

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §106.5, Public Notice.

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 this rulemaking is to propose notice of public meeting requirements for concrete batch plant registrations described in §106.5(b) that are consistent with notice of public meetings proposed for other air permit applications in this rulemaking. The public participation process for air permits and the registrations covered by this proposed rule includes an opportunity for interested persons to request public meetings. While the requirements relevant to requesting and holding a public meeting are currently explicitly described in existing rules, the method and timing of notice of public meetings for air quality applications are not currently expressly addressed. This has resulted in a certain amount of variation in the methods used and timing of notices of public meetings related to air applications. Thus, specific and

consistent requirements regarding the method and timing of notice of public meetings for all air matters, including those registrations for which there is an opportunity to request a public meeting are proposed in this rulemaking.

SECTION BY SECTION DISCUSSION

Section 106.5(c) is proposed to provide that if a public meeting is held in connection with a concrete batch plant registration, the notice of public meeting requirements of §39.603 must be followed. Those requirements include a requirement for 30 days notice of a public meeting as well as alternative newspaper publication requirements for small business stationary sources. This proposed change makes the method and timing of notice requirements for public meetings held in connection with air applications clear and consistent.

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 implications to units of state and local government as a result of administration or enforcement of the proposed amendment.

The proposed amendment is intended to provide for notice of public meeting requirements for certain concrete batch plant applications and make these requirements consistent with other notice of public meeting requirements for air applications proposed in concurrent rulemaking. This change will ensure consistency regarding notices of public meetings for certain concrete batch plant applications.

Affected concrete batch operations include permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, and facilities that specialize in wet batch, concrete, mortar, grout mixing, or pre-cast concrete products.

There may be units of state and local government which own and operate concrete batch plants subject to these rules. If so, the commission estimates that the majority of affected units applying for 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 concrete batch plant permit applicants to provide notice of public meetings. For those applicants, this rulemaking will implement new notice of public meeting requirements including at least 15 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 amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased consistency regarding the public notification requirements for public meetings relating to proposed registrations of concrete batch plants.

The proposed amendments are intended to provide for notice of public meeting requirements for certain concrete batch plant applications and make these requirements consistent with other notice of public meeting

requirements for air applications proposed in concurrent rulemaking. This change will ensure consistency regarding notices of public meetings for certain concrete batch plant applications.

Affected concrete batch operations include permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, and facilities that specialize in wet batch, concrete, mortar, grout mixing, or pre-cast concrete products.

The majority of individuals and businesses applying for concrete batch 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 concrete batch plant permit applicants to provide notice of public meetings. For those applicants, this rulemaking will implement new notice of public meeting requirements including at least 15 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 adverse fiscal impacts to small or micro-businesses as a result of the proposed amendment. The proposed amendment is intended to provide for notice of public meeting requirements for certain concrete batch plant applications and make these requirements consistent with other notice of public meeting requirements for air applications proposed in concurrent rulemaking. This change will ensure consistency regarding notices of public meetings for certain concrete batch plant applications.

Affected concrete batch operations include permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, and facilities that specialize in wet batch, concrete, mortar, grout mixing, or pre-cast concrete products.

The commission estimates that the majority of small and micro-businesses applying for 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 certain concrete batch plant permit applicants to provide notice of public meetings. For those applicants, this rulemaking will implement new notice of public meeting requirements including at least 15 days notice prior to a public meeting. Affected businesses qualifying as small or micro-businesses 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. 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. 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 Texas Health and Safety Code (THSC), §382.056, which establishes the commission's authority to adopt rules regarding notice and public comment; THSC, §382.058, which establishes the commission's requirements for notice regarding certain concrete batch plants; THSC, §382.017, which establishes the commission's rulemaking authority under the Texas Clean Air Act; TWC, §5.103, which establishes the commission's general authority to adopt rules; 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 A: GENERAL PROVISIONS

§106.5

§106.5. Public Notice.

(a) (No change.)

(b) Facilities constructed under this chapter that consist of permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, or specialty wet batch, concrete, mortar, grout mixing, or pre-cast concrete products, shall conduct public notice of the proposed construction unless exempted from public notice requirements by TCAA, §382.058(b). In all cases, public notice shall comply with the requirements under Chapter 39 of this title (relating to Public Notice) and public participation shall be subject to Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearing, Public Comment); and [.]

(c) If a public meeting is held in connection with any registration described in subsection (b) of this section, notice of the public meeting shall be given as provided by §39.603(f) of this title (relating to Notice of Public Meeting.)