

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §116.131, Public Notification Requirements. This rule will be submitted to the United States Environmental Protection Agency as a revision to the Texas state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission is proposing a number of changes to its procedural rules in this issue of the *Texas Register*. The changes include proposed revisions to Chapters 1, 35, 39, 50, 55, 80, 106, and 116. These chapters contain proposed changes to update and clarify agency rules, to facilitate permit processing and to more clearly set out the responsibilities of those involved in the permitting process. In addition, in part, the changes proposed in this issue of the *Texas Register* are intended to be responsive to comments received during the rulemaking proceedings implementing House Bill (HB) 801 during the summer and early fall of 1999 requesting that the adopted rules be subject to subsequent review to address any deficiencies which became apparent following adoption. (See September 24, 1999 issue of the *Texas Register* (24 TexReg 8190).)

The purpose of the changes proposed for this chapter is to make the notice of public meeting requirements consistent for all air applications. Thus, those air applications that were administratively complete before September 1, 1999 and thus subject to §116.131 will be subject to the same notice of public meeting requirements as those air applications administratively complete on or after September 1, 1999 and therefore subject to HB 801 enacted by the 76th Legislature, 1999. While existing rules expressly address the opportunity to request a public meeting and the procedures for holding a public meeting, the method and timing of notice of public meetings for air applications, are not currently expressly addressed in

commission rules. As a result, the method and timing of notice of public meetings for air applications has varied. These rules are proposed to clearly set forth the obligations of applicants regarding the method and timing of notice of public meetings and to ensure consistent notice of public meeting requirements for air applications.

SECTION BY SECTION DISCUSSION

The amendment to §116.131 is proposed to provide that if a public meeting is held in connection with any air application under Chapter 116 of this title (relating to Control of Air Pollution for Permits for New Construction or Modification), the applicant must satisfy the requirements of §39.603(f), which include newspaper notice 30 days prior to a public meeting and certain alternative publication requirements allowing for abbreviated notice for small business stationary sources that qualify.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impacts for units of state and local government as a result of administration or enforcement of the proposed amendment.

The proposed amendment will provide that new source review air permit applications administratively complete before September 1, 1999 will be subject to the same notice of public meeting requirements applicable to new source review applications administratively complete on or after September 1, 1999. The proposed rule change will ensure consistency regarding notices of public meetings.

The majority of units of state and local government applying for new source review permits already provide notice of public meetings; however, there may be a small number that have not provided notice of public meetings in the past because there has been no express requirements in the commission's public notice rules requiring new source review applicants to provide notice of public meetings. For those applicants, this rulemaking will implement new notice of public meeting requirements including 30 days notice prior to a public meeting. The approximate cost for notice of a public meeting in a newspaper of general circulation is \$500.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be will be increased consistency regarding the public notification requirements for public meetings relating to proposed new source review permit applications.

The proposed amendment will provide that new source review air permit applications administratively complete before September 1, 1999 will be subject to the same notice of public meeting requirements applicable to new source review applications administratively complete on or after September 1, 1999. The proposed rule change will ensure consistency regarding notices of public meetings.

The majority of individuals and businesses applying for new source review permits already provide notice of public meetings; however, there may be a small number that have not provided notice of public meetings in the past because there has been no express requirements in the commission's public notice rules requiring

new source review applicants to provide notice of public meetings. For those applicants, this rulemaking will implement new notice of public meeting requirements including 30 days notice prior to a public meeting. The approximate cost for notice of a public meeting in a newspaper of general circulation is \$500.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no anticipated significant adverse fiscal impacts to any small or micro-businesses as a result of the proposed amendment. The proposed amendment will provide that new source review air permit applications administratively complete before September 1, 1999 will be subject to the same notice of public meeting requirements applicable to new source review applications administratively complete on or after September 1, 1999. The proposed rule change will ensure consistency regarding notices of public meetings.

The majority of small or micro-businesses applying for new source review permits already provide notice of public meetings; however, there may be a small number that have not provided notice of public meetings in the past because there has been no express requirements in the commission's public notice rules requiring new source review applicants to provide notice of public meetings. For those applicants, this rulemaking will implement new notice of public meeting requirements including 30 days notice prior to a public meeting. Affected businesses qualifying as small or micro-business will have the option to publish an abbreviated notice, which should keep the cost of publishing the notice below \$500.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "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 rulemaking is procedural in nature and is only intended to establish certain requirements for the method and timing for the notice of public meetings for air applications not subject to HB 801 to be consistent with those requirements for air applications that are subject to HB 801. Therefore, the rulemaking does not meet the definition of “major environmental rule” because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the rulemaking pursuant to Texas Government Code, §2007.043. The specific purpose of the rulemaking is to establish certain requirements for the method and timing for the notice of public meetings for air applications not subject to HB 801 to be consistent with those requirements for air applications that are subject to HB 801. The rulemaking contains procedural rule changes only and does not affect private real property. Therefore, the rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rulemaking is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor does it affect any action or authorization identified in

§505.11. The rulemaking concerns only the procedural rules of the commission. Therefore, the rulemaking is not subject to the CMP.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal on March 6, 2001 at 10 a.m., Building F, Room 2210, Texas Natural Resource Conservation Commission Complex, 12100 Park 35 Circle, Austin, Texas. The hearings are 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 hearings; however, agency staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Duron, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-016-035-AD. Comments must be received in writing by 5:00 p.m., March 12, 2001. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which establishes the commission's general authority to adopt rules, Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority under the Texas Clean Air Act; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.056, which establishes the commission's authority to adopt rules concerning notice and public comment; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice.

There are no other statutes, articles, or codes implemented by the proposed amendment.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 3: PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§116.131

§116.131. Public Notification Requirements.

(a) (No change.)

(b) Availability of application for review. The executive director shall make the completed application (except sections relating to confidential information) and the preliminary analyses of the application completed prior to publication of the public notice available for public inspection during normal business hours at the commission's Austin office and at the appropriate commission regional office in the region where construction is proposed throughout the comment period established in the notice published under §116.132 of this title; and [.]

(c) Notice of public meeting. If a public meeting is held in connection with any application subject to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), the applicant shall comply with §39.603(f) of this title (relating to Notice of Public Meeting).