

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§116.1011, 116.1040, 116.1041, and 116.1050 and new §116.1042.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of this rulemaking is to implement legislation relating to public notice and hearing requirements. Senate Bill (SB) 688 (an act relating to requirements for public notice and hearing on applications for certain permits that may have environmental impact), 77th Legislature, 2001, amended Texas Clean Air Act (TCAA), Chapter 382, Subchapter C, by amending §382.05194, Multiple Plant Permit, and by adding §382.05197, Multiple Plant Permit: Notice and Hearing. The proposed amendments and new section address the amendments to TCAA, Chapter 382, Subchapter C. The proposal also contains grammatical revisions, cross-reference corrections, and changes which conform the rule language to *Texas Register* and agency formatting requirements.

SECTION BY SECTION DISCUSSION

Section 116.1011, Multiple Plant Permit Application, is proposed to be amended to reflect new statutory requirements under TCAA, §382.05197 for a multiple plant permit (MPP) applicant to publish notice of intent to obtain the permit. Subsection (a)(5) is proposed to be deleted because information necessary to calculate the cost of public notice would no longer be needed by the executive director as part of the MPP application, since the proposal would require the applicant, rather than the commission, to publish notice of intent to obtain the permit. Minor changes proposed under §116.1011 include substituting the term “executive director” for the “commission” to more accurately reflect agency duties and responsibilities; changing the specific application references from “Form PI-1M

Multiple Plant Permit Application” and “Form PI-1M” to “application form” or “form” to allow for ongoing improvements in commission application documents and flexibility under subsection (a); and adding the word “and” at the end of subsection (a)(3).

Section 116.1040, Multiple Plant Permit Public Notice, is proposed to be amended to reflect the new statutory language under TCAA, §382.05197 by amending the title of this rule and by adding new language under proposed subsections (a) - (c). The amended title of the rule reflects the inclusion of provisions to address new public participation procedures in the statute. New TCAA, §382.05197(c) provides that public participation for an MPP application filed before September 1, 2001, will be done in the same manner as provided by TCAA, §382.0561, concerning Federal Operating Permit; and §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Texas Government Code, Chapter 2001, and require the executive director to send notice of final action to persons who comment during the comment period or during a hearing. Because the commission has developed public notice and participation requirements implementing similar language in TCAA, §382.05191 for voluntary emission reduction permits (VERP) and electric generating facility permits, the proposed requirements of §§116.1040 - 116.1042 are based on the sections in 30 TAC Chapter 116, Subchapters H and I, that implement the requirements of TCAA, §382.0561 and §382.0562. In addition, the commission’s review of TCAA, §382.05194 and §382.05197 indicates that the new public notice and public participation requirements that substitute for otherwise applicable requirements under Texas Government Code, Chapter 2001, are only available for applications filed before September 1, 2001, for the initial issuance, amendment, or revocation of an MPP under §382.05194(e). As a general matter, the requirements in 30 TAC Chapter 50, relating to

Action on Applications and Other Authorizations, and specifically the requirements in Subchapter G, relating to Action by the Executive Director, apply to all MPP applications regardless of the filing date for the applications.

The new language proposed in §116.1040(a) would require that applications for an MPP filed on or after September 1, 2001 are subject to the same procedural requirements of 30 TAC Chapters 39, 50, 55, and 80 that apply to applications processed under Chapter 116, Subchapter B, relating to New Source Review Permits, except that any required newspaper notice shall be published in accordance with proposed subsection (b)(1)(A).

Proposed new §116.1040(b) is based on language in existing §116.1041(c), and provides that the public notice and public participation process in TCAA, §382.05197, is only available for applications filed before September 1, 2001, for initial issuance, amendment, or revocation of an MPP. The new language proposed under paragraph (1) would require the applicant for an MPP application filed before September 1, 2001, to follow the same public notice requirements applicable to initial issuance VERPs and electric generating facility permits that are specified in §39.403(d), except as provided by proposed §116.1040. Proposed new subparagraph (A) would require an applicant for initial issuance of an MPP to publish notice of intent to obtain the permit in accordance with the applicable requirements in §39.603, except that: the notice of a proposed MPP for existing facilities must be published in one or more state-wide or regional newspapers that provide reasonable notice throughout the state; or if the MPP for existing facilities will be effective for only part of the state, the notice must be published in a newspaper of general circulation in the area to be affected. Subparagraph (B) clarifies that the notice

required under §39.603 will include a statement that any person is entitled to request a notice and comment hearing from the commission. The new requirements proposed under subparagraph (C) would allow the executive director to authorize an applicant for an MPP for an existing facility that constitutes or is part of a small business stationary source as defined in TCAA, §382.0365(h)(2), to provide notice using an alternative means if the executive director finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, the cost, and the consistency with federal requirements. Proposed paragraph (2) provides that any person who may be affected by emissions from a facility that is included in an MPP application under subsection (b) may request a notice and comment hearing on the MPP application within 30 days after publication of notice under §39.418, concerning Notice of Receipt of Application and Intent to Obtain Permit. In accordance with TCAA, §382.05197(c) and §382.0561, new paragraph (3) clarifies that a hearing relating to an MPP under subsection (b) will follow the procedures for a notice and comment hearing according to the proposed amendments in §116.1041. The proposed new paragraph (4) provides that the executive director's response to public comments and notice of decision relating to a permit application under subsection (b) will be conducted under the procedures of proposed new §116.1042. New paragraph (5) provides that persons affected by a decision of the commission to issue or deny an MPP application under subsection (b) will be entitled to file a motion to overturn the decision under §50.139, relating to Motion to Overturn Executive Director's Decision, and may seek judicial review under TCAA, §382.032, Appeal of Commission Action.

Proposed new §116.1040(c) specifies publication requirements for MPP renewals. Consistent with the statutory requirement in TCAA, §382.05197, new subsection (c) requires the state-wide or regional publication of any required newspaper notice when an applicant submits an application for renewal of an MPP. An MPP may potentially apply to facilities located in different areas of the state and the commission considers state-wide or regional publication an appropriate requirement for both initial issuance and renewal of an MPP. The commission is authorized to require this publication in new TCAA, §382.05197 and §382.056. The proposed deletion of the existing language under §116.1040 reflects the deletion of the previously existing statutory language under TCAA, §382.05194(d).

Section 116.1041, Multiple Plant Permit Public Comment Procedures, is proposed to be amended to reflect the new statutory language under TCAA, §382.05197(c) and (d), consistent with existing requirements for initial issuance of VERPs and electric generating facility permits to provide notice and comment hearings under TCAA, §382.0561 and §382.0562. The amended title of the rule reflects the inclusion of provisions to address new notice and comment hearing procedures in the statute. Proposed language in subsection (a) clarifies that the notice and comment hearing requirements in §116.1041 apply only to applications filed before September 1, 2001, for the initial issuance, amendment, or revocation of an MPP. New requirements proposed under subsection (b) would allow the executive director to decide whether to hold a hearing based on the reasonableness of a request. 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 facility that is included in an MPP application is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from an MPP facility, and that request is reasonable, the executive director will hold a hearing. Proposed new language in subsection

(c) specifies that an applicant must provide newspaper notice of a hearing on a draft permit 30 days before the hearing in compliance with specific publication and notice content requirements. Proposed subsection (d) provides procedures for submitting hearing comments, and subsections (e) - (i) describe more specific procedures relating to the hearing record (including hearing recordings, written transcripts, and written comments), requirements relating to comments and supporting materials, and changes to the draft permit. New subsection (j) provides that the executive director will respond to comments as provided in proposed new §116.1042.

The proposed deletion of the existing language under §116.1041(a) and (b) reflects the deletion of the previously existing language under TCAA, §382.05194(e) and (f), respectively. Existing subsection (c) is proposed to be deleted because equivalent language is included in proposed new §116.1040(b) consistent with TCAA, §382.05194(e).

New proposed §116.1042, Notice of Final Action, incorporates requirements in TCAA, §382.05197(c) and (d), and is consistent with existing procedures for initial issuance of VERPs and electric generating facility permits to provide notice of final decisions on applications under TCAA, §382.0561 and §382.0562. Proposed subsection (a) specifies requirements for notice of final action for applications filed before September 1, 2001 for the initial issuance, amendment, or revocation of an MPP.

Proposed subsection (a) provides what must be included with the notice and who will receive the notice. Proposed subsection (b) specifies what to include in the notice of final action, including a statement about the opportunity to move for a rehearing and to seek judicial review under TCAA, §382.032.

Section 116.1050, Multiple Plant Permit Application Fee, is proposed to be amended to delete language concerning additional public notice costs and language concerning initiation of the public notice by the commission, since the proposal requires the applicant, rather than the commission, to publish notice.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed amendments and new section are in effect, there will be no significant fiscal implications for the agency due to administration or enforcement of the proposed amendments and new section. There may be public notice costs, which are not anticipated to be significant, for units of state and local government that apply for an MPP. All other units of state and local government would not be affected by the proposed amendments and new section. An MPP is an air quality permit that is available to any regulated air emission source. This permit is a single permit for multiple plant sites that are owned or operated by the same person or persons under common control, that may be issued if certain emission limits and public participation criteria are met.

This rulemaking is intended to implement certain provisions of SB 688, which shifted the burden to provide public notice for MPPs from the commission to the permit applicant. The bill requires applicants for MPPs to publish notice of intent to obtain a permit. Applicants with existing facilities would be required to publish a notice in one or more state-wide or regional newspapers that provide reasonable notice throughout the state, unless the facility will only affect part of the state, in which case the notice would only have to be published in a newspaper of general circulation in the area to be

affected. The bill would allow the executive director to authorize an applicant for an MPP for an existing facility that is a small business stationary source to provide notice using alternative means.

The commission anticipates that very few, if any, units of state or local government will be affected by additional public notice costs over the next five years. Since the MPP became an option in 1999, the commission has only received two applications, neither of which were submitted by units of state or local government. The costs for public notice vary significantly, depending on the location and the anticipated environmental impact of the facility. Small town/city newspapers generally charge much less than large town/city newspapers for publication of a public notice. The commission estimates that a newspaper that provides regional coverage throughout the state would charge approximately \$3,000 for the display notice and approximately \$450 for the legal notice. It is estimated that a smaller city newspaper would charge approximately \$210 for the display notice and \$20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be \$150. The total costs for public notice associated with MPPs would range from \$380 to \$3,600, assuming alternative language notice is also required. If a request for notice and comment hearing is received on an application, the applicant would also be required to publish a legal notice for the hearing, which, it is estimated, would cost an additional \$450 for publication in a large city newspaper, and \$20 in a smaller city newspaper.

The proposed amendments and new section would also implement other provisions of SB 688, which requires the commission to provide an opportunity for a public notice and comment hearing instead of a public meeting, the submission of public comment, and the mailed notice of the final action on an

application for an MPP. The commission does not anticipate significant fiscal impacts to the agency or any other unit of state or local government due to implementation of these provisions.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each of the first five years the proposed amendments and new section are in effect, the public benefit anticipated as a result of implementing the amendments and new section will be improved public notification and input due to revised notice and comment requirements for certain MPP applications.

This rulemaking is intended to implement certain provisions of SB 688, which shifted the burden to provide public notice for MPPs from the commission to the permit applicant. The bill requires applicants for MPPs to publish notice of intent to obtain a permit. Applicants with existing facilities would be required to publish a notice in one or more state-wide or regional newspapers that provide reasonable notice throughout the state, unless the facility will only affect part of the state, in which case the notice would only have to be published in a newspaper of general circulation in the area to be affected.

The commission anticipates that very few, if any, businesses will be affected by additional public notice costs over the next five years. Since the MPP became an option in 1999, the commission has only received two applications from industry. The costs for public notice vary significantly depending on the location and the anticipated environmental impact of the facility. Small town/city newspapers generally charge much less than large town/city newspapers for publication of a public notice. The commission

estimates a newspaper that provides regional coverage throughout the state would charge approximately \$3,000 for the display notice and approximately \$450 for the legal notice. It is estimated that a smaller city newspaper would charge approximately \$210 for the display notice and \$20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be \$150. The total costs for public notice associated with MPPs would range from \$380 to \$3,600, assuming alternative language notice is also required. If a request for notice and comment hearing is received on an application, the applicant would also be required to publish a legal notice for the hearing, which, it is estimated, would cost an additional \$450 for publication in a large city newspaper, and \$20 in a smaller city newspaper.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small or micro-businesses as a result of administration or enforcement of the proposed amendments and new section, which are intended to implement provisions of SB 688. The bill shifted the burden to provide public notice for MPPs from the commission to the permit applicant. The bill requires applicants for MPPs to publish notice of intent to obtain a permit. Applicants with existing facilities would be required to publish a notice in one or more state-wide or regional newspapers that provide reasonable notice throughout the state, unless the facility will only affect part of the state, in which case the notice would only have to be published in a newspaper of general circulation in the area to be affected. The bill would allow the executive director to authorize an applicant for an MPP for an existing facility that is a small business stationary source to provide notice using alternative means. This provision could result in cost savings, which are not anticipated to be significant, for affected small business stationary sources compared to the public notice costs presented in this fiscal note.

In order to qualify as a small business stationary source, a site is required to emit less than 50 tons per year (tpy) of any one regulated air pollutant and less than 75 tpy of all regulated air pollutants.

The commission anticipates that very few, if any, small or micro-businesses will be affected by additional public notice costs over the next five years. Since the MPP became an option in 1999, the commission has only received two applications from industry. The costs for public notice vary significantly depending on the location and the anticipated environmental impact of the facility. Small town/city newspapers generally charge much less than large town/city newspapers for publication of a public notice. The commission estimates a newspaper that provides regional coverage throughout the state would charge approximately \$3,000 for the display notice and approximately \$450 for the legal notice. It is estimated that a smaller city newspaper would charge approximately \$210 for the display notice and \$20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be \$150. The total costs for public notice associated with multiple plant permits would range from \$380 to \$3,600, assuming alternative language notice is also required. If a request for notice and comment hearing is received on an application, the applicant would also be required to publish a legal notice for the hearing, which, it is estimated, would cost an additional \$450 for publication in a large city newspaper, and \$20 in a smaller city newspaper.

The following is an analysis of the costs per employee for small and micro-businesses that is required to public a notice of intent to obtain an MPP in one newspaper with state-wide coverage. This example also assumes a hearing will be requested. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business would have to pay up to an additional \$41 per

employee to comply with the proposed amendments and new section. A micro-business would have to pay up to an additional \$203 per employee to comply with the proposed amendments and new section.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures concerning public notice and hearings, the rulemaking does not meet the definition of a “major environmental rule.”

In addition, even if the proposed rules are major environmental rules, a draft regulatory impact analysis is not required because the rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal state agency procedures; as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. In addition, the proposal is in direct response to SB 688, and does not exceed the requirements of this bill. This proposal does not 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. This proposal does not adopt a rule solely under the general powers of the agency, but rather under specific state laws (i.e., Texas Government Code, §2001.004; and TCAA, §382.05197). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to procedures for

public notice and hearings. As added by SB 688, TCAA, §382.05197: 1) requires an applicant for an MPP filed before September 1, 2001, to publish notice of intent to obtain the permit as required by TCAA, §382.056, with certain exceptions; 2) allows the executive director to authorize an applicant for an MPP for an existing facility that constitutes or is part of a small business stationary source to provide notice using an alternative means if the executive director makes certain findings; 3) requires the executive director to provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for an MPP filed before September 1, 2001, in the same manner as provided under TCAA, §382.0561 and §382.0562; and 4) allows a person affected by a decision of the executive director to issue or deny an MPP filed before September 1, 2001, to move for rehearing and entitles the person to judicial review under TCAA, §382.032. The proposed rules will substantially advance these stated purposes by providing specific procedural requirements in response to legislative changes. Promulgation and enforcement of the rules will not burden private real property. The proposed rules do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas

Coastal Management Program. The proposed actions concern only the procedural rules of the commission, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (31 TAC Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40 *et seq.*).

Interested persons may submit comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin at 2:00 p.m. on May 21, 2002 at the Texas Natural Resource Conservation Commission complex, Building F, Room 2210, 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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 Lola Brown, 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 2001-028-039-AD. Comments must be received by 5:00 p.m., May 28, 2002. For further information contact Ray Henry Austin, Policy and Regulations Division, at (512) 239-6814.

SUBCHAPTER J: MULTIPLE PLANT PERMITS

§§116.1011, 116.1040, 116.1041, 116.1042, 116.1050

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TCAA, §382.05192, which requires review and renewal of MPPs to be conducted under §382.055; TCAA, §382.05194, which authorizes the commission to issue MPPs; TCAA, §382.05197, which specifies the notice and hearing procedures for certain MPPs; TCAA, §382.055, which specifies permit review and renewal requirements; and TCAA, §382.056, which specifies notice and hearing requirements for certain air permits.

The proposed amendments and new section implement TWC, §5.103 and §5.105 and TCAA, §§382.05194, 382.05197, and 382.056.

§116.1011. Multiple Plant Permit Application.

(a) An application for a multiple plant permit (MPP) must include a completed application form [Form PI-1M Multiple Plant Permit Application]. The application form [Form PI-1M] must be signed by an authorized representative of the applicant. The form [Form PI-1M] specifies additional support information which must be provided before the application is deemed complete. In order to be granted an MPP [a multiple plant permit], the owner or operator of the existing facilities shall submit the following information to the executive director [commission]:

(1) (No change.)

(2) for grandfathered facilities, as defined in §116.10(6) of this title (relating to General Definitions) for which an MPP [a multiple plant permit] application is filed prior to September 1, 2001, the information required by §116.811(3) of this title (relating to Voluntary Emission Reduction Permit Application) solely for the purpose of determining the aggregate emission rate of air contaminants to be authorized under the permit;

(3) for permitted facilities, the relevant permit; and

(4) relevant information, indicating that the emissions from the facilities will not contravene the intent of the TCAA, including protection of the public's health and physical property.

[(5) information necessary to calculate the cost of public notice under §116.1040 of this title (relating to Multiple Plant Permit Public Notice).]

(b) (No change.)

§116.1040. Multiple Plant Permit Public Notice and Public Participation.

(a) An application for a multiple plant permit (MPP) that is filed on or after September 1, 2001, is subject to the same procedural requirements of Chapters 39, 50, 55, and 80 of this title (relating to Public Notice; Action on Applications and Other Authorizations; Requests for Reconsideration and Contested Case Hearings, Public Comment; and Contested Case Hearings) that apply to applications processed under Subchapter B of this chapter (relating to New Source Review Permits), except that any required newspaper notice shall be published in accordance with subsection (b)(1)(A) of this section.

(b) Applications for MPP initial issuance, amendment, or revocation that are filed before September 1, 2001, are not subject to Texas Government Code, Chapter 2001, and are subject to the notice and hearing process of TCAA, §382.05197, as provided in this subsection.

(1) An applicant for an MPP shall comply with the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric

generating facility permits as specified in §39.403(d) of this title (relating to Applicability), except as provided by this section.

(A) An applicant for an MPP shall publish notice of intent to obtain the permit as required under §39.603 of this title, except that:

(i) the notice of a proposed MPP for existing facilities shall be published in one or more state-wide or regional newspapers that provide reasonable notice throughout the state; or

(ii) if the MPP for existing facilities will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected.

(B) As provided in §39.411(10)(B) of this title (relating to Text of Public Notice), the notice shall include a statement that any person is entitled to request a notice and comment hearing from the commission.

(C) The executive director may authorize an applicant for an MPP for an existing facility that constitutes or is part of a small business stationary source as defined in TCAA, §382.0365(h)(2) to provide notice using an alternative means if the executive director finds that the proposed method will result in equal or better communication with the public, considering the

effectiveness of the notice in reaching potentially affected persons, the cost, and the consistency with federal requirements.

(2) Any person who may be affected by emissions from a facility that is included in an MPP application under this subsection may request the executive director to hold a notice and comment hearing on the MPP application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any notice and comment hearing request must be made in writing during the 30-day public comment period.

(3) Any hearing for an MPP application under this subsection shall be conducted under the procedures in §116.1041 of this title (relating to Multiple Plant Permit Notice and Comment Hearings).

(4) The executive director's response to public comments and the notice of decision on whether to issue or deny an MPP application under this subsection will be conducted under the procedures in §116.1042 of this title (relating to Notice of Final Action).

(5) A person affected by a decision to issue or deny an MPP application under this subsection may seek review, as appropriate, under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision), and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

(c) For applications for renewal of an MPP, any required newspaper notice shall be published in accordance with subsection (b)(1)(A) of this section.

[The commission will publish notice of a proposed multiple plant permit in the *Texas Register* and in a newspaper of general circulation in the area to be affected. If the multiple plant permit will affect the entire state, the commission will publish notice in *Texas Register* and in the daily newspaper of largest circulation in Dallas and Houston and in other regional newspapers, as appropriate. The notice will include relevant information required by §39.411 of this title (relating to Text of Public Notice) and will be published not later than the 30th day before the date the commission issues the multiple plant permit. Applicants must publish notice of a proposed multiple plant permit amendment consistent with §116.116(b)(4) of this title (relating to Changes to Facilities).]

§116.1041. Multiple Plant Permit [Public] Notice and Comment Hearings.

(a) The notice and comment hearing requirements apply only to an application filed before September 1, 2001, for a multiple plant permit (MPP) initial issuance, amendment, or revocation. [The commission will hold a public meeting to provide an additional opportunity for public comment. The commission will give notice of a public meeting under this section as part of the notice described in §116.1040 of this title (relating to Multiple Plant Permit Public Notice) not later than the 30th day before the date of the meeting.]

(b) The executive director shall decide whether to hold a hearing. The executive director is not required to hold a hearing if it determines that the basis of the request by a person who may be affected by emissions from a facility that is included in an MPP application is unreasonable. If a hearing is requested by a person who may be affected by emissions from a facility that is included in an MPP application, and that request is reasonable, the executive director will hold a hearing. [If the commission receives public comment related to the issuance of a multiple plant permit for existing facilities, the commission will issue a written response to the comments at the same time the commission issues or denies the permit. The response will be made available to the public, and the commission will mail the response to each person who made a comment.]

(c) 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 facility that is included in an MPP application is located, or in the municipality nearest to the location of the facility. 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.

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

(1) The executive director may set reasonable time limits for oral statements, and may require the submission of statements in writing.

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

(3) At the hearing, the executive director may extend the period for submitting written comments beyond the close of the hearing.

(e) The agency will make an audio recording or written transcript of the hearing available to the public.

(f) 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 issues and submit all arguments supporting that position by the end of the public comment period.

(g) Any supporting materials for comments submitted under subsection (f) 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) federal or state statutes, regulations, and rules;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(h) The executive director will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

(i) The draft permit may be changed based on comments relating to whether the draft permit complies with the requirements of this subchapter.

(j) The executive director will respond to comments consistent with §116.1042 of this title (relating to Notice of Final Action).

[(c) Applications for multiple plant permit issuance, amendment, or revocation which are filed before September 1, 2001, are not subject to Texas Government Code, Chapter 2001.]

§116.1042. Notice of Final Action.

(a) After the public comment period or the conclusion of any notice and comment hearing, notice will be sent by first class mail of the final action on the application for initial issuance, amendment, or revocation of a multiple plant permit that was filed before September 1, 2001. The notice will include the information required by §39.420(a)(1) - (2) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision) and will be sent to any person who commented during the public comment period or at the hearing, and to the recipients specified in §39.420(b)(1) - (3) and (5) - (6) of this title.

(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; and

(3) a statement that any person affected by the decision of the commission may petition for a rehearing under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations) and may seek judicial review under TCAA, §382.032, Appeal of Commission Action.

§116.1050. Multiple Plant Permit Application Fee.

Any person who applies for a multiple plant permit (MPP) shall remit, at the time of application for such permit, a fee of \$450 [plus the estimated public notice cost for the permit consistent with the public notice requirements in §116.1040 of this title (relating to Multiple Plant Permit Public Notice)].

(1) Fees will not be charged for MPP [multiple plant permit] alterations, changes of ownership, or changes of location of permitted facilities.

(2) Fees must be paid at the time an application for a permit is submitted. [If the applicant withdraws the application for the permit prior to initiation of the public notice process by the commission, the estimated cost of public notice will be refunded to the applicant.] No fees will be refunded after a deficient application has been voided [or after initiation of the public notice process by the commission].