

The Texas Natural Resource Conservation Commission (commission) proposes new §39.402, Applicability to Air Quality Permit Amendments. This new section is being proposed as part of the implementation of House Bill (HB) 2518 (an act relating to the issuance of certain permits for the emission of air contaminants), as passed by the 77th Texas Legislature, 2001. The proposed new section concerns public notice requirements for applications for amendments to air quality preconstruction permits.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill 2518 amended Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.0516, Notice to State Senator and Representative; §382.0518, Preconstruction Permit; and §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing. The legislation clarified that each of these sections applies to air quality permit amendments by prominently inserting that phrase in each section. In §382.0518, HB 2518 established new criteria for public participation in the approval process of proposed air quality permit amendments and provided that the commission, in considering a permit amendment application, shall consider the applicant's compliance history within the five years before the date on which the application for the amendment was filed. The purpose of this rulemaking is to implement the new public participation criteria. No rulemaking is required to implement the changes to §382.0516 and §382.056. The compliance history provision in HB 2518 does not require rulemaking because 30 TAC §116.120 currently requires a comprehensive compliance history evaluation during a permit amendment review and HB 2912 of the 77th Texas Legislature requires the agency to develop a multi-media compliance history evaluation process which will be addressed in a separate rulemaking.

As amended by HB 2518, TCAA, §382.0518(h) provides that public notice of proposed air permit amendments is not required for facilities affected by TCAA, §382.020, Control of Emissions from Facilities that Handle Certain Agricultural Products, if the total emissions increase from all facilities authorized under the amended permit, including new facilities, is not significant as defined for public notice and the emissions will not change in character. Furthermore, §382.0518(h) provides that public notice for all other air permit amendment applications is not required if the total emissions increase from all facilities authorized under the amended permit, including new facilities, will meet the public notice de minimis criteria defined by commission rule and the emissions will not change in character. The public notice procedures enacted under HB 801 by the 76th Texas Legislature, 1999, and codified in Chapter 39 continue to be applicable to permit amendment applications to the extent that those procedures are not changed as a result of HB 2518. In addition, HB 2518 does not affect the technical review of air permit amendment applications, including evaluation of best available control technology (BACT), off-property impacts of air contaminants, or any other review, such as federal applicability or pollution prevention, to ensure that the public health and safety are protected. The changes in law made by HB 2518 apply to applications for a permit amendment pending before the commission on September 1, 2001 or filed with the commission on or after September 1, 2001.

The commission proposes new §39.402 to implement the public notice provisions of HB 2518. Under this proposal, the criteria for determining whether permit amendment applications concerning facilities affected by TCAA, §382.020, are subject to Chapter 39 public notice requirements differs from the criteria that will govern public notice applicability for all other permit amendment applications. The criteria, or thresholds, consist of emission rates for various air contaminants. Amended permits with

total emission increases from all facilities authorized under the amended permit below the proposed criteria could be reviewed and issued without Chapter 39 public notice. However, the commission proposes to retain for the executive director the ability to require public notice in certain circumstances, even where the total emissions increase from all facilities authorized under the amended permit is below the proposed criteria.

#### SECTION BY SECTION DISCUSSION

The commission proposes new §39.402(a)(1) to address applicability of Chapter 39 public notice requirements to permit amendment applications for facilities affected by TCAA, §382.020. Section 382.020 affects facilities that handle grain, seed, legumes, or vegetable fibers and have particulate matter (PM) emissions. The commission proposes that to be subject to Chapter 39 public notice requirements, the total emission increases from all facilities authorized under the amended permit must be greater than the annual emissions rates outlined in 30 TAC §106.4(a)(1) - (3), and included in proposed §39.402(a)(1). Thus, an applicant would be required to publish notice for a permit amendment only when the total emissions increase under the amended permit exceeded the emission rates in proposed §39.402(a)(1).

The commission proposes new §39.402(a)(2) to address public notice for all other permit amendment applications. Under current commission rules, the term “de minimis” is associated with facilities, sources, and emission levels. Prior to HB 2518, the term de minimis had not been used in conjunction with public notice. The commission proposes to establish public notice de minimis criteria that will be used to determine whether an air quality permit amendment application is subject to Chapter 39 public

notice requirements. Under this proposal, permit amendment applications would be subject to Chapter 39 public notice requirements if the total emissions increase from all facilities authorized under the amended permit exceeded the public notice de minimis criteria.

The public notice de minimis criteria to be defined in proposed §39.402(a)(2) are based on an evaluation of state and federal de minimis and annual emission rates for criteria pollutants (carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOC), sulfur dioxide (SO<sub>2</sub>), PM, and lead (Pb)) and are less than or equal to these federal or state definitions of “de minimis.” In addition, the commission examined the results of the United States Environmental Protection Agency’s (EPA’s) prevention of significant deterioration (PSD) and national ambient air quality standards (NAAQS) modeling assessment for major source de minimis criteria. Although the proposed public notice de minimis criteria are not based on a specific health effects review, when compared and ratioed against EPA’s assessment, the criteria should result in concentrations that are equal to or less than approximately 2% of the NAAQS, as applicable. There are no NAAQS for individual species of PM, VOC, or for the air contaminant category designated “other.” This proposal does not change the requirements of the technical review which include a BACT and impacts review.

Specifically, the commission proposes §39.402(a)(2)(A) to set the public notice de minimis criteria for CO at 50 tons per year (tpy). The commission proposes this threshold for the following reasons: 1.) the federal operating permit major source threshold for CO is established at 100 tpy (see 30 TAC §122.10(13)(C) and §116.12(10)); and 2.) using the modeling evaluation described, this proposed rate is only 2.5% of the NAAQS for CO. A consequence of many control strategies for the reduction of

emissions of NO<sub>x</sub>, an ozone formation precursor, is increased CO emissions. The commission anticipates that CO emissions at combustion sites throughout the state may increase in the near future due to control strategies implemented at facilities affected by recently-adopted commission rules to reduce NO<sub>x</sub> emissions.

The commission proposes §39.402(a)(2)(B) to set the public notice de minimis criteria for SO<sub>2</sub> at 10 tpy. The commission proposes this threshold for the following reasons: 1.) the federal operating permit major source threshold for SO<sub>2</sub> is established at 100 tpy (see §122.10(13)(C) and §116.12(10)); 2.) the de minimis threshold is based on the modeling review by EPA using the 40 tpy limit of federal major modification (see 30 TAC §101.1(22) and §116.12(10)); 3.) the significance threshold for permits by rule under TCAA, §382.057, as implemented by 30 TAC Chapter 106, is defined as 25 tpy (see §106.4(a)(1)); and 4.) using the modeling evaluation described, the proposed emission rate is less than 1% of the NAAQS for SO<sub>2</sub>.

The commission proposes §39.402(a)(2)(C) to set the public notice de minimis criteria for lead at 0.6 tpy. The commission proposes this threshold for the following reasons: 1.) the federal operating permit major source threshold for lead is established at 100 tpy (see §122.10(13)(C) and §116.12(10)); 2.) the federal major modification limit is 0.6 tpy (see §116.12(10)); and 3.) using the modeling evaluation described, the proposed emission rate is 2% of the NAAQS for lead.

The commission proposes §39.402(a)(2)(D) to set the public notice de minimis criteria for all other air contaminants, including NO<sub>x</sub>, VOC, PM, or any other air contaminant (except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen) at five tpy.

For NO<sub>x</sub>, the commission proposes the five tpy threshold for the following reasons: 1.) the federal operating permit major source threshold for NO<sub>x</sub> is established at 100 tpy, except in severe nonattainment areas where it is established at 25 tpy (see §122.10(13)(C) and §116.12(10)); 2.) the de minimis modeling threshold is based on the modeling review by EPA using the 40 tpy limit of federal major modification (see §101.1(22) and §116.12(10)); 3.) the significance threshold for permits by rule under TCAA, §382.057, as implemented by 30 TAC Chapter 106, is defined as 100 tpy, except in severe nonattainment areas where it is established at 25 tpy (see §106.4(a)(1)); 4.) in nonattainment areas, the de minimis threshold test (netting) for major stationary sources is five tpy (see 30 TAC §116.150(a)); and 5.) using the modeling evaluation described, the proposed emission rate is less than 1% of the NAAQS for NO<sub>x</sub>.

For VOC, the commission proposes the five tpy threshold for the following reasons: 1.) the federal operating permit major source threshold for VOCs is established at 100 tpy, except in severe nonattainment areas where it is established at 25 tpy (see §122.10(13)(C) and §116.12(10)); 2.) the federal major modification limit is 25 tpy (see §116.12(10)); 3.) the significance threshold for permits by rule under TCAA, §382.057, as implemented by 30 TAC Chapter 106, is defined as 100 tpy, except in severe nonattainment areas where it is established at 25 tpy (see §106.4(a)(1)); and 4.) in

nonattainment areas, the de minimis threshold test (netting) for major stationary sources is five tpy (see §116.150(a)). There is no NAAQS for VOCs as a category.

For PM, the commission proposes the five tpy threshold for the following reasons: 1.) the federal operating permit major source threshold for PM is established at 100 tpy, except in serious nonattainment areas where it is established at 70 tpy (see §122.10(13)(C) and §116.12(10)); 2.) the de minimis modeling threshold is based on a modeling review by EPA using the 15 tpy limit of federal major modification (see §101.1(22) and §116.12(10)); 3.) the significance threshold for permits by rule under TCAA, §382.057, as implemented by 30 TAC Chapter 106, is defined as 25 tpy (see §106.4(a)(1)); and 4.) using the modeling evaluation described, the proposed emission rate is 2% of the NAAQS for PM with an aerodynamic diameter less than or equal to ten microns ( $PM_{10}$ ).

For all other air contaminant categories (such as hydrogen chloride, hydrogen sulfide, or other air contaminants not considered a part of a group under criteria pollutants), the commission proposes five tpy as a conservative threshold, which is less than the 25 tpy significance threshold for permits by rule under TCAA, §382.057, as implemented by 30 TAC Chapter 106 (see §106.4(a)(1)).

The commission proposes new §39.402(a)(3) to allow the executive director to require public notice of air permit amendment applications for reasons other than exceedance of the proposed public notice criteria. The proposed §39.402(a)(3) simply restates §39.403(b)(8)(C) which provides that the executive director may use his discretion to require public notice for any application when: there is a reasonable likelihood for emissions to impact a nearby sensitive receptor; there is a reasonable

likelihood of high nuisance potential from the operation of facilities; the application involves a facility or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process; or there is a reasonable likelihood of significant public interest in a proposed activity. The commission intends to develop and make available guidelines for applications which may fall into these categories.

For purposes of determining the total emissions increase in an amended permit, the commission proposes that the total emissions increase in an amended permit could include: 1.) increases in emissions as a result of construction of new facilities at an existing permitted site; 2.) changes to permitted allowable emission rates as a result of physical or operational changes and modifications to existing facilities; 3.) changes to allowable emission rates as a result of incorporation of a previous authorization when actual emissions are above that authorization's current limitations or authorized actual emission rates; 4.) changes to allowable emission rates due to sampling when actual emissions are above that facility's current limitations or authorized allowable emission rates; and 5.) emissions due to routine maintenance, start-ups, or shutdowns at new or modified facilities. The commission does not intend the total emissions increase in an amended permit to include: 1.) consolidation or incorporation of any previously authorized facility or activity (permits by rule, standard permits, existing facility permits, etc.); 2.) changes to permitted allowable emission rates when those changes are exclusively due to changes to standardized emission factors; or 3.) inclusion of actual emissions due to routine maintenance, start-up, or shutdowns at existing, permitted facilities. Thus, the total emissions increase would be the sum of emissions increases under the amended permit and the emissions decreases under the amended permit for each air contaminant affected by the amendment

application after application of BACT. The commission invites comment on these criteria as well as suggestions for additional criteria. To facilitate the implementation of the proposed rules, guidance will be developed containing these criteria and other information that may be necessary to assist applicants and the public.

The commission proposes new §39.402(b) to address the portion of HB 2518 which states that facilities may not be required to publish notice if there is no change in the character of emissions as a result of the amended permit. If the permit amendment application includes any criteria air contaminant category not previously emitted, public notice is required in all cases.

#### 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 new section is in effect some units of state and local government applying for air quality permits amendments may be exempted from public notice requirements. Those entities may be exempted from notice requirements if the total emissions increase from all facilities authorized under the amended permit is determined not to exceed certain air emission rates. The cost of these public notice requirements is estimated to range between approximately \$700 - \$4,000, depending on the publishing rates for the newspaper in the city in which the notice is displayed.

The proposed rulemaking is intended to implement certain provisions of HB 2518. The bill provides that an applicant for a permit amendment may be excluded from public notice requirements if the total emissions increase from all facilities authorized under the amended permit meets the de minimis criteria

defined by the commission and if the emissions will not change in character. The bill also exempts agricultural plant permit amendment applications from notice and hearing requirements if the total emissions increase authorized under the amended permit does not exceed the significance criteria defined by the commission and if the emissions will not change in character.

The proposed new section will apply to applications for permit amendments pending before the commission on September 1, 2001 or filed with the commission on or after September 1, 2001.

This proposal is intended to define the emission rates to be used to determine whether a permit amendment application will qualify for an exemption from public notice requirements. For all nonagricultural plant-related permit amendment applications, if the total air emissions increase from all facilities authorized under the amended permit does not exceed the following emission rates, an applicant would be exempt from public notice requirements: 50 tons per year (tpy) of CO; ten tpy of SO<sub>2</sub>; 0.6 tpy of lead; or five tpy of NO<sub>x</sub>, VOC, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen. If the total emissions increase from all facilities authorized for an amended permit for an agricultural plant does not exceed the following emission rates, the applicant would be exempt from public notice requirements: 250 tpy of CO or NO<sub>x</sub>; 25 tpy of VOCs, SO<sub>2</sub>, PM, or any other contaminant, except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen; or the new major stationary source or major modification threshold. However, this rulemaking proposes to retain for the executive director the ability to require public notice in certain circumstances, although the total emission increase of a permit amendment application is below the proposed criteria.

The commission processes approximately 600 air quality permit amendment applications annually. Of this total, approximately 5%, or 30 applications, are from units of state and local government. If a permit amendment application from a unit of state and local government will not exceed the applicable emission rates, the applicant could benefit from reduced costs because the public notice requirement could be waived. Compliance with the commission public notice requirements for air quality permit amendments consists of publishing notice of the proposed permit amendment in two different locations of a newspaper, publishing notice in an alternative language newspaper if required, and posting a sign. If the application is referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing, the applicant must publish a notice of hearing. The cost of publishing a display newspaper notice is approximately \$210 - \$3,000 and a legal newspaper notice is approximately \$20 - \$450. The cost of publishing a notice in an alternative language newspaper is approximately \$150 and the cost of posting a sign is approximately \$300. The total costs savings for an applicant is estimated to range between \$700 - \$4,000 per application. The actual public notice cost depends on the publishing rates for the newspaper in the city in which the notice is displayed.

The proposed new section does not add regulatory requirements that are not already required; therefore, the commission does not anticipate any additional costs for units of state and local government due to implementation of the proposed new section.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will be a clarification of public notice requirements for proposed air quality permit applications.

The proposed new section is intended to implement certain provisions of HB 2518, which provides that an applicant for a permit amendment may be excluded from public notice requirements if the total emissions increase from all facilities authorized under the amended permit will meet the de minimis criteria defined by the commission and if the emissions will not change in character. The bill also exempts agricultural plant permit amendments from notice requirements if the total emissions increase authorized under the amended permit does not exceed the significance criteria defined by the commission and the emissions will not change in character. However, this rulemaking proposes to retain for the executive director the ability to require public notice in certain circumstances, although the total emissions increase of a permit amendment application is below the proposed criteria.

The proposed new section will apply to applications for permit amendments pending before the commission on September 1, 2001 or filed with the commission on or after September 1, 2001. This proposal is also intended to define the emission rates to be used to determine whether a permit amendment will qualify for exemption from public notice requirements.

The commission processes approximately 570 air quality permit amendments from industry annually. If the commission determines that an amended permit will not exceed the applicable emission rates, the

applicant could benefit from reduced costs because requirements for public notice could be waived.

Compliance with the commission public notice requirements for air quality permit amendments consists of publishing notice of the proposed permit amendment in two different locations of a newspaper, publishing notice in an alternative language newspaper if required, and posting a sign. If the application is referred to the SOAH for a contested case hearing, the applicant must publish a notice of hearing. The cost of publishing a display newspaper notice is approximately \$210 - \$3,000 and a legal newspaper notice is approximately \$20 - \$450. The cost of publishing a notice in an alternative language newspaper is approximately \$150 and the cost of posting a sign is approximately \$300. The total costs savings for an applicant is estimated to range between \$700 - \$4,000 per application. The actual public notice cost depends on the publishing rates for the newspaper in the city in which the notice is displayed.

The proposed new section does not add regulatory requirements that are not already required; therefore, the commission does not anticipate any additional costs for individuals and businesses due to implementation of the proposed new section.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There should be no adverse fiscal impacts to any small or micro-business as a result of the proposed new section, which implements certain provisions of HB 2518. Some small and micro-businesses applying for air quality permit amendments may be exempted from public notice related costs, which can range from approximately \$700 - \$4,000 depending on location of the permitted facility.

The proposed new section is intended to implement certain provisions of HB 2518, which provides that an applicant for a permit amendment may be excluded from public notice requirements if the total emissions increase from all facilities authorized under the amended permit will meet the de minimis criteria defined by the commission and if the emissions will not change in character. The bill also exempts agricultural plant permit amendments from notice requirements if the total emissions increase authorized under the amended permit does not exceed the significance criteria defined by the commission and the emissions will not change in character. However, this rulemaking proposes to retain for the executive director the ability to require public notice in certain circumstances, although the total emissions increase of a permit amendment application is below the proposed criteria.

The proposed new section will apply to applications for permit amendments pending before the commission on September 1, 2001 or filed with the commission on or after September 1, 2001. This proposal is also intended to define the emission standards to be used to determine whether a permit amendment will qualify for exemption from public notice requirements.

The commission processes approximately 570 air quality permit amendments from industry annually, some of which are estimated to be from small and micro-businesses. If the commission determines that an amended permit will not exceed applicable emission rates, the applicant could benefit from reduced costs because requirements for public notice could be waived. Compliance with the commission public notice requirements for air quality permit amendments consists of publishing notice of the proposed permit amendment in two different locations of a newspaper, publishing notice in an alternative language newspaper if required, and posting a sign. If the application is referred to the SOAH for a

contested case hearing, the applicant must publish a notice of hearing. The cost of publishing a display newspaper notice is approximately \$210 - \$3,000 and a legal newspaper notice is approximately \$20 - \$450. The cost of publishing a notice in an alternative language newspaper is approximately \$150 and the cost of posting a sign is approximately \$300. The total costs savings for an applicant is estimated to range between \$700 - \$4,000 per application. The actual public notice cost depends on the publishing rates for the newspaper in the city in which the notice is displayed.

The proposed new section does not add regulatory requirements that are not already required; therefore, the commission does not anticipate any additional costs for small or micro-businesses due to implementation of the proposed new section.

The following is an analysis of the potential cost savings per employee for small or micro-businesses affected by the proposed new section. Small and micro-business are defined as having fewer than 100 or 20 employees respectively. A small business exempted from public notice requirements would save between approximately \$700 - \$4,000 per notice or \$7 - \$40 per employee. A micro-business exempted from public notice requirements would save between approximately \$700 - \$4,000 per notice or \$35 - \$200 per employee. The overall cost savings would depend on what city the notice would have been published in, and the number of persons employed by an affected business.

#### 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 act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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 for providing public notice, an opportunity for public comment, and an opportunity for public hearing, the rulemaking does not meet the definition of a “major environmental rule.”

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does 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 HB 2518, 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 THSC, Chapter 382, Subchapter C). 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.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed an analysis of whether the proposed rule is subject to Texas Government Code, Chapter 2007. The following is a summary of that analysis. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to procedures for public participation in certain air quality permitting proceedings as required by HB 2518. The proposal relates to procedures for providing public notice. As amended by HB 2518, TCAA, §382.0518(h) provides that public notice of proposed air permit amendments is not required for facilities affected by TCAA, §382.020, Control of Emissions from Facilities that Handle Certain Agricultural Products, if the total emissions increase from all facilities authorized under the amended permit, including new facilities, is not significant as defined for public notice and the emissions will not change in character. Furthermore, §382.0518(h) provides that public notice for all other air permit amendment applications is not required if the total emissions increase from all facilities authorized under the amended permit, including new facilities, will meet the public notice de minimis criteria defined by commission rule and the emissions will not change in character as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE and SECTION BY SECTION DISCUSSION portions of this proposal. The proposed rule will substantially

advance these stated purposes by providing specific procedural requirements. Promulgation and enforcement of the rule will not burden private real property. The proposed new section does 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 new section 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's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. 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 (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40 *et seq.*).

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

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on September 20, 2001 at 10:00 a.m. at the Texas Natural Resource Conservation Commission in Building F, Room 2210, located at 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, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-028A-039-AD. Comments must be received by 5:00 p.m., September 24, 2001. For further information, please contact Ray Henry Austin at (512) 239-6814.

#### STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The new

section is also proposed under THSC, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.020, which authorizes the commission to adopt rules to control the emissions of PM from plants which handle certain agricultural products; §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; §382.0518, which authorizes the commission to issue preconstruction permits; §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; and §382.05196, which authorizes the commission to adopt permits by rule for certain types of facilities that will not make a significant contribution of air contaminants to the atmosphere. The new section is also proposed under HB 2518 (an act relating to the issuance of certain permits for the emission of air contaminants), as passed by the 77th Texas Legislature, 2001.

The new section implements TCAA, §§382.017, 382.020, 382.051, 382.0518, and 382.05196. The new section also implements HB 2518, as passed by the 77th Texas Legislature, 2001, which requires public notice of applications for amendments to air quality preconstruction permits unless the emission rates from all facilities authorized under the amended permit are less than significant for agricultural facilities, and less than de minimis for all other facilities, and the emissions will not change in character.

**SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS**

**§39.402**

**§39.402. Applicability to Air Quality Permit Amendments.**

(a) Air quality permit amendment applications under §116.116(b) of this title (relating to Changes to Facilities) or amendment applications to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) must comply with this subchapter and Subchapter K of this chapter regarding notices when the amendment involves:

(1) a facility affected by TCAA, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds any of the following:

(A) 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO<sub>x</sub>);

(B) 25 tpy of volatile organic compounds (VOC), sulfur dioxide (SO<sub>2</sub>), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(C) a new major stationary source or major modification threshold as defined in §116.12 of this title (relating to Nonattainment Review Definitions); or

(D) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR) §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration); or

(2) for all other facilities, the total emissions increase from all facilities to be authorized under the amended permit exceeds any of the following:

(A) 50 tpy of CO;

(B) ten tpy of SO<sub>2</sub>;

(C) 0.6 tpy of lead; or

(D) five tpy of NO<sub>x</sub>, VOC, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen; or

(3) any amendment when the executive director determines that:

(A) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(B) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(C) the application involves a facility or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process; or

(D) there is a reasonable likelihood of significant public interest in a proposed activity.

(b) Except as provided in subsection (a)(3) of this section, air quality permit amendment applications with total emission increases at or below the emission rates in subsection (a)(1) or (2) of this section and with emissions that will not change in character are not required to comply with this subchapter and Subchapter K of this chapter.

