

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: July 6, 2016

DATE OF REQUEST: June 17, 2016

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

CAPTION: Docket No. 2016-0484-RUL. Consideration for publication of, and hearing on, proposed amended Sections 39.411 and 39.603 of 30 TAC Chapter 39, Public Notice, and amended Section 55.152 of 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; and corresponding revisions to the State Implementation Plan.

The proposed rulemaking would amend existing public participation rules to allow for consolidation of Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision for an Air Quality Standard Permit for Concrete Batch Plants and to provide for a 30-day period for submitting comments, and requests for public meeting or contested case hearing. (Janis Hudson, Tasha Burns) (Rule Project No. 2016-030-039-LS)

Caroline M. Sweeney
Deputy Director

Robert Martinez
Division Director

Patricia L. Durón *for* Kris Hogan
Agenda Coordinator

Copy to CCC Secretary? NO YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners Date: June 17, 2016

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

From: Caroline Sweeney, Deputy Director
Office of Legal Services

Docket No.: 2016-0484-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 39, Public Notice
Chapter 55, Requests for Reconsideration and Contested Case Hearings;
Public Comment
Concrete Batch Plant Notice
Rule Project No. 2016-030-039-LS

Background and reason(s) for the rulemaking:

On February 25, 2016, Texas Aggregates and Concrete Association submitted a petition requesting that the Texas Commission on Environmental Quality (commission or TCEQ) conduct rulemaking to amend public notice rules applicable to registration requests for authorization under the Air Quality Standard Permit for Concrete Batch Plants. The petition requested amendments to existing rules to provide for one 30-day public notice of registration. On April 6, 2016, the commission considered the petition and directed the executive director to examine the request and initiate rulemaking.

Currently, persons registering for authorization under this specific standard permit must publish the Notice of Receipt of Application and Intent to Obtain Permit (NORI) which provides a 15-day period to submit comments, request a public meeting, and request a contested case hearing. When technical review is complete, these registrants are required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments for a 30-day period; hearing requests are also solicited but only if at least one such request was timely made in response to the NORI.

Registrations for concrete batch plants, generally, have been subject to comment and contested case hearing since 1985. The requirement for NAPD was added in 1999 and expanded in 2010. Although the comment period was lengthened by the addition of the NAPD requirement, the public has expressed concerns that the 15-day NORI period is often not enough time to review the registration, determine whether to comment, request a public meeting or contested case hearing, and then to timely submit the information to the TCEQ.

This rulemaking proposes to consolidate the NORI and NAPD requirements to allow for one 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. The current rule that allows for extension of the comment period from 30 days after the last publication date of the notice to the close of a public meeting will continue to apply to these registrations. If a request for a contested case hearing is received within the single 30-day comment period, the opportunity to

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request a hearing will extend to 30 days after the executive director files the Response to Comments.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking would consolidate publication of the NORI and NAPD for registrations under the Air Quality Standard Permit for Concrete Batch Plants into one notice with a 30-day period to submit comments and requests for a public meeting or contested case hearing.

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

The rulemaking implements the requirements of the Texas Clean Air Act, Texas Health and Safety Code (THSC), §382.056 and §382.058. No federal statute or rule directly applies. Most of the proposed amendments will be proposed as revisions to the State Implementation Plan.

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

None.

Statutory authority:

Texas Water Code, §§5.013, 5.102, 5.103, 5.105, and 5.115; THSC, §§382.002, 382.011, 382.012, 382.017, 382.056, and 382.058; Texas Government Code, §2001.004; and the Federal Clean Air Act, 42 United States Code, §7401, *et seq.*

Effect on the:

The rulemaking will not create a group of affected persons who were not affected previously.

A.) Regulated community:

There will be cost savings for owners and operators who apply for authorization to construct and operate concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants. The rule would provide for one notice instead of two, which would apply to English language publication and any alternative language publication. The cost savings are discussed in the proposed preamble.

B.) Public:

While the public currently has the initial 15-day period and then a later 30-day period to submit comments, the opportunity to request a contested case hearing during the current 30-day period is very limited. The public may benefit from the notice consolidation, because it will reduce confusion about the restrictions on the time to submit hearing requests. During the proposed 30-day period, the public may submit comments, requests for a public meeting, and requests for a contested case hearing.

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C.) Agency programs:

The consolidated NORI/NAPD instead of two (a NORI and a NAPD) notices, will be prepared and distributed to owners and operators who register to construct and operate concrete batch plants. However, this is not anticipated to have any significant fiscal implication for the agency.

Stakeholder meetings:

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

Potential controversial concerns and legislative interest:

Some persons may view the change from two notices to one as limiting public participation. There is no known legislative interest in this rulemaking. In addition to the consolidated notice, legislators will continue to receive the 30-day advance notice of the draft permit as required by Senate Bill 709 (84th Texas Legislature, 2015).

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

The scope of this change in public participation is limited to the Air Quality Standard Permit for Concrete Batch Plants.

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

The public participation requirements for registrations for the Air Quality Standard Permit for Concrete Batch Plants will remain the same. There are no alternatives to rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 6, 2016

Anticipated *Texas Register* publication date: July 22, 2016

Anticipated public hearing date (if any): August 10, 2016

Anticipated public comment period: July 8, 2016 - August 22, 2016

Anticipated adoption date: December 7, 2016

Agency contacts:

Janis Hudson, Project Manager/Attorney, Environmental Law Division (512) 239-0466

Tasha Burns, Air Permits Division, (512) 239-5868

Kris Hogan, Texas Register Coordinator, (512) 239-6812

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

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §39.411 and §39.603.

If adopted, the amendments to §39.411(e)(4)(A)(i) and (ii), (e)(5) (introductory paragraph), (e)(11)(A)(iv) and (v), (e)(13), (f) (introductory paragraph), (f)(8), and (g); and §39.603 will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan.

Background and Summary of the Factual Basis for the Proposed Rules

On February 25, 2016, Texas Aggregates and Concrete Association (TACA) submitted a petition requesting the commission conduct rulemaking to amend public notice rules applicable to initial registration requests for authorization under the Air Quality Standard Permit for Concrete Batch Plants. The petition requested amendments to §39.411(e)(11)(A)(iii) and §39.603(a) and (b) to provide for one 30-day public notice of initial registration. On April 6, 2016, the commission considered the petition and directed the executive director to examine the request and initiate rulemaking.

The TACA petition did not address the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls authorized under Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.05198. The public notice requirements for that standard permit are listed within the permit, and registrations for that permit are not subject to the rules in Chapter 39. Therefore, public notice requirements for that

permit would not be affected by this proposed rulemaking.

The commission is authorized to adopt standard permits under THSC, §382.05195, which prescribes the procedures the commission must follow to adopt a standard permit. The commission implemented THSC, §382.05195 by adopting rules in 30 TAC Chapter 116, Subchapter F. The rules in Chapter 116, Subchapter F provide that when the executive director drafts a new (or proposes amendments to an existing) standard permit, notice of the proposed permit is published in the *Texas Register* and in newspapers. In addition, TCEQ holds a public meeting to provide stakeholders an opportunity for discussion with TCEQ staff and for submittal of comments regarding the proposed permit. The responses to comments and any changes made to the proposed permit in response to the comments are presented to the commission for consideration in an open meeting, commonly referred to as Agenda. Once adopted, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the standard permit. The standard permits are not designed to be amended to include tailored permit conditions applicable to an individual registration. The Air Quality Standard Permit for Concrete Batch Plants was last amended by the commission effective December 21, 2012.

Each individual registration is subject to the public participation requirements in 30 TAC Chapters 39 and 55. Since 1985, owners or operators registering for authorization to construct and operate a concrete batch plant (under what is known today as the Air Quality Standard Permit for Concrete Batch Plants) have been subject to specific notice

requirements for the proposed plant. These public notice requirements for initial registrations included the opportunity to request a contested case hearing on the individual registration. In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which made changes to notice requirements for initial registrations that were administratively complete on or after September 1, 1999. Since the rulemaking to implement HB 801 in 1999, and rule amendments adopted in 2010, have been in effect, the commission has required registrants for the concrete batch plant standard permit to publish a Notice of Receipt of Application and Intent to Obtain Permit (NORI) which solicits comments for a 15-day period; contested case hearing and public meeting requests are also solicited. At the same time the NORI is published in a newspaper of general circulation in the municipality or in the nearest municipality in which the plant will be located, the registrant is required to place a copy of the registration in a public place in the county, and to post signs at the proposed facility location. Alternative language publication and signs may also be required.

After TCEQ staff complete the technical review, registrants are required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments for a 30-day period; hearing requests are also solicited but only if at least one such request was timely made in response to the NORI. At the close of the comment period, the executive director prepares a written response to all timely-filed comments and files the response with the TCEQ's Office of Chief Clerk. Based on comments, registrants may update their registration representations as to how they will construct and operate under the standard permit. Historically, this has been very uncommon. Also,

because the permit conditions in the Air Quality Standard Permit for Concrete Batch Plants are established by the commission when the standard permit is adopted, the executive director cannot change any permit conditions for an individual registration in response to comments.

During comment periods for previous concrete batch plant registrations, the public has expressed concerns that the 15-day period is often not enough time to review the registration, determine whether to comment, request a public meeting, or contested case hearing, and then to timely submit the information to the TCEQ. Specifically, with one notice instead of two, TCEQ expects there will be more clarity regarding the restrictions on the timeframe to submit hearing requests, and the notice will specify that the draft permit has not changed (and cannot change) since the first notice (NORI) was published.

Concurrently with this proposal, and published in this issue of the *Texas Register*, the commission is proposing to amend 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, §55.152, to provide for a 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted in response to the consolidated NORI and NAPD. The 30-day period begins on the last date of newspaper publication, and the comment period is automatically extended to the close of any public meeting, as required by §55.152(b). As provided for in 30 TAC §55.201, which implements Senate Bill 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted

comments.

The public participation requirements for renewals of registrations under the Air Quality Standard Permit for Concrete Batch Plants are not affected by the proposed amendments in Chapters 39 and 55.

Section by Section Discussion

In addition to the amendments discussed later, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include 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.

§39.411, Text of Public Notice

Clause (iv) is proposed to be added to §39.411(e)(11)(A), which would amend requirements for the notice text for initial registrations received on or after January 1, 2017, for concrete batch plants that register to operate under the Air Quality Standard Permit for Concrete Batch Plants. The proposed clause states that the text of the notice shall include three statements, proposed as subclauses (I) – (III). First, a request for a contested case hearing must be received by the commission before the close of the 30-day comment period following the last publication of the consolidated NORI and NAPD. Second, if no hearing requests are received by the end of the 30-day comment

period, there is no further opportunity to request a contested case hearing. Third, if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments. Existing clause (iv) will be re-designated as clause (v).

Subsection (f) is proposed to be amended to add a reference to the consolidated notice proposed in §39.603(c). In addition, because the effective date of §39.411 will change if the proposed amendments are adopted, the references to "the effective date of this section" in §39.411(e)(4)(A)(i) and (ii), (e)(5), (f)(8) and (9), and (g) are proposed to be updated to provide for the precise date of June 18, 2010, which is the actual effective date for these particular requirements.

§39.603, Newspaper Notice

Proposed §39.603(c) would provide that, for initial registrations received on or after January 1, 2017, for authorization to construct and operate a concrete batch plant (without enhanced controls) under an air quality standard permit, owners and operators are required to publish a consolidated NORI and NAPD. The consolidated NORI and NAPD must be published no later than 30 days after the executive director declares the registration administratively complete, and the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. In addition, the new consolidated notice must contain the text as required by §39.411(f).

Existing subsections (c) - (e) are proposed to be re-lettered as subsections (d) - (f). References to “registrant” are proposed to be added to subsections (d) - (f) to ensure that these requirements also apply to initial registrations for a standard permit for concrete batch plants without enhanced controls.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are expected for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules in Chapter 39 would require owners or operators who register to construct and operate a concrete batch plant without enhanced controls under the Air Quality Standard Permit for Concrete Batch Plants to publish a consolidated NORI and NAPD as one consolidated NORI/NAPD notice, rather than separately as required under current rules. Concrete batch plants that are public-works projects associated with a right-of-way and which are contiguous to the right-of-way of the public works project are not included in this rulemaking as they are exempt from the NORI and NAPD public notice requirement.

Under the proposed rules in Chapters 39 and 55, the period for submitting public

comments and requests for a public meeting or a contested case hearing will change from the current 15 days under NORI plus an additional 30 days for submitting comments under NAPD, to one 30-day period for submitting comments and requests for a public meeting or a contested case hearing. Currently, hearing requests may be submitted in response to the NORI, but not in response to the NAPD, unless hearing requests were submitted in response to the NORI. The purpose of the NAPD is to provide opportunity for comments on the draft permit. However, the permit conditions of a Standard Permit are adopted by the commission and cannot be changed in response to comments (unlike for case-by-case permits). Thus, the additional time in the current notice process cannot result in any change to the draft permit.

Under the proposed rules, the regulated community will benefit from a more efficient notice process and issuance times, as well as an approximate 50% reduction in publication costs (one publication instead of two for English language publication and also for any required alternate language publication). The public may generally benefit by having a longer period to submit contested case hearing requests and more clarity regarding the permit conditions remaining unchanged.

No significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government. Concrete batch plant registrants make arrangements and pay for their own newspaper publication and then provide proof of publication to TCEQ. This is true for both English-language newspapers and, where applicable, for alternate language

publications. Under the proposed rules, the consolidated NORI/NAPD instead of two (a NORI and a NAPD) notices, will be prepared and distributed owners and operators who register to construct and operate these types of facilities. However, this is not anticipated to significantly reduce agency workload or costs for APD to issue the permits. Other units of state or local government do not construct and operate these types of facilities and therefore would not be affected.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be that the public will have a 30-day period, instead of an initial 15-day period, to submit comments and contested case hearing requests. The public will also generally benefit in that there will be one notice instead of two which will reduce confusion about the restrictions on the time to submit hearing requests, and clarify that the draft permit has not changed (and cannot change) since the first notice (NORI) was published.

These proposed rules are expected to result in some cost savings and revenue losses for businesses and no fiscal implications for individuals. Owners or operators filing registrations for concrete batch plant standard permits may experience cost savings for only being required to secure one newspaper publication notice, though in general these cost savings are not anticipated to be significant for most registrants. Over the past 11 years, the agency has issued on average, 110 concrete batch plant permits each

year. The newspaper publication notice costs will be reduced by approximately 50%, because only one round of publication will be required instead of the currently required two (for English language publication and also for any required alternate language publication). One round of publication costs may be between \$674 and \$9,759 depending on which newspaper (newspapers in larger cities have higher costs), the day of the week, and how many words are in the notice. One registrant would then be estimated to be able to save between \$674 and \$9,759 in publication costs and newspapers around the state would lose a like amount in revenue for each notice.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules in for the first five-year period the proposed rules are in effect. Small or micro-businesses that apply for concrete batch plant standard permits may experience cost savings for newspaper publication notices, though the savings for small business will be slightly less than for a large business due to the fact that publication costs for small businesses were reduced in a prior rulemaking. This proposed rulemaking does not affect that previously established cost-saving measure. Small and micro-businesses would save the cost of one round of publication estimated to be between \$634 and \$7,522, depending on which newspaper (newspapers in larger cities have higher costs), the day of the week, and how many words are in the notice.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the 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 amendments to Chapter 39 are not specifically intended to protect the environment or reduce risks to human health from

environmental exposure to air pollutants, but instead would amend the notice requirements for initial registrations for concrete batch plant (without enhanced controls) standard permit authorizations, which are procedural in nature.

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 amendments to Chapter 39 would amend the notice requirements for initial registrations for concrete batch plant (without enhanced controls) standard permit authorizations. 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 developed to meet the requirements for public participation in the TCAA as identified in the Statutory Authority section of this preamble.

Written comments on the Draft Regulatory Impact Analysis 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 amendments to Chapter 39 would amend the notice requirements for initial registrations for concrete batch plant (without enhanced controls) standard permit authorizations, which are procedural in nature. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed amendments do 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). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

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

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rules will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 10, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 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 Ms. Kris Hogan, 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 2016-030-039-LS. The comment period closes on August 22, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Janis Hudson, Environmental Law Division, at (512) 239-0466.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§39.411

Statutory Authority

The amendments 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, §5.115, Persons Affected in Commission Hearings' Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendments is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the

commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission; and THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, which prescribes authorization requirements for certain concrete batch plants. In addition, the amendment is also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §382.056 and §382.058.

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit

Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other

Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) filed on or after June 18, 2010 [the effective date of this section];

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA,

§112(g), 40 CFR Part 63),per existing title in TAC whether for construction or reconstruction, filed on or after June 18, 2010 [the effective date of this section]; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located if there is substantial public interest in the proposed activity when requested by any interested person for the following applications that are filed on or after June 18, 2010 [the effective date of this section]:

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards [(NAAQS)] or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case

hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(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), a 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]

(iv) for initial registrations for concrete batch plants without enhanced controls authorized by an air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) received on or after January 1, 2017, the following statements:

(I) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(II) if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing; and

(III) if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments; or

(v) [(iv)] for all air quality permit applications other than those in clauses (i) - (iv) [(iii)] of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt

of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted;
and

(F) if notice is for air quality permit applications described in subparagraph (A)(v) [(A)(iv)] of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant without enhanced controls under a standard permit adopted by the commission under Chapter 116, Subchapter F of this title [(relating to Standard Permits)] is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;"

(15) if notice is for an application for an air quality permit under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions), a statement that any interested person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(16) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision, or the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, as provided for in §39.603(c) of this title, to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county with internet access in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and, where applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity. The notice must include a statement that the comment period will be for at least thirty days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's Web site;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 [the effective date of this section] for permits under Chapter 116, Subchapter B, Divisions 5 of this title (relating to Nonattainment Review Permits) and 6 of this title:

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's Web site at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 [the effective date of this section] for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's website [Web site] at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications filed on or after June 18, 2010 [the effective date of this section], the text of the notice must include the information in this subparagraph. Air quality permit applications filed before June 18, 2010 [the effective date of this section] are governed by the rules in Subchapters H and K of this chapter as they existed immediately before June 18, 2010 [the effective date of this section], and those rules are continued in effect for that purpose.

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (16) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, and, as applicable, preliminary determination summary, and air quality analysis may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9) and (16) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

SUBCHAPTER K: PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

§39.603

Statutory Authority

The amendments 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, §5.115, Persons Affected in Commission Hearings' Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendments is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.056, concerning Notice of Intent to Obtain Permit

or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the TCEQ; and THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, which prescribes authorization requirements for certain concrete batch plants. In addition, the amendment is also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §382.056 and §382.058.

§39.603. Newspaper Notice.

(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.

(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.

(c) Owners and operators who submit initial registrations on or after January 1, 2017, for authorization to construct and operate a concrete batch plant without enhanced controls under an air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) shall publish a consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) under §39.418 of this title and Notice of Application and Preliminary Decision (NAPD) under §39.419 of this title no later than 30 days after the executive director declares the registration administratively complete and the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. This notice must contain the text as required by §39.411(f) of this title.

(d) [(c)] General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air quality permit application or registration, the applicant or registrant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application or registration number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(e) [(d)] Alternative publication procedures for small businesses.

(1) The applicant or registrant does not have to comply with subsection (d)(2) [(c)(2)] of this section if all of the following conditions are met:

(A) the applicant or registrant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's or registrant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(f) [(e)] If an air application or registration is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant or registrant shall publish notice once in a newspaper as described in subsection (d) [(c)] of this section, containing the information under §39.411(h) of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §55.152.

If adopted, the amendments to §55.152(a)(2), (3), (6) and (7) will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan.

Background and Summary of the Factual Basis for the Proposed Rule

On February 25, 2016, Texas Aggregates and Concrete Association (TACA) submitted a petition requesting the commission conduct rulemaking to amend public notice rules applicable to initial registration requests for authorization under the Air Quality Standard Permit for Concrete Batch Plants. The petition requested amendments to 30 TAC §39.411(e)(11)(A)(iii) and §39.603(a) and (b) to provide for one 30-day public notice of initial registration. On April 6, 2016, the commission considered the petition and directed the executive director to examine the request and initiate rulemaking.

The TACA petition did not address the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls authorized under Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.05198. The public notice requirements for that standard permit are listed within the permit, and registrations for that permit are not subject to the rules in 30 TAC Chapter 39. Therefore, public notice requirements for that permit would not be affected by this proposed rulemaking.

The commission is authorized to adopt standard permits under THSC, §382.05195, which prescribes the procedures the commission must follow to adopt a standard permit. The commission implemented THSC, §382.05195 by adopting rules in 30 TAC Chapter 116, Subchapter F. The rules in Chapter 116, Subchapter F provide that when the executive director drafts a new (or proposes amendments to an existing) standard permit, notice of the proposed permit is published in the *Texas Register* and in newspapers. In addition, TCEQ holds a public meeting to provide stakeholders an opportunity for discussion with TCEQ staff and for submittal of comments regarding the proposed permit. The responses to comments and any changes made to the proposed permit in response to the comments are presented to the commission for consideration in an open meeting, commonly referred to as Agenda. Once adopted, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the standard permit. The standard permits are not designed to be amended to include tailored permit conditions applicable to an individual registration. The Air Quality Standard Permit for Concrete Batch Plants was last amended by the commission effective December 21, 2012.

Each individual registration is subject to the public participation requirements in Chapters 39 and 55. Since 1985, owners and operators registering for authorization to construct and operate a concrete batch plant (under what is known today as the Air Quality Standard Permit for Concrete Batch Plants) have been subject to specific notice

requirements for the proposed plant. These public notice requirements for initial registrations included the opportunity to request a contested case hearing on the individual registration. In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which made changes to notice requirements for initial registrations that were administratively complete on or after September 1, 1999. Since the rulemaking to implement HB 801 in 1999, and rule amendments adopted in 2010, have been in effect, the commission has required registrants for the concrete batch plant standard permit to publish a Notice of Receipt of Application and Intent to Obtain Permit (NORI) which solicits comments for a 15-day period; contested case hearing and public meeting requests are also solicited. At the same time the NORI is published in a newspaper of general circulation in the municipality or in the nearest municipality in which the plant will be located, the registrant is required to place a copy of the registration in a public place in the county, and to post signs at the proposed facility location. Alternative language publication and signs may also be required.

After TCEQ staff complete the technical review, registrants are required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments for a 30-day period; hearing requests are also solicited but only if at least one such request was timely made in response to the NORI. At the close of the comment period, the executive director prepares a written response to all timely-filed comments and files the response with the TCEQ's Office of Chief Clerk. Based on comments, registrants may update their registration representations as to how they will construct and

operate under the standard permit. Historically, this has been very uncommon. Also, because the permit conditions in the Air Quality Standard Permit for Concrete Batch Plants are established by the commission when the standard permit is adopted, the executive director cannot change any permit conditions for an individual registration in response to comments.

During comment periods for previous concrete batch plant registrations, the public has expressed concerns that the 15-day period is often not enough time to review the registration, determine whether to comment, request a public meeting, or contested case hearing, and then to timely submit the information to the TCEQ. Specifically, with one notice instead of two, there will be more clarity regarding the restrictions on the timeframe to submit hearing requests, and the notice will specify that the draft permit has not changed (and cannot change) since the first notice (NORI) was published.

Proposed amended §55.152(a)(2) would provide for a 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted in response to the consolidated NORI and NAPD. The 30-day period begins on the last date of newspaper publication, and the public comment period is automatically extended to the close of any public meeting, as required by §55.152(b). As provided for in §55.201(c), which implements Senate Bill 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted comments.

Concurrently with this proposal, and published in this issue of the *Texas Register*, the commission is proposing amendments to Chapter 39, Public Notice, to provide for a consolidated NORI and NAPD.

The public participation requirements for renewals of registrations under the Air Quality Standard Permit for Concrete Batch Plants are not affected by the proposed amendments in Chapters 39 and 55.

Section Discussion

§55.152, Public Comment Period

Proposed amended §55.152(a)(2) is created by relocating some of the text of existing subsection (a)(2) to a proposed subsection (a)(3). Proposed subsection (a)(2) would provide that the close of the public comment period for standard permit registrations for concrete batch plants (without enhanced controls) would change from 15 days after the last publication of NORI, or 30 days after NAPD if a second notice is required, to 30 days after the last publication of the consolidated notice concurrently proposed in §39.603. Proposed §55.152(a)(2) would not apply to concrete batch plants temporarily located in or contiguous to the right-of-way of a public works project or to temporary concrete batch plants (without enhanced controls) operating under the standard permit that qualify for relocation.

Proposed amended subsection (a)(3) will continue to provide for the comment period applicable to air quality permit renewal applications. Existing paragraphs (3) - (6) in §55.152(a) are proposed to be re-numbered as paragraphs (4) - (7).

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule in Chapter 55 would establish a 30-day public comment period for registrations under the Air Quality Standard Permit for Concrete Batch Plants.

Under the proposed rules in Chapters 39 and 55, the period for submitting public comments will change from the current 15 days under NORI and an additional 30 days for comments under NAPD, to one 30-day period for submitting comments and hearing requests. Currently, hearing requests may be submitted in response to the NORI, but not in response to the NAPD, unless hearing requests were timely submitted in response to the NORI. The purpose of the NAPD is to provide opportunity for comments on the draft permit. However, the permit conditions of a Standard Permit are adopted by the commission and cannot be changed in response to comments (unlike for case-by-case permits). Thus, the additional time in the current notice

process cannot result in any change to the draft permit and results in a longer period for the commission to approve the registration.

Concurrently with this proposal, the commission is proposing amendments to Chapter 39, for standard permits for concrete batch plants without enhanced controls. This amendment to Chapter 55 is proposed in order to maintain consistency with the proposed amendments in Chapter 39 and to address concerns with the current public comment periods for concrete batch plant standard permits. Fiscal implications, if any, with regard to the amendment proposed for the change to the public comment period are discussed in the Chapter 39 rulemaking. No fiscal implications are anticipated for the proposed amendment to Chapter 55.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be that the public will have a 30-day period, instead of an initial 15-day period, to submit comments and requests for public meetings or contested case hearings. The public will also generally benefit in that there will be one notice instead of two which will reduce confusion about the restrictions on the time to submit hearing requests, and clarify that the draft permit has not changed (and cannot change) since the first notice (NORI) was published.

No fiscal implications are anticipated for businesses or individuals due to implementation or administration of the proposed amendment to Chapter 55. The amendment to Chapter 55 is proposed in order to maintain consistency with the proposed amendments in Chapter 39 and to address concerns with the current public comment periods for concrete batch plant standard permits. Any fiscal implications with regard to the amendment proposed for the change to the public comment period are discussed in the Chapter 39 rulemaking.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The amendment to Chapter 55 is proposed in order to maintain consistency with the proposed amendments in Chapter 39 and to address concerns with the current public comment periods for concrete batch plant standard permits. No fiscal implications are anticipated for small or micro-businesses due to implementation of the proposed amendment to Chapter 55.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Local Employment Impact Statement

The commission 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 Chapter 55 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, but instead would amend the public comment period for initial standard permit registrations for concrete batch plants (without enhanced controls), which are procedural in nature.

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 Chapter 55 would amend the public comment period for initial standard permit registrations for concrete batch plants (without enhanced controls), which is procedural in nature. 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 developed to meet the requirements for public participation in the TCAA as identified in the Statutory Authority section of this preamble.

Written comments on the Draft Regulatory Impact Analysis 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 to Chapter 55 would amend the public comment period for initial standard permit registrations for concrete batch plants (without enhanced controls), which are procedural in nature. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed amendment 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). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

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 amendment 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.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rule will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 10, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 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 Ms. Kris Hogan, 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 2016-030-039-LS. The comment period closes on August 22,

2016. Copies of the proposed rulemaking can be obtained from the commission's

website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further

information, please contact Janis Hudson, Environmental Law Division, at (512) 239-

0466.

SUBCHAPTER E: PUBLIC COMMENT AND PUBLIC MEETINGS

§55.152

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, Persons Affected in Commission Hearings' Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper

control of the state's air; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission; and THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, which prescribes authorization requirements for certain concrete batch plants. In addition, the amendment is also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §382.056 and §382.058.

§55.152. Public Comment Period.

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of 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), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title (relating to Newspaper Notice) for a registration for a concrete batch plant without enhanced controls authorized by an air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project;

(3) [(2)] 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) [or a concrete batch plant without enhanced controls authorized by a air quality standard per TAC permit adopted by the commission under Chapter 116, Subchapter F of this

title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project];

(4) [(3)] 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(5) [(4)] 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(6) [(5)] the time specified in commission rules for other specific types of applications; or

(7) [(6)] as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended to the close of any public meeting.