

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: October 22, 2014

DATE OF REQUEST: October 3, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2013-1626-RUL. Consideration of the adoption of new Sections 101.600 - 101.602 of 30 TAC Chapter 101, General Air Quality Rules.

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

The adopted rulemaking would allow the applicant to pay a surcharge to request the expedited processing of an application filed under 30 TAC Chapter 106, 116, or 122 where the applicant has demonstrated that the purpose of the application will benefit the state or local economy. The proposed rules were published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4129).

(Becky Southard, Booker Harrison) (Rule Project No. 2013-042-101-AI)

Steve Hagle, P.E.

Deputy Director

Michael Wilson, P.E.

Division Director

Derek Baxter

Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 3, 2014

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

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

Docket No.: 2013-1626-RUL

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

Background and reason(s) for the rulemaking:

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

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

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

Scope of the rulemaking:

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

Re: Docket No. 2013-1626-RUL

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

B.) Scope required by federal regulations or state statutes: Applicants requesting expedited processing must comply with all applicable federal and state requirements, including the existing public notice requirements. These requirements will continue to include the opportunity, when applicable, to submit comments and request a public meeting, a notice and comment hearing, or a contested case hearing. In addition, when public notice is required for an expedited project, the published notice must indicate that the application is being processed in an expedited manner.

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

Statutory authority:

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

Re: Docket No. 2013-1626-RUL

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

Effect on the:

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

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

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

Stakeholder meetings: In order to expedite the rulemaking, the commission did not hold any stakeholder meetings. The commission provided an appropriate period of time for public comment (at least 30 days), and held a hearing on the adopted rules. The commission will also continue to provide updates on key milestones on the agency web site.

Public comment:

The commission held a public hearing on June 24, 2014. No oral comments were presented. During the public comment period, comments were received from Baker Botts, L.L.P. on behalf of the Texas Industry Project (TIP), the United States Environmental Protection Agency (EPA), the TCEQ Office of the Public Interest Council (OPIC), the Texas Chemical Council (TCC), the Texas Pipeline Association (TPA), the Texas Oil and Gas Association (TXOGA), and Valero. Five commenters supported the rulemaking, and two commenters were neutral. The neutral commenters had questions regarding implementation, contract labor, and public notice. Four commenters suggested adding changes to the rules regarding the economic benefit analysis, deadlines, surcharge amounts, and refund policy. The suggested changes also included various implementation suggestions.

Re: Docket No. 2013-1626-RUL

Significant changes from proposal:

The commission made a change suggested by TPA. TPA suggested changing TAC §101.600(a) and (b) to also include, “an area of this state” as having an economic benefit to be more consistent with the Texas Health and Safety Code and to ensure a benefit to the local economy.

Potential controversial concerns and legislative interest:

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

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

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

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: May 30, 2014

Anticipated Texas Register adoption publication date: November 7, 2014

Anticipated effective date: November 13, 2014

Six-month Texas Register filing deadline: November 30, 2014

Agency contacts:

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

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

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

Attachments:

SB 1756

Commissioners

Page 5

October 3, 2014

Re: Docket No. 2013-1626-RUL

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

AN ACT

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

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

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

Sec. 382.05155. EXPEDITED PROCESSING OF APPLICATION.

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

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

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

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

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

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

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

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

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

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

President of the Senate

Speaker of the House

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

Secretary of the Senate

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

Chief Clerk of the House

Approved:

Date

Governor

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

Section 101.600 is adopted *with change* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4129). Sections 101.601 and 101.602 are adopted *without changes* to the proposed text, and, therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 1756, 83rd Legislature, 2013, amended the Texas Health and Safety Code (THSC), Chapter 382, Texas Clean Air Act (TCAA), to provide TCEQ with the authority to accept a surcharge from the applicant to cover the expenses incurred by expediting the processing of an application. THSC, §382.05155, Expedited Processing of Application, allows applicants to request, and the executive director may grant, expedited processing of applications. The commission interprets THSC, §382.05155 to only apply to an application filed under 30 Texas Administrative Code (TAC) Chapter 106, 116, or 122. The applicant must demonstrate that the purpose of the application will benefit the state or local economy and the executive director may expedite the processing of the application if it is determined that by expediting the processing it will benefit the economy of this state or an area of this state. THSC, §382.05155 allows the commission to authorize the use of overtime or contract labor to process expedited

applications, and to add a surcharge to cover expenses incurred by the expediting process. THSC, §382.05155 specifies that the overtime or contract labor used to process expedited applications is not included in the calculation of the number of full-time equivalent commission employees. Applicants must still comply with all applicable federal and state requirements, including the existing public notice requirements. These requirements will continue to include the opportunity, when applicable, to submit comments and request a public meeting, a notice and comment hearing, or a contested case hearing. In addition, when public notice is required for an expedited project, the published notice must indicate that the application is being processed in an expedited manner.

Section by Section Discussion

§101.600, Applicability

The commission adopts new §101.600, to establish that owners and operators may request expedited processing of applications filed under 30 TAC Chapter 106, 116, or 122, and to establish the standard the executive director must use to determine whether an application may be processed under this section. Adopted new §101.600(a) requires the owner or operator to demonstrate that the application and project will benefit the economy of this state or an area of this state. Adopted new §101.600(b) provides that the executive director may expedite the processing of an application if the executive director determines that expediting it will benefit the economy of this state or an area of

this state. In addition to this determination, adopted subsection (b) provides that the executive director must have the available financial and physical resources for this purpose. The number of applications that can be expedited will depend upon available permitting resources, such as availability of qualified personnel (commission employees or contract labor), office space, and computers. For the 2014 - 2015 biennium, the commission appropriation for the program is limited by the Appropriation Rider authorized by General Appropriations Act, Article IX, §18.57 (83rd Legislature, 2013). This rider limits the funds appropriated for this program to an amount not to exceed \$955,000 in fiscal year 2014 and not to exceed \$897,000 in fiscal year 2015. The Appropriation Rider limits the amount the commission can spend from the collected surcharge and does not include other fees, such as Prevention of Significant Deterioration (PSD) fees. Expending the appropriation authorized under this rider is contingent on the agency collecting revenue from the expedited permit program.

§101.601, Surcharge

The commission adopts new §101.601 to provide for the executive director to add a surcharge for processing expedited applications and to provide for a refund or additional charge when applicable. Adopted new §101.601(a) requires this surcharge to be added in an amount sufficient to cover expenses incurred by expediting the processing of an application. Adopted new §101.601(b) requires applicants to pay a surcharge at the time an application, filed under 30 TAC Chapter 106, 116, or 122, is

submitted or is under review. Only after the surcharge is received will TCEQ begin expediting the processing of the application. Adopted new §101.601(c) allows the executive director to collect additional surcharge(s) from an applicant to cover the expenses of expediting the application above the original surcharge amount. The requirement that the executive director include a surcharge to cover the expenses of expediting an application is statutory. Once a request for expedited permitting is received, the executive director will evaluate the resources necessary to expedite the processing of each application. The commission has included this provision allowing for additional surcharge(s) to meet the intent of the statute if additional surcharge is necessary to cover expenses incurred by expediting the application. Adopted new §101.601(d) states that the executive director may refund any unused portion of the surcharge.

§101.602, Public Notice

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

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact

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

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific purpose of this adopted rulemaking, as discussed elsewhere in this preamble, is to implement SB 1756 by developing a process to expedite the processing of an application filed under 30 TAC Chapter 106, 116, or 122.

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

of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted new rules were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382 (also known as the TCAA), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, and is specifically required by state law. Further, the rules do not exceed a standard set by federal law or exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States

Constitution or Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the adopted rulemaking under Texas Government Code, §2007.043. The specific purpose of this adopted rulemaking, as discussed elsewhere in this preamble, is to implement SB 1756 by developing a process to expedite the application process.

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

Consistency with the Coastal Management Program

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

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on June 24, 2014. The comment period closed on June 30, 2014. The commission received comments from Baker Botts, L.L.P. on behalf of the Texas Industry Project (TIP), the United States Environmental Protection Agency

(EPA), the TCEQ Office of the Public Interest Council (OPIC), the Texas Chemical Council (TCC), the Texas Pipeline Association (TPA), the Texas Oil and Gas Association (TXOGA), and Valero. Five commenters supported the proposed rulemaking, and two commenters were neutral. Four commenters suggested specific changes to the proposed rules.

Response to Comments

Comment

TIP, TCC, TPA, TXOGA, and Valero submitted comments in support of the revisions to Chapter 101.

Response

The commission appreciates the support. No change was made to the rules in response to this comment.

Comment

TPA, TXOGA, and TCC made suggestions regarding the economic benefit analysis. TPA suggested changing §101.600(a) and (b) to also include, "an area of this state" as having an economic benefit to be more consistent with the Texas Health and Safety Code and to ensure a benefit to the local economy. TCC commented that the economic benefit analysis should not be a burdensome process, that the burden is on the applicant to

make the demonstration, and the evidence necessary to support the economic benefit finding should be minimal. TXOGA and TCC commented that the ED should maintain discretion in the economic benefit analysis and the analysis should not be a subject to challenge in a contested case hearing.

Response

The language has been changed to, "this state or an area of this state" in places that economic benefit is discussed, including §101.600(a) and (b). The commission has not specified criteria for evaluating economic benefit and will consider any demonstration of economic benefit to this state or an area of this state. The economic benefit analysis and determination is only used to determine whether the application is expedited. The economic benefit analysis is not part of the administrative or technical review and does not impact permit issuance. Therefore, the economic benefit analysis is not subject to the contested case hearing process.

Comment

TPA recommended changing "may" to "shall" in §101.600(b) to more clearly state that if the resources are available and expediting the permit would benefit the economy, application of the process would be automatic. TPA also recommended changing "may" to "shall" in §101.601(d) that discusses refunding any unused portion of the surcharge to

more clearly indicate that overpayments will be refunded and to ensure consistency with the THSC.

Response

Changing the rule language as recommended would be inconsistent with the statutory language and would remove the flexibility needed to administer these rules. In addition, there could be situations when expediting a permit application might not be possible, such as if the rider appropriations limit has been reached. No change was made to the rule in response to this comment.

Comment

TPA suggested including rule language that requires the commission to inform the applicant on its decision regarding expediting within ten business days.

Response

The commission is committed to responding to expedited requests in a reasonable amount of time. In the commission's experience, considerations such as these should be in the implementation procedures and policies so that specific facts such as permit type and complexity can be included. No change was made to the rule in response to this comment.

Comment

EPA asked whether the proposed revisions to Chapter 101 would be submitted to EPA for review as a revision to the State Implementation Plan (SIP) or the Texas Federal Operating Permits Program.

Response

The commission is not submitting Project 2013-042-101-AI or any portions of the rulemaking to EPA as a SIP or Texas Federal Operating Permits Program revision. No change was made to the rule in response to this comment.

Comment

TCC asked the commission to revise the preamble to clarify that the current caps for each fiscal year do not also include permit fees in 30 TAC §116.141.

Response

The financial limits in the Section by Section Discussion for §101.600, Applicability, are referring to funds appropriated by the legislature, not a financial cap that the agency can control. The limit in the appropriations rider is the amount the commission can spend in fiscal years 2014 and 2015 from the surcharge(s) collected through the expedited permit process to

pay for additional resources. This does not include other fees, such as PSD fees. The preamble was updated to include this clarification. No change was made to the rule in response to this comment.

Comment

EPA, TCC, and OPIC asked how the commission would ensure that any contracted workers hired to expedite permits would not introduce a conflict of interest in developing and issuing air permits.

Response

The commission plans to initially use current employees as the additional resources needed to implement the expedited permitting program. The rule language allowing for the use of contract labor reflects the statutory language in the THSC. If the commission chooses in the future to use contract labor to work on expedited permit projects, appropriate language in the contract will address potential conflicts of interest. No change was made to the rule in response to this comment.

Comment

TCC sought clarification regarding a scenario when both a New Source Review (NSR) permit and Title V permit is required. TCC asked if the applicant would have the option

to expedite only one permit or the other, or if both permits would be required to be expedited. TCC also wanted clarification regarding how a surcharge would be assessed in that scenario.

Response

Requests for expediting application reviews will be made by the applicant as part of each application submitted. A separate surcharge will be assessed for each request that the executive director has determined meets the requirements of the §§101.600 - 101.602. The applicant will not be required to expedite multiple applications, even in circumstances when the applicant has multiple applications pending with the Air Permits Division. The expedited permit program is a voluntary program and the applicant can request to expedite any or all applications submitted.

Comment

OPIC, TCC, TXOGA, and TIP expressed concerns regarding expedited permit applications and public notice. TCC and TXOGA requested clarification on how the commission is planning on handling a situation when an application has already been to public notice and then the applicant chooses to expedite the application process.

Response

The commission will continue to follow all public notice process requirements for both NSR and Title V permitting. An application for an expedited permit will continue to meet the same public notice timeframes as required by current public notice rules. In instances when the applicant requests an application to be expedited after public notice has been correctly completed, the commission does not intend to require the applicant to republish notice. No change was made to the rule in response to these comments.

Comment

OPIC specifically expressed concern about the timeline for public review being reduced.

Response

Expedited permit applications will continue to be subject to the existing public notice deadlines and timeframes specified in current rules covering the public notice and comment process. However, the intended purpose of the underlying legislation is to shorten the overall time between the filing of a permit application and the issuance or denial of the permit, and as a natural consequence, certain steps in the administrative and technical review portions of the permit review may occur more rapidly. The public

will continue to be able to state their views regarding all aspects of the permit application and technical review, and will continue to have the opportunity to request a public meeting, contested case hearing, motion to overturn, or a request for reconsideration (as applicable) under the same time constraints currently allowed.

Comment

EPA asked for an explanation of how the commission will integrate the expedited process into the Title V workload. Specifically, EPA asked how the commission was planning on keeping the expedited surcharge separate from Title V emission fees.

Response

The commission will continue to follow all air permitting process requirements for both NSR and Title V permitting. Application fees, emission fees, and expedited permitting surcharges will be tracked separately. Expedited permitting surcharge funds will not be placed in or combined with the commission's Title V fee account (Account No. 5094); rather, as specified in the rider for SB 1756 in the General Appropriations Act, the surcharges will be paid from Clean Air Account No. 151. The commission will create a separate and distinct tracking number for the expedited surcharge and any resulting incentives for payroll accounting

purposes. No change was made to the rule in response to this comment.

Comment

TIP, OPIC, TCC, TPA, and TXOGA provided implementation suggestions. TIP provided implementation suggestions for expediting permit projects regarding staffing, timing of applicability, and public notice language. OPIC expressed concerns regarding implementation of contract labor and preservation of sufficient time for public review of application documents. TCC provided many implementation suggestions for expediting permit projects regarding economic benefit analysis, the surcharge, applicability, project prioritization, staffing, and administration. TPA provided implementation suggestions regarding response letter deadlines, issuance deadlines, and staffing. TXOGA provided implementation suggestions regarding staffing, public notice timing, specificity of providing economic benefit, and the surcharge. TIP requested that the commission confirm, and TXOGA and TPA commented, that all aspects of the permit application process, e.g., the modeling and toxicology analyses, can be expedited, and owners or operators may elect expedited treatment for applications after initial submission. TCC recommended a "once in, always in" approach, meaning once an applicant has requested expedited processing, the application remains in the program for all purposes until a draft permit is issued.

Response

The commission appreciates the suggestions and will consider them in its implementation process. The commission will continue to follow all air permitting process requirements for both NSR and Title V permitting. The commission agrees that under the rule, all parts of the permit application process that do not have a specific timeline in rule or statute may be expedited. The commission will take appropriate measures to inform applicants of all implemented procedures and policies by developing guidance and promptly responding to public questions. No change was made to the rule in response to these comments.

Comment

TCC and TXOGA suggested that any surcharge money accumulated in one fiscal year should be allowed to be used the next fiscal year. TXOGA specifically suggested adding rule language to accomplish this.

Response

The ability to carry forward appropriation authority across bienniums requires specific legislative authority. The commission currently does not have this authority for expedited air permits funding. The commission is limited to carrying forward appropriation authority within the same

biennium. No change was made to the rule in response to this comment.

SUBCHAPTER J: EXPEDITED PERMITTING

§§101.600 - 101.602

Statutory Authority

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

contaminants; THSC, §382.05155, concerning Expedited Processing of Application, which authorizes the commission to develop a process for expediting applications and charging a surcharge; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which requires an applicant for a permit issued under THSC, §382.0518 to publish notice of intent to obtain a permit. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules, and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

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

§101.600. Applicability.

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

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

§101.601. Surcharge.

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

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

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

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

§101.602. Public Notice.

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

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(8) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(9) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018;

(10) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law; and

(11) an application for a production area authorization, ~~except as provided in accordance with §331.108 of this title (relating to Independent Third-Party Experts) [that is submitted after September 1, 2007, unless the application for the production area authorization seeks:]~~

~~{(A) an amendment to a restoration table value in accordance with the requirements of §331.107(g) of this title (relating to Restoration);}~~

~~{(B) the initial establishment of monitoring wells for any area covered by the authorization, including the location, number, depth, spacing, and design of the monitoring wells, unless the executive director uses the recommendations of an independent third-party expert as provided in §331.108 of this title (relating to Independent Third-Party Experts); or}~~

~~{(C) an amendment to the type or amount of financial assurance required for aquifer restoration, or by Texas Water Code, §27.073, to assure that there are sufficient funds available to the state to utilize a third-party contractor for aquifer restoration or plugging of abandoned wells in the area. Adjustments solely associated with the annual inflation rate adjustment required under §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), or for adjustments due to decrease in the cost estimate for plugging and abandonment of wells when plugging and abandonment has been approved by the executive director in accordance with §331.144 of this~~

~~title (relating to Approval of Plugging and Abandonment) are not considered an amendment to the type or amount of financial assurance required for aquifer restoration or well plugging and abandonment.}~~

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

Filed with the Office of the Secretary of State on May 16, 2014.

TRD-201402296

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 29, 2014

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

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**CHAPTER 101. GENERAL AIR QUALITY
RULES**

SUBCHAPTER J. EXPEDITED PERMITTING

30 TAC §§101.600 - 101.602

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

Background and Summary of the Factual Basis for the Proposed Rules

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

Section by Section Discussion

§101.600, Applicability

The commission proposes new §101.600, to establish that owners and operators may request expedited processing of applications filed under 30 TAC Chapter 106, 116, or 122, and to

establish the standard the executive director must use to determine whether an application may be processed under this section. Proposed new §101.600(a) requires the owner or operator to demonstrate that the application and project will benefit the economy of Texas. Proposed new §101.600(b) provides that the executive director may expedite the processing of an application if the executive director determines that expediting it will benefit the economy of Texas. In addition to this determination, proposed subsection (b) provides that the executive director must have the available financial and physical resources for this purpose. The number of applications that can be expedited will depend upon available permitting resources, such as availability of qualified personnel (commission employees or contract labor), office space, or computers. For the 2014 - 2015 biennium, the commission appropriation for the program is limited by Appropriation Rider authorized by General Appropriations Act, Article IX, §18.57 (83rd Legislature, 2013). This rider limits the amount appropriated for this program to an amount not to exceed \$955,000 in fiscal year 2014 and not to exceed \$897,000 in fiscal year 2015. Expending the appropriation authorized under this rider is contingent on the agency collecting revenue from the expedited permit program.

§101.601, Surcharge

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

§101.602, Public Notice

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

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency since any increase in agency revenue would be used to offset any additional agency costs. The proposed rules are not anticipated to have fiscal implications for other units of state or local government unless they request an expedited application review. Those that request the expedited

process would be required to pay a surcharge. Surcharge amounts will vary based on the type and complexity of the application.

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

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

Public Benefits and Costs

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

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required by state law and do not adversely affect a small or micro-business in a

material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

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

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to implement SB 1756 by developing a process to expedite the processing of an application filed under 30 TAC Chapter 106, 116, or 122.

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

The proposed new rules were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382 (also known as the TCAA), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, and is specifically required by state law. Further, the rules do not exceed a standard set by federal law or exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in

whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

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

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

Consistency with the Coastal Management Program

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

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 24, 2014, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be

submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-042-116-AI. The comment period closes June 30, 2014. Copies of the proposed rule-making can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Becky Southard, Operational Support Section, Air Permits Division, at (512) 239-1638.

Statutory Authority

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

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

§101.600. Applicability.

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

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

§101.601. Surcharge.

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

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

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

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

§101.602. Public Notice.

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

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

Filed with the Office of the Secretary of State on May 16, 2014.

TRD-201402284

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 29, 2014

For further information, please call: (512) 239-2613



CHAPTER 290. PUBLIC DRINKING WATER SUBCHAPTER H. CONSUMER CONFIDENCE REPORTS

30 TAC §290.272

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §290.272.

Background and Summary of the Factual Basis for the Proposed Rule

In 2013, the 83rd Legislature passed House Bill (HB) 1461, which requires all retail public utilities to notify their customers of water loss reported in their water loss audits filed with the Texas Water Development Board (TWDB). The notice shall be provided through the utility's consumer confidence report (CCR) or in the customer's bill after the water loss audit is filed. The purpose of this proposed rulemaking is to amend Chapter 290 to reflect the legislative changes to Texas Water Code (TWC), §13.148, Notification of Water Loss.

Texas Commission on Environmental Quality



ORDER ADOPTING NEW RULES

Docket No. 2013-1626-RUL

Rule Project No. 2013-042-101-AI

On October 22, 2014, the Texas Commission on Environmental Quality (Commission) adopted new §§ 101.600 - 101.602 of 30 TAC Chapter 101 (General Air Quality Rules), concerning SB 1756: Expedited Permitting Program. The proposed rules were published for comment in the May, 30, 2014, issue of the *Texas Register* (39 TexReg 4129).

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

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

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

Date Issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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