

**SUBCHAPTER D: PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE
REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL
ACTION, EPA REVIEW, AND PUBLIC PETITION
§§122.312, 122.320, 122.322, 122.330, 122.340, 122.345, 122.350, 122.360
Effective December 11, 2002**

§122.312. Public Announcement.

- (a) Public announcement requirements apply to minor permit revisions.
- (b) The executive director shall publish an announcement of a draft permit for a minor permit revision on the commission's publicly accessible electronic media. The announcement shall contain the following:
 - (1) permit application number;
 - (2) permit holder's name and address;
 - (3) description of the location of the site;
 - (4) the location and availability of the following:
 - (A) copies of the complete permit application;
 - (B) the draft permit;
 - (C) all other relevant supporting materials in the public files of the agency;
 - (5) a description of the comment procedures, including the duration of the public announcement comment period; and
 - (6) name, address, and phone number of the commission office to be contacted for further information.
- (c) The executive director shall make a copy of the public announcement and date of publication accessible to the EPA and all local air pollution control agencies with jurisdiction in the county in which the site is located.
- (d) The executive director shall furnish a notice of the public announcement to the air pollution control agency of any affected state.
- (e) The executive director shall make available for public inspection the draft permit and the

complete revision application throughout the comment period during business hours at the commission's central office and at the commission's regional office where the site is located.

(f) The executive director shall receive public comment for 30 days after the announcement of the draft permit is published. During the comment period, any person may submit written comments on the draft permit.

(g) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(h) Public notice requirements satisfy public announcement requirements.

(i) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

Adopted August 9, 2000

Effective September 4, 2000

§122.320. Public Notice.

(a) Public notice requirements apply to initial issuances, significant permit revisions, reopenings, and renewals.

(b) The executive director shall direct the applicant to publish a notice of draft permit and preliminary decision, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The executive director shall direct the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The notice shall contain the following information:

(1) the permit application number;

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

(3) a description of the location of the site or proposed location of the site;

(4) a description of the activity or activities involved in the permit application;

(5) for significant permit revisions, the air pollutants with emission changes;

(6) the location and availability of the following:

- (A) the complete permit application;
- (B) the draft permit;
- (C) all other relevant supporting materials in the public files of the agency;

(7) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(8) a statement that a person who may be affected by the emission of air pollutants from the site is entitled to request a notice and comment hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

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

(10) if applicable, the time and location of any public meeting; and

(11) the name, address, and phone number of the commission office to be contacted for further information.

(c) One notice may be published for multiple permits at a site with the approval of the executive director.

(d) The applicant shall submit a copy of the public notice and date of publication to the executive director and all local air pollution control agencies with jurisdiction in the county in which the site is located.

(e) The applicant shall submit a statement to the executive director, with a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the sign required by subsection (h) of this section has been posted consistent with the provisions of that subsection.

(f) The executive director shall make a copy of the permit application, the draft permit, and any required notices accessible to the EPA.

(g) The executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office and at the commission's regional office where the site is located.

(h) At the applicant's expense, a sign shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the executive director may be contacted for further information.

(1) The sign shall be provided by the applicant and shall substantially meet the following requirements.

(A) The sign shall consist of dark lettering on a white background and shall be not smaller than 18 inches by 28 inches and all lettering shall be no less than one and one-half inches in size and block printed capital lettering.

(B) The sign shall be headed by the words "APPLICATION FOR FEDERAL OPERATING PERMIT".

(C) The sign shall include the words "APPLICATION NO." and the number of the permit application.

(D) The sign shall include the words "for further information contact".

(E) The sign shall include the words "TEXAS NATURAL RESOURCE CONSERVATION COMMISSION," and the address of the appropriate commission regional office.

(F) The sign shall include the phone number of the appropriate commission office.

(G) The sign shall include the name of the company applying for the permit.

(2) The sign shall be in place by the date of publication of the newspaper notice and shall remain in place and legible throughout the period of public comment.

(3) The sign placed at the site shall be located at or near the site main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director must approve the variations before signs are posted.

(4) One sign may be posted for multiple permits at a site with the approval of the executive director.

(i) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft permit.

(j) During the 30-day public notice comment period, any person who may be affected by emissions from a site regulated under this chapter may request in writing a notice and comment hearing on the draft permit.

(k) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(l) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

(m) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the site is located or proposed to be located. Notice of this public meeting shall be provided in the notice required by subsection (b) of this section.

Adopted May 9, 2001

Effective June 3, 2001

§122.322. Bilingual Public Notice.

(a) The requirements of this subsection are applicable when either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Education Code, Chapter 29, Subchapter B, and 19 Texas Administrative Code (TAC) §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs), or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.1205(g). Schools not governed by the provisions of 19 TAC §89.1205 shall not be considered in determining applicability of the requirements of this section. Each affected facility shall meet the following requirements.

(1) At the applicant's expense, an additional notice shall be published at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.1205(a) under 19 TAC §89.1205(g), the notice shall be published in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(2) Each notice under this section shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.

(3) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located.

(4) The requirements of this section are waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice.

(5) Notice under this subsection shall only be required to be published within the United States.

(6) If the alternate language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(7) Each alternate language publication shall follow the requirements of §122.320 of this title (relating to Public Notice) not otherwise inconsistent with this subsection.

(8) At the applicant's expense, an additional sign shall be posted in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.1205(a) under 19 TAC §89.1205(g), the alternate language signs shall be posted in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(9) The alternate language signs shall be posted adjacent to each English language sign required in public notice.

(10) The alternate language signs shall meet all other requirements of §122.320 of this title.

(b) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of subsection (a) of this section.

(c) If the notices required by §122.320 of this title and §122.340 of this title (relating to Notice and Comment Hearing) are combined, the combined notice is subject to the requirements of this section.

Adopted August 9, 2000

Effective September 4, 2000

§122.330. Affected State Review.

(a) Affected state review requirements apply to initial issuances, minor permit revisions, significant permit revisions, reopenings, and renewals.

(b) An affected state may be New Mexico, Oklahoma, Kansas, Colorado, Arkansas, or Louisiana if either of the following criteria are satisfied:

(1) The state is contiguous to Texas and the state's air quality may be affected by the issuance or denial of a federal operating permit, revision, or renewal; or

(2) The state is within 50 miles of the site or proposed site.

(c) The executive director shall provide notice of the draft permit to any affected state on or before the time notice is provided to the public through public announcement or public notice.

(d) Affected states shall have 30 days from date of notification to comment on the draft permit.

(e) The executive director shall notify the EPA and any affected state, in writing, of the refusal to incorporate any recommendations into the proposed permit that the affected state submitted during the affected state review period. The notice shall include the executive director's reasons for not accepting any of the recommendations.

(f) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(g) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

Adopted May 9, 2001

Effective June 3, 2001

§122.340. Notice And Comment Hearing.

(a) Notice and comment hearing requirements apply to initial issuances, significant permit revisions, reopenings, and renewals.

(b) Any hearing regarding a permit will be conducted under the procedures in this section, and not under the APA.

(c) Any person who may be affected by emissions from a site regulated under this chapter may request the executive director to hold a hearing on the draft permit. The request must be made during the 30-day public comment period.

(d) The executive director shall decide whether to hold a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a site is determined to be unreasonable. If a hearing is requested by a person who may be

affected by emissions from a site regulated under this chapter, and that request is reasonable, the executive director shall hold a hearing.

(e) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

(f) The applicant shall submit a copy of the notice of hearing and date of publication to the executive director and all local air pollution control agencies with jurisdiction in the county in which the site is located.

(g) At the executive director's discretion, the hearing notice may be combined with the notice of the draft permit required by this chapter.

(h) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) Reasonable time limits may be set for oral statements, and the submission of statements in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(i) A tape recording or written transcript of the hearing must be made available to the public.

(j) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(k) Any supporting materials for comments submitted under subsection (j) of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:

- (1) already part of the administrative record in the same proceedings;
- (2) state or federal statutes and regulations;
- (3) EPA documents of general applicability; or
- (4) other generally available reference materials.

(l) The executive director shall keep a record of all comments received and issues raised in the hearing. This record is available to the public.

(m) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(n) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

Adopted May 9, 2001

Effective June 3, 2001

§122.345. Notice of Proposed Final Action.

(a) After the public comment period or the conclusion of any notice and comment hearing, the executive director shall send notice by first-class mail of the proposed final action on the application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

- (1) the response to any comments submitted during the public comment period;
- (2) identification of any change in the conditions of the draft permit and the reasons for the change;
- (3) a description and explanation of the process for public petitions to the EPA;
- (4) the date by which the petition must be filed; and
- (5) a statement that any person affected by the decision of the executive director may petition the Administrator.

Adopted August 9, 2000

Effective September 4, 2000

§122.350. EPA Review.

(a) EPA review requirements apply to initial issuances, minor permit revisions, significant permit revisions, reopenings, and renewals.

(b) The executive director shall submit the proposed permit to the EPA.

(1) For initial issuances, significant permit revisions, reopenings, and renewals the proposed permit shall be submitted to the EPA. At the discretion of the executive director, the procedural requirements of §122.320 of this title (relating to Public Notice), §122.322 of this title (relating to Bilingual Notice), and the requirements for EPA Review under this section may run concurrently. The procedural requirements of §122.320 and §122.322 of this title and the requirements for EPA review under this section may not run concurrently if any person submits comments or if the executive director grants a hearing request. In such case, any comments received and the revised proposed permit, if applicable, shall be submitted to the EPA. The EPA review period shall begin upon its receipt of the comments and the proposed permit.

(2) For minor permit revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public announcement period.

(3) For general operating permit initial issuances and significant revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public comment period. If any person submits comments or if the executive director grants a hearing request, any comments received and the revised general operating permit, if applicable, shall be submitted to the EPA. The EPA review period shall begin upon its receipt of the comments and the general operating permit. For general operating permit minor revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public announcement period.

(c) Upon receipt of the proposed permit, the EPA shall have 45 days to object, in writing, to the issuance of the proposed permit. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

(d) The executive director may issue the permit provided the following:

- (1) the EPA does not object to the issuance of the proposed permit;
- (2) the EPA notifies the executive director that the EPA will not object to the issuance of the permit; or
- (3) the executive director resolves any objections received.

(e) If the executive director fails, within 90 days of receipt of an objection, to revise the proposed permit and submit a revised permit, if necessary, in response to the objection, the EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under FCAA, Title V (relating to Permit).

Adopted November 20, 2002

Effective December 11, 2002

§122.360. Public Petition.

(a) Public petition requirements apply to initial issuances, significant permit revisions, reopenings, and renewals.

(b) If the EPA does not file an objection with the executive director, any person, including the applicant, affected by a decision of the commission under this chapter may petition the EPA to make an objection. After receiving a petition, the EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

(c) The petition must be filed with the EPA within 60 days after the expiration of EPA's 45-day review period. For general operating permits, the petition must be filed no later than 60 days after issuance of the general operating permit by the executive director.

(d) A copy of the petition shall be provided to the executive director and the applicant by the petitioner.

(e) The petition does not limit the effectiveness of a permit issued by the executive director or the finality of the executive director's action for purposes of an appeal under Texas Health and Safety Code, §382.032.

(f) Petitions shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates in the petition to the EPA that it was not possible to raise the objections within the public comment period, or that the grounds for the objection arose after the public comment period. The petition shall identify all objections.

(g) If the EPA objects to the permit as a result of a petition filed under this section before issuance of the permit, the executive director shall not issue the permit until EPA's objection has been resolved.

(h) If the executive director has issued a permit before receipt of an EPA objection based on a public petition, the permit remains effective and the executive director shall have 90 days from the receipt of an EPA objection to resolve any objection and, if necessary, terminate or revise the permit.

(1) In the event additional information is needed from the permit holder, the executive director may request from EPA a 90-day extension to resolve the objection.

(2) If the executive director fails to resolve the objection, EPA will revise, terminate, or revoke the permit, and the executive director may issue only a revised permit that satisfies EPA's objection.

(3) The permit holder will not be in violation of the requirement to have submitted a timely and complete application.

Adopted May 9, 2001

Effective June 3, 2001