

# Texas Commission on Environmental Quality

## Interoffice Memorandum

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

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

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

**Docket No.:** 2016-0484-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
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 (TACA) submitted a petition requesting that the Texas Commission on Environmental Quality (commission or TCEQ) conduct rulemaking to amend public notice rules applicable to registration applications 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 a registration application. On April 6, 2016, the commission considered the petition and directed the executive director to examine the request and initiate rulemaking.

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

Registration applications 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 application, determine whether to comment, request a public meeting or contested case hearing, and then to timely submit the information to the TCEQ.

This rulemaking will 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

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meeting will continue to apply to these registration applications. If a request for a contested case hearing is received within the single 30-day comment period, the opportunity to 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 registration applications 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 adopted amendments will be submitted to the United States Environmental Protection Agency 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 rulemaking would provide for one notice instead of two, which would apply to English language publication and any alternative language publication. The cost savings were discussed in the preamble for the proposed rule.

**B.) Public:**

While the public has had an initial 15-day period and then a later 30-day period to submit comments, the opportunity to request a contested case hearing during the 15-day period is very limited, therefore the rule amendments would extend the time to request a contested case hearing to 30 days and consolidate two notices into one notice. 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 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 submit registration applications 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 was scheduled during the comment period in Austin. Comments were submitted on behalf of Texas State Representative Alma Allen (Representative Allen) and the City of Houston.

**Public comment:**

The commission received comments from Representative Allen, the City of Dallas, the City of Houston, TACA, and the United States Environmental Protection Agency, Region 6.

Comments concerned the changes regarding the number of notices and the amount of time to submit comments and requests for a contested case hearing. While commenters supported the additional time to request a contested case hearing, they expressed concern regarding the overall reduction in time to obtain information, organize, and submit comments. Representative Allen requested a 45-day notice period. Comments regarding protection of health were submitted by the City of Houston and the City of Dallas. TACA supported the rulemaking, citing time and cost savings and elimination of duplicative public notice.

**Significant changes from proposal:**

In response to a comment, §39.603(c) was revised to remove the reference to the executive director's declaration that a registration application is administratively complete to ensure it is clear that the consolidated notice is provided to the applicant for publication after both administrative and technical reviews of the registration application are complete.

Specific references to the Air Quality Standard Permit for Concrete Batch Plants replace the text "concrete batch plant without enhanced controls." While not a substantive change, the more accurate reference eliminates any confusion about which standard permit is the subject of these rules.

**Potential controversial concerns and legislative interest:**

Some persons may view the change from two notices to one as limiting public participation. 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).

**Does 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.

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

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

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

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

Anticipated *Texas Register* adoption publication date: December 23, 2016

Anticipated effective date: December 29, 2016

Six-month *Texas Register* filing deadline: January 22, 2017

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**Attachments:**

None.

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