

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for a Petition for Rulemaking

AGENDA REQUESTED: April 6, 2016

DATE OF REQUEST: March 18, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kris Hogan, (512) 239-6812

CAPTION: Docket No. 2016-0284-PET. Consideration of a petition for rulemaking under Section 20.15 of 30 Texas Administrative Code (TAC) Chapter 20, Rulemaking.

The petition was filed with the Texas Commission on Environmental Quality (commission) on February 26, 2016, by the Texas Aggregates and Concrete Association. The petitioner requests the commission amend public notice rules applicable to registration requests for standard permit authorization of concrete batch plants without enhanced controls in 30 TAC Sections 39.411(e)(11)(A)(iii) and 39.603(a) – (b) to provide for one 30-day notice of registration. (Janis Hudson) (Project No. 2016-025-PET-NR)

Caroline Sweeney

Deputy Director

Robert Martinez

Division Director

Kristina M. Hogan

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 18, 2016

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

From: Caroline Sweeney, Deputy Director
Office of Legal Services

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2016-0284-PET

Project No.: 2016-025-PET-NR

Who Submitted the Petition:

On February 26, 2016, the Texas Commission on Environmental Quality (commission) received a petition for rulemaking from Texas Aggregates and Concrete Association (petitioner).

What the Petitioner Requests:

The petitioner requests the commission amend public notice rules applicable to registration requests for standard permit authorization of concrete batch plants without enhanced controls in 30 TAC §39.411(e)(11)(A)(iii) and §39.603(a) – (b) to provide for one 30-day notice of registration.

Recommended Action and Justification:

The executive director recommends the commission direct agency staff to examine the petitioner's request and initiate rulemaking necessary to effect the request to consolidate the notice requirements for the Notice of Receipt of Application and Intent to Obtain Permit commonly referred to as NORI) and of Notice of Preliminary Decision (commonly referred to as NAPD).

Applicable Law:

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule
- 30 TAC §20.15, which provides such procedures specific to the commission
- Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other law as necessary and convenient to the exercise of the commission's jurisdiction
- Texas Health and Safety Code, §§382.017, 382.056, and 382.058

Agency Contacts:

Janis Hudson, Project Manager/Staff Attorney, Environmental Law Division, (512) 239-0466
Kris Hogan, Texas Register Coordinator, (512) 239-6812

Attachment

Commissioners

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March 18, 2016

Re: Docket No. 2016-0284-PET

Petition

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

BY THE TEXAS AGGREGATES
AND CONCRETE ASSOCIATION

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BEFORE THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY



ORIGINAL PETITION FOR RULEMAKING

COMES NOW, the Texas Aggregates and Concrete Association (“TACA”) and pursuant to 30 Tex. Admin. Code (“TAC”) § 20.15, submits this Petition for Rulemaking with the Texas Commission on Environmental Quality (the “Commission”) to amend existing notice rules applicable to concrete batch plants without enhanced controls that are authorized under the Standard Air Permit for Concrete Batch Plants (“SAP”). TACA respectfully requests that the Commission consider this Petition and the proposed amendments to the Commission’s rules described below and initiate proceedings necessary to adopt such amendments. In support of this Petition, TACA respectfully provides the following information as required by 30 TAC § 20.15:

I. THE TEXAS AGGREGATES AND CONCRETE ASSOCIATION

TACA is a statewide trade organization comprised of more than 150 producer companies that represent approximately 80% of the aggregates, 75% of the concrete, and 100% of the cement produced in Texas. The association also represents more than 100 allied companies that provide services to the aggregates, concrete, and cement industries. In Texas alone, these industries and their related construction industries contribute more than 75,000 jobs to the state economy. TACA’s members supply aggregates, concrete, and other materials to developers, builders and landowners who develop and construct commercial property in Texas. TACA’s address is 900 Congress Avenue, Suite 200, Austin, TX 78701. TACA seeks an amendment to

the notice requirements applicable to the SAP to remove the mandatory “second public notice requirements” for batch plants without enhanced controls.

II. BRIEF EXPLANATION OF PROPOSED AMENDMENT

Concrete batch plants authorized by the SAP must operate according to the specific requirements in the SAP. By their nature, standard air permits contain identical permit conditions that apply to a specific class of facilities. As a result, there is not an opportunity for a standard permit to be revised in response to any comments raised in the public notice period. Current Commission notice rules require SAP applicants to publish two public newspaper notices as part of the SAP application process. Publishing a duplicative “second notice” for SAP applicants increases the permitting timeline for new facilities and increases unnecessary administrative tasks and expenses for Commission staff. Depending on the newspaper’s distribution, size and publication frequency, publication fees for notice can be very costly for the applicant. Because the SAP permit conditions are not revised in response to public comment, the current SAP second notice provides no meaningful public participation or measurable environmental benefit beyond those already afforded by a single notice. The proposed amendments would revise the public notice requirements for SAP applications to require a single notice publication.

III. TEXT OF PROPOSED AMENDMENTS TO EXISTING COMMISSION RULES

Two existing rule sections from the Commission’s Public Notice rules in Chapter 39, 30 TAC §§ 39.411(e)(11)(A)(iii) and 39.603(a)-(b), should be revised as follows:

39.411(e)(11)(A)(iii)

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit, or for a concrete batch plant without enhanced controls under a standard air permit adopted by the commission under Chapter 116, Subchapter F, the 15-day hearing request period in response to the last publication of the applicable notice for a concrete batch plant under this chapter; or

39.603(a)-(b)

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(e) of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications, but it may be combined with the notice requirement under paragraph (b) of this section

for concrete batch plants without enhanced controls under a standard air permit adopted by the commission under Chapter 116, Subchapter F.

(b) – Notice of Application and Preliminary Decision under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(f) of this title. This notice may be combined with the notice set forth in paragraph (a) of this section for concrete batch plants without enhanced controls under a standard air permit adopted by the commission under Chapter 116, Subchapter F. If this notice is combined, the TCEQ will ensure that the hearing request period for timely filing a contested case hearing is 15 days and the TCEQ will ensure that the comment period for timely filing comments or for requesting a public meeting is 30 days.

IV. AUTHORITY FOR PROPOSED RULE

The suggested amendments are proposed to be adopted pursuant to the Commission's authority in Texas Health and Safety Code § 382.05195. This statutory provision authorizes the Commission to issue a standard permit for new or existing similar facilities if the Commission finds that (1) the standard permit is enforceable; (2) the Commission can adequately monitor compliance with the terms of the standard permit; and (3) the permit requires the use of best available control technology. General legal authority for enacting amendments to Commission

rules is found in Chapter 5 of the Texas Water Code¹ and Chapter 382 of the Texas Health and Safety Code.²

**V. INJURY OR INEQUITY RESULTING FROM FAILURE TO ADOPT
PROPOSED RULE**

Current rules require each concrete batch plant SAP application to publish two separate public notices. The two separate notices are unique to the facility being permitted, and are independent from the public notice that was provided when the Commission issued the SAP pursuant to Tex. Health & Safety Code §§ 382.05198 and 382.05199 and 30 Tex. Admin. Code § 116.603. In addition, the current version of the SAP contains a reference to 30 TAC § 55.201(h)(i)(3)(C), which is no longer applicable to concrete batch plants.³

The proposed amendments will make the concrete batch plant permitting process more efficient for the industry, the Commission, and the public. Publishing two notices of a draft permit that has already been subjected to public review creates an unnecessary burden on the concrete industry. The publication fees for large media market newspapers in Dallas, Fort Worth, Houston, Austin and San Antonio are expensive and, for the SAP, unnecessary. Amending the public notice provisions does not take away any procedural or public participation rights the public currently enjoys. Rather, this change would ensure that public participation is undertaken on the front end of the permitting process and would be consistent with the original intent of House Bill 801 to streamline the pre-permit hearing process. The proposed changes

¹ See TEX. WATER CODE §§ 5.102 (General Powers), 5.103 (Rules), and 5.105 (Policy).

² See TEX. HEALTH & SAFETY CODE §§ 382.017 (Rules), 382.002 (Policy and Purpose), 382.011 (General Powers), 382.056 (Notice of Intent to Obtain Permit or Permit Review; Hearing), 382.058 (Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption).

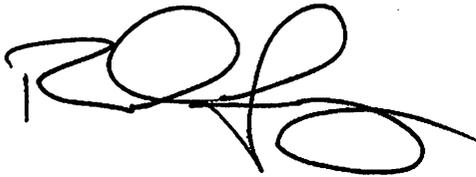
³ See General Requirement (5)(L)(vii) of the “Amendments to the Air Quality Standard Permit for Concrete Batch Plants,” effective December 21, 2012, page 8 of 12.

would decrease the administrative burden on the Commission and the regulatory and financial burden to the industry. If proposed changes are adopted, TCEQ staff currently reviewing second notices for SAP concrete batch plants could be redirected to other, more complex matters.

VI. PRAYER

For the reasons stated above, TACA requests the TCEQ to initiate a rulemaking proceeding to amend 30 TAC §§ 39.411(e)(11)(A)(iii) and 39.603(a)-(b) in the manner shown above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Szecsy', with a stylized flourish at the end.

Richard S. Szecsy, Ph.D., P.E., President
Texas Aggregates and Concrete Association
900 Congress Avenue, Suite 200
Austin, Texas 78701
(512) 451-5100 (Telephone)
(512) 451-4162 (Facsimile)

Texas Commission on Environmental Quality



DECISION OF THE COMMISSION REGARDING THE PETITION FOR RULEMAKING FILED BY TEXAS AGGREGATES AND CONCRETE ASSOCIATION

Docket No. 2016-0284-PET
Rule Project No. 2016-025-PET-NR

On April 6, 2016, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by Texas Aggregates and Concrete Association on February 26, 2016. The petitioner requests the commission amend public notice rules applicable to registration requests for standard permit authorization of concrete batch plants without enhanced controls in 30 Texas Administrative Code § 39.411(e)(11)(A)(iii) and § 39.603(a) - (b) to provide for one 30-day notice of registration.

IT IS THEREFORE ORDERED BY THE COMMISSION pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code, § 5.102, that the Executive Director examine the request and initiate rulemaking.

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

Date Signed:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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