment revises a rule regarding commission action on requests for CCH and is procedural in nature. The primary purpose of the proposed rulemaking is to update a cross-reference to a rule that implemented changes made to the APA in SB 1267. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or 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.

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 January 26, 2016, 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.

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 Sherry Davis, 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://www1.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 No. 2016-008-055-LS. The comment period closes on January 29, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466.

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, Chapter 5, Subchapter L, concerning Emergency and Temporary Orders, which authorizes the commission to issue and hold hearings regarding emergency and temporary orders. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.142, concerning Notification of Decisions and Orders, which prescribes requirements for the notification of decisions and orders

of a state agency; Texas Government Code, §2001.143, concerning Time of Rendering Decision, which concerns when a decision in a contested case becomes final; Texas Government Code, §2001.144, concerning Decisions; When Final, which provides the time at which decisions in contested cases are final; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The proposed amendment implements TWC, §5.504; Texas Government Code, §2001.004; and SB 1267 (84th Texas Legislature, 2015).

#### §35.29. Procedures for a Hearing.

(a) Hearings before the commission under this chapter shall be conducted in accordance with Chapter 10 of this title (relating to Commission Meetings). Contested case hearings shall be conducted under the Texas Administrative Procedure Act (APA) [APA] and Chapter 80 of this title (relating to Contested Case Hearings).

(b) If a contested case hearing is requested on the application, and the commission grants the request, the commission shall either conduct the contested case hearing or remand the matter to the State Office of Administrative Hearings (SOAH) [SOAH].

(c) The commission or judge may, consistent with the requirements of the APA, reduce the time periods specified in the commission's rules governing contested case hearings.

(d) For any hearing on a temporary or emergency order, the following procedures will apply:

(1) parties will be designated by the commission or judge. To be designated as a party, the person seeking party status must show a justiciable interest. For each hearing under this section, the applicant, the public interest counsel, and the executive director are parties by rule;

(2) the testimony of all witnesses will be under oath, with an opportunity for questioning by the commission or judge and cross-examination by the other parties;

(3) other parties to the hearing will be given an opportunity to present rebuttal evidence and testimony;

(4) the applicant will have the burden of proving its need for an emergency or temporary order, and will have the right to open and close the evidentiary parts of the hearing. The fact that an emergency order was issued without a hearing, standing alone, will not constitute evidence of the need for such authorization; and

(5) the commission or judge will have the right to limit the number of witnesses; to limit the time for direct questioning or cross-examination of a witness; to refuse illustrative and documentary evidence; and to limit argument.

(e) If a hearing request is denied, the procedures contained in §80.272 [§80.271] and §80.273 of this title (relating to Motion for Rehearing; and Decision Final and Appealable) apply.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2015.

TRD-201505475

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CHAPTER 39. PUBLIC NOTICE  
SUBCHAPTER L. PUBLIC NOTICE OF  
INJECTION WELL AND OTHER SPECIFIC  
APPLICATIONS

**30 TAC §39.651**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §39.651.

**Background and Summary of the Factual Basis for the Proposed Rule**

This rulemaking implements House Bill (HB) 655, 84th Texas Legislature, 2015, addressing the commission's regulation of aquifer storage and recovery (ASR) projects in Texas. ASR involves the use of one or more injection wells for the purpose of placing a water supply into a subsurface geologic formation, or aquifer, for storage so that the water may be subsequently recovered and used by the project operator. The proposed amendment to §39.651 implements the requirements of HB 655 for providing public notice for an individual injection well permit application for an ASR injection well. There are no requirements for providing individual public notice on ASR injection wells that are authorized by rule.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes revisions to 30 TAC Chapter 295, Water Rights, Procedural; Chapter 297, Water Rights, Substantive; and Chapter 331, Underground Injection Control.

**Section Discussion**

**§39.651, Application for Injection Well Permit**

The commission proposes to amend §39.651 to implement the public notice requirements in Texas Water Code (TWC), §27.153(d). With the proposed revisions, an application for a permit for a Class V injection well, including a Class V permit for an ASR well, would be subject to similar public notice requirements for a nonhazardous Class I or Class III injection well permit. These requirements include providing mailed notice to any groundwater conservation district located in the same county as the proposed injection well and newspaper publication requirements. Section 39.651(c)(4) is proposed to be amended to add "Class V" to include Class V injection well permit applications in the requirements for the Notice of Receipt of Application and Intent to Obtain a Permit. Section 39.651(d)(4) and (6) is proposed to be amended to add "Class V" to include Class V injection well permit applications in the requirements for the Notice of Application and Preliminary Decision. Section 39.651(f)(3)(B) is proposed to be amended to add "Class V" to include Class V injection well permit applications in the requirements for a notice of hearing.

**Fiscal Note: Costs to State and Local Government**

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, 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 for other units of state or local government as a result of the administration or enforcement of the proposed rule.

The proposed rule implements HB 655. HB 655 amended TWC, Chapters 11, 27, and 36, regarding regulation of ASR projects. In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes revisions to 30 TAC Chapters 295, 297, and 331. This fiscal note applies only to the proposed changes to Chapter 39.

ASR involves the use of one or more injection wells for the purpose of placing a water supply into a subsurface geologic formation, or aquifer, for storage so that the water may be subsequently recovered and used by the project operator. ASR allows the operator to utilize an existing aquifer as a storage reservoir rather than using aboveground storage options. The stored water can be available for public or private drinking water supplies, agriculture, or industrial uses. The operator must assure that the aquifer formation receiving the injected water has appropriate geologic and hydrologic properties that are amenable to injection and will allow the control or containment of the injected water. The operator must also assure that the injection will not pollute the native groundwater already in the aquifer or other underground sources of drinking water. TCEQ's Underground Injection Control program regulates the authorization, construction, operation, and closure of the injection wells used for ASR projects.

HB 655 revised TWC statutory provisions under which an application for an individual permit for an ASR project is subject to public notice. The HB 655 requirements are added in the proposed revisions to §39.651 and would now include individual permit applications for Class V injection wells as being subject to public notice requirements.

The proposed rule would require TCEQ to mail notice of an application for an ASR individual permit to all persons who own property adjacent to the proposed ASR project and to all persons who own mineral rights on property adjacent to the proposed project. TCEQ will bear the costs of mailing these notices. These costs are not anticipated to be significant. ASR projects may also be authorized by rule. Since authorizations by rule do not have public notice requirements and most applicants are expected to apply for an ASR authorization by rule process rather than seek an individual permit, any costs to the agency to implement the proposed rule should be minimal.

Municipalities or other entities providing water supplies that use or intend to use ASR for storage of water may be affected by the changes to Chapter 39. If one of these entities chooses to obtain authorization for an ASR project under an individual permit, they will have to provide the TCEQ with the names and addresses of all adjacent landowners and mineral owners. Obtaining this information would be at some cost, depending on the number of adjacent landowners and mineral owners. However, TCEQ anticipates that this cost will be minimal in relation to the total cost of an ASR project and that most applicants will apply for an ASR authorization by rule process rather than seek an individual permit. Because notice requirements are not associated with authorization-by-rule applications, municipalities or other local governmental entities who apply for authorization-by-rule would not be affected by the proposed rule.

**Public Benefits and Costs**

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit an-

case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I, ~~or~~ Class III, or Class V underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility;

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(v) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2015.

TRD-201505500

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: January 24, 2016

For further information, please call: (512) 239-6812



CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT  
SUBCHAPTER G. REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

**30 TAC §55.255**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §55.255.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking is proposed to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS).

In corresponding rulemaking published in this issue of the *Texas Register*, the commission proposes to amend §35.29 and to repeal §80.271, which will complete the rulemaking necessary to implement SB 1267.

## Section Discussion

### §55.255, Commission Action on Hearing Request

Section 55.255(e) is proposed to be amended to implement SB 1267, Section 9. SB 1267, Section 9, which amends Texas Government Code, §2001.146, changes the date for filing a motion for rehearing from within 20 days after notification to not later than the 25 days after the commission's decision or order is signed. However, the deadline may be extended under prescribed sections of the APA. On December 9, 2015, the commission adopted similar changes to §55.211(f) and §80.272.

In addition to the proposed amendment, various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, rule structure. These changes are non-substantive and generally not specifically discussed in this preamble.

#### Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, 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 for other units of state or local government. The proposed rule is procedural in nature and does not directly impact the cost of CCHs.

The proposed rule would implement SB 1267 adopted by the 84th Texas Legislature (2015). SB 1267 amends the APA, codified in the Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB1267 revises and creates numerous requirements related to notice of a CCH and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 TAC Chapters 1, 50, 55, 70, and 80. The proposed amendment to §55.255 is necessary to complete the implementation of SB 1267. Specifically, the proposed amendment to §55.255 changes the date for filing a motion for rehearing from within 20 days after notification to not later than the 25 days after the commission's decision or order is signed. However, the deadline may be extended under prescribed sections of the APA. The proposed rule is procedural in nature and does not directly impact the cost of CCHs.

The number of applications regarding units of local governments that are subject to a CCH, and for which §55.255 is applicable, is a small to medium percentage of the total number of applications for water rights, radioactive materials licensing, and districts. A unit of state government can be a permit applicant, and, if one is, the unit of state government would be affected in the same way as non-governmental entities who are applicants. State agencies are generally prohibited from contesting TCEQ permit applications, so they would not be affected the same as other governmental entities who protest applications and participate in CCHs.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years that §55.255 is in effect, the public benefit anticipated from the changes seen in the proposed rule would be compliance with state law and provide greater clarity for the public and also for applicants for certain water rights, radioactive materials licensing, and districts applications that are subject to a CCH on those applications.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rule.

The proposed rule is procedural in nature and does not directly impact the cost of CCHs.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule would have the same effect on a small business as it does on a large business. The proposed amendment is procedural in nature and does not directly impact the cost of CCHs. It is not known how many applicants would be small or micro-businesses.

#### 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 is necessary to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rule is 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of 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 amendment to §55.255 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it is procedural in nature and implements changes made to the APA in SB 1267 by revising a rule regarding commission action on requests for CCH.

The rulemaking is procedural in nature and does not 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.

As defined in the Texas Government Code, §2001.0225 only 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 powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendment to §55.255 is

procedural in nature and implements changes made to the APA in SB 1267 regarding commission action on requests for CCH. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

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 an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment revises a rule regarding commission action on requests for CCH and is procedural in nature. The primary purpose of the proposed rulemaking is to implement changes made to the APA in SB 1267. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or 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.

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 January 26, 2016, 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.

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 Sherry Davis, 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://www1.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 No. 2016-008-055-LS. The comment period closes on January 29, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466.

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; TWC, §5.115, concerning Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications; TWC, §11.132, concerning Notice, which provides opportunity for contested case hearing on water rights applications; TWC, §11.134, concerning Action on Application, which authorizes the commission to grant or deny an application for water rights; TWC, §49.011, concerning Notice Applicable to Creation of a District by the Commission, which authorizes the commission to act on districts applications under TWC, Chapters 36, 50, 51, 54, 55, 58, 65, and 66; and Texas Health and Safety Code, §401.114, concerning Notice and Hearing, which authorizes the commission to grant or renew a radioactive waste disposal license. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The proposed amendment implements Texas Government Code, §2001.146, and Senate Bill 1267 (84th Texas Legislature, 2015).

#### §55.255. Commission Action on Hearing Request.

(a) The determination of the validity of a hearing request is not, in itself, a contested case subject to the Texas Administrative Procedure Act (APA) [APA]. The commission will evaluate the hearing request at the scheduled commission meeting, and may:

- (1) determine that a hearing request does not meet the requirements of this subchapter, and act on the application;
- (2) determine that the hearing request does not meet the requirements of this subchapter, and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that a hearing request meets the requirements of this subchapter, and direct the chief clerk to refer the application to the State Office of Administrative Hearings (SOAH) [SOAH] for a hearing; or
- (4) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a

recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the APA.

(b) A request for a contested case hearing shall be granted if the request is:

- (1) made by the applicant or the executive director; or
- (2) made by an affected person if the request:

(A) complies with the requirements of §55.251 of this title (relating to Requests for Contested Case Hearing, Public Comment);

(B) is timely filed with the chief clerk; and

(C) is pursuant to a right to hearing authorized by law.[:]

(c) The commission may refer an application to SOAH if there is no hearing request complying with this subchapter, if the commission determines that a hearing would be in the public interest.

(d) A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(e) If all requests for contested case hearing [~~hearings request~~] are denied, [~~the procedures contained in~~] §80.272 of this title (relating to Motion for Rehearing) applies [~~apply~~]. A motion for rehearing in such a case must be filed not later than 25 [~~no earlier than, and no later than 20~~] days after[:] the date that [~~the person or his attorney of record is notified of~~] the commission's final decision or order is signed, unless the time for filing the motion for rehearing has been extended under Texas Government Code, §2001.142 and §80.276 of this title (relating to Request for Extension to File Motion for Rehearing), by agreement under Texas Government Code, §2001.147, or by the commission's written order issued pursuant to Texas Government Code, §2001.146(e) [~~on the application~~]. If the motion is denied under §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable), the commission's decision is final and appealable under Texas Water Code, §5.351<sub>2</sub>, [~~or~~] Texas Health and Safety Code, §401.341<sub>2</sub>, or under the APA.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2015.

TRD-201505476

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: January 24, 2016

For further information, please call: (512) 239-2141



## CHAPTER 80. CONTESTED CASE HEARINGS

## SUBCHAPTER F. POST HEARING PROCEDURES

### 30 TAC §80.271

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §80.271.

#### Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking is proposed to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS). The applicable rule, §80.272, was amended by the commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission proposes to amend §35.29 and §55.255, which will complete the rulemaking necessary to implement SB 1267.

#### Section Discussion

Section 80.271 is proposed for repeal because the changes adopted by the commission on December 9, 2015, to §80.272 make §80.271 obsolete.

#### Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period after rule is repealed, no fiscal implications are anticipated for the agency or for other units of state or local government. The existing rule, and the rule that now applies, §80.272, are procedural in nature and do not directly impact the cost of CCHs.

The proposed repeal would implement SB 1267 adopted by the 84th Texas Legislature (2015). SB 1267 amends the APA, codified in the Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of a CCH and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 TAC Chapters 1, 50,

55, 70, and 80. The proposed repeal of §80.271 is necessary to complete the implementation of SB 1267 by removing an obsolete rule. The repeal of §80.271 is procedural in nature and does not directly impact the cost of CCHs.

The applicable rule, §80.272, was amended by the commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications. As stated in the fiscal note for that rulemaking, the number of units of local governments is a small percentage of the number of applicants for and who comment on air quality; water quality; municipal, industrial, and hazardous waste; and underground injection control permit applications, and while it is possible that a unit of state government can be a permit applicant, it is rare. A unit of state government can be a permit applicant, and, if one is, the unit of state government would be affected in the same way as non-governmental entities who are applicants. However, state agencies are generally prohibited from contesting TCEQ permit applications, so they would not be affected the same as other governmental entities who protest applications and participate in CCHs.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years that §80.271 is no longer in effect, the public benefit anticipated from the changes seen would be compliance with state law and provide greater clarity for the public and also for applicants for which a CCH is held on those applications.

No fiscal implications are anticipated for businesses or individuals as a result of the repeal of §80.271.

Section 80.271, proposed for repeal, is procedural in nature and does not directly impact the cost of CCHs.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed repeal of §80.271. Repeal of this rule would have the same effect on a small business as it does on a large business. Section 80.271 is procedural in nature and does not directly impact the cost of CCHs. It is not known how many applicants would be small or micro-businesses.

#### 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 repeal of §80.271 is necessary to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rule is 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 repeal of §80.271 does not adversely affect a local economy in a material way for the first five years after §80.271 is repealed.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of 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 repeal of §80.271 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, §80.271 is obsolete.

The rulemaking is procedural in nature and does not 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.

As defined in the Texas Government Code, §2001.0225 only 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 powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed repeal of §80.271 is necessary to complete the implementation of SB 1267 by removing an obsolete rule. The rule that would be repealed, §80.271, is procedural in nature and does not directly impact the cost of CCHs. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

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 an assessment of whether Texas Government Code, Chapter 2007, is applicable. The primary purpose of the proposed rulemaking is to repeal an obsolete rule, §80.271. This is necessary to complete the implementation of SB 1267. Section 80.271 is procedural in nature and does not directly impact the cost of CCHs. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed repeal of §80.271 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

#### Consistency with the Coastal Management Program

The commission reviewed the proposed repeal of §80.271 and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the repeal affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule repeal is 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 public hearing on this proposal in Austin on January 26, 2016, 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.

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 Sherry Davis, 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://www1.tceq.texas.gov/rules/eccomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number No. 2016-008-055-LS. The comment period closes on January 29, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466.

## Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.142, concerning Notification of Decisions and Orders, which prescribes requirements for the notification of decisions and orders of a state agency; Texas Government Code, §2001.143, concerning Time of Rendering Decision, which concerns when a decision in a contested case becomes final; Texas Government Code, §2001.144, concerning Decisions; When Final, which provides the time at which decisions in contested cases are final; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The proposed repeal implements Texas Government Code, §2001.004, and SB 1267 (84th Texas Legislature, 2015).

## §80.271. Motion for Rehearing.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2015.

TRD-201505477

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: January 24, 2016

For further information, please call: (512) 239-2141

## CHAPTER 295. WATER RIGHTS, PROCEDURAL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §295.21 and §295.22; new §295.21; and amendment to §295.202.

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

This rulemaking implements House Bill (HB) 655, 84th Texas Legislature, 2015, addressing the commission's regulation of aquifer storage and recovery (ASR) projects in Texas. ASR involves the use of one or more injection wells for the purpose of placing a water supply into a subsurface geologic formation, or aquifer, for storage so that the water may be subsequently recovered and used by the project operator. The proposed revisions to Chapter 295 implement amendments to Texas Water Code (TWC), §11.153 and the repeal of TWC, §11.154 under HB 655. HB 655 eliminated the requirement that ASR projects using appropriated water must first develop a pilot project. The proposed revisions in this chapter implement HB 655 by removing the requirements that an ASR project using surface water under a water right develop the project in separate phases. HB 655 states that a water right holder or a person who has contracted for the use of water under a contract that does not prohibit the use of the water in an ASR project may undertake an ASR project without obtaining any additional authorization under the water rights program. An ASR project must comply with applicable requirements under TWC, Chapters 27 and 36.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes amendments to 30 TAC Chapter 39, Public Notice; Chapter 297, Water Rights, Substantive; and Chapter 331, Underground Injection Control.

### Section by Section Discussion

#### §295.21, *Aquifer Storage and Retrieval Projects*

The commission proposes to repeal and replace §295.21. Existing §295.21 includes the requirements for water rights permitting from TWC, §11.153(d) and (e). HB 655 amended TWC, §11.153, to remove subsections (d) and (e); therefore, the commission proposes to delete the corresponding requirements in §295.21.

#### §295.21, *Aquifer Storage and Recovery Projects*

HB 655 also amended TWC, §11.153(a) - (c), to allow a water right holder or a person who has contracted for the use of water under a contract that does not prohibit the use of the water in

# Texas Commission on Environmental Quality



## ORDER ADOPTING AMENDED AND REPEALED RULES

**Docket No. 2015-01715-RUL**

**Rule Project No. 2016-008-055-LS**

On March 3, 2016, the Texas Commission on Environmental Quality (Commission), adopted amended § 35.29 and § 55.255 in 30 Texas Administrative Code Chapter 35, concerning Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 55 concerning Requests for Reconsideration and Contested Case Hearings; Public Comment; and repealed § 80.271 in Chapter 80, concerning Contested Case Hearings. The proposed and repealed rules were published for comment in the December 25, 2015 issue of the *Texas Register* (40 TexReg 9491).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted and the repealed rule be repealed. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted and repealed rules and the preambles to the adopted and repealed rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by Tex. Gov't Code Ann., Chapter 2001 (West 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Signed:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., P.E., Chairman