

The Texas Commission on Environmental Quality (agency or commission) adopts an amendment to §116.603 *without change* to the proposed text as published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3839), and will not be republished.

The amended section will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission is adopting a revision to §116.603, Public Participation in Issuance of Standard Permits, that will require newspaper notice of proposed standard permits with statewide applicability in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis. Also, the executive director will use press releases and appropriate electronic means to inform state and local officials. Electronic means include, but are not limited to, the use of e-mail addresses, Web sites, or electronic bulletin boards and publications. This change will increase notification with state and local officials and provide an opportunity for more statewide newspaper coverage through commission press releases.

Texas Health and Safety Code, §382.05195(b), requires the commission to publish notice of a standard permit in one or more statewide or regional newspapers designated by rule that will, in the commission's judgement, provide reasonable notice throughout the state. The regulation in §116.603 required publication in 11 newspapers. Six standard permits have been issued under the requirements of §116.603 and over 80% of the comments originated from the Austin, Dallas, and Houston areas.

The amendment will also save up to \$4,500 per standard permit notice at a time that an increase in the number of new standard permits may be expected. Publishing notice in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis, along with the required *Texas Register* publication and posting on the agency Web site will provide reasonable notice of proposed standard permits and will give the commission discretion to target the specific areas affected.

The amendment makes the standard permit public notice more consistent with the agency's existing non-individual permit requirements. This includes the Water Quality General Permits, which require publication in at least one newspaper of statewide or regional circulation. Also, air standard permit amendments and revocations, permits by rule, and Title V general operating permits with statewide applicability are required to be published in newspapers in Austin, Dallas, and Houston.

SECTION DISCUSSION

The commission adopts an amendment to §116.603(a). The amendment requires newspaper notice of proposed standard permits with statewide applicability in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis. This allows the commission to focus its efforts in areas most affected by standard permits. The commission will continue to post each draft standard permit on its Web site and conduct stakeholder meetings, as appropriate. The executive director will issue a press release and will publish notice in the *Texas Register*. The executive director may also use appropriate electronic means to notify selected state and local officials in the affected area. The rule no longer requires newspaper notice for each standard

permit proposal in Amarillo, Corpus Christi, El Paso, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, or Tyler.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. 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. The specific intent is not to protect the environment. This rulemaking changes notice requirements and does not affect any environmental standards.

The amendment to §116.603(a) modifies the existing rule in accordance with Texas Health and Safety Code, §382.05195(b), which requires the commission to publish notice of a proposed standard permit in the *Texas Register* and in one or more statewide or regional newspapers by rule that will provide reasonable notice throughout the state. This amendment provides for a more efficient public notice of proposed standard permits. The rule will not 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.

In addition, a regulatory impact analysis is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the requirements are consistent with applicable federal standards. In addition, this rule does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend §116.603(a) in accordance with Texas Health and Safety Code, §382.05195(b), which requires the commission to publish notice of a proposed standard permit in the *Texas Register* and in one or more statewide or regional newspapers designated by rule that will provide reasonable notice throughout the state. This amendment does not affect private property in a manner that restricts or

limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, promulgation and enforcement of this adopted rule is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, this rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination 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. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and

Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The adopted revisions will not affect sites subject to the Federal Operating Permits Program.

PUBLIC COMMENT

A public hearing on this proposal was held on June 12, 2006, and the public comment period closed on June 14, 2006. No comments were received at the public hearing. The commission received written comments on the rule proposal from the Houston Regional Group of the Sierra Club, Lone Star Chapter (Sierra Club) and the EPA, Region 6.

RESPONSE TO COMMENTS

The Sierra Club did not support removing the requirement to publish public notices in the largest general circulation newspapers in Amarillo, Corpus Christi, El Paso, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, and Tyler. The Sierra Club commented that this would provide less opportunity for the public to become aware of and participate in decisions concerning rulemaking for standard permits.

The commission makes no changes in response to this comment because it determined that the use of press releases to newspapers will provide an opportunity for a wider distribution of information, resulting in more awareness of the public. More newspapers will have an

opportunity to publish information regarding new standard permit requirements. Newspapers reflect local community interests and would be able to provide information about local activities requiring these types of standard permit requirements.

The Sierra Club does support notification of state and local officials electronically and the use of press releases to widen distribution of the notice of rulemaking for standard permits.

The commission appreciates their support.

The EPA believes the revisions to §116.603 will continue to ensure an adequate opportunity for the public to comment on proposed standard permits. The EPA recommends that the TCEQ review all prior comments concerning proposed standard permits originating from areas other than Austin, Dallas, and Houston. They suggest the commission report the number of significant comments from these areas.

The commission determined that it is not appropriate to evaluate the significance of each comment because that exercise would be subjective. When evaluating and responding to comments from the public, the commission addresses each comment as being significant and important. This rule may result in more public participation and the use of press releases to newspapers will provide an opportunity for a wider distribution of information, resulting in more awareness of the public. More newspapers will have an opportunity to publish information regarding new standard permit requirements.

The EPA recommends that the TCEQ develop criteria that it will use to determine when to publish notice in other newspapers beside Austin, Dallas, and Houston.

The commission agrees with the EPA that criteria may need to be developed for guidance when determining the need to publish notice in other newspapers. The executive director will establish the criteria as internal guidance and not in the rule. There should be ample flexibility and discretion for making the decision to publish in other newspapers. The commission also wants to ensure that the criteria would not prohibit wider publication of notice.

SUBCHAPTER F: STANDARD PERMITS

§116.603

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and §5.105, concerning General Policy, which authorizes the commission, by rule, to establish and approve all general policy of the commission. The amendment is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.05195, which authorizes the commission to issue a standard permit.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.017, 382.011, 382.012, and 382.05195.

§116.603. Public Participation in Issuance of Standard Permits.

(a) The commission will publish notice of a proposed standard permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed standard permit. If the proposed standard permit will have statewide applicability, notice will be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: Austin, Dallas, and Houston and any other regional newspapers designated by the executive director on a case-by-case basis. In all cases, the commission will publish notice in the *Texas Register* and issue a press release. Electronic means may be used to transmit notice to selected state and local officials.

(b) The contents of a public notice of a proposed standard permit shall be in accordance with §122.506 of this title (relating to Public Notice for General Operating Permits) except where clearly not applicable. Each notice will include an invitation for written comments by the public regarding the proposed standard permit. The public notice will specify a comment period of at least 30 days and the public notice will be published not later than the 30th day before the commission issues a standard permit.

(c) 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 subsection as part of the notice described in subsection (b) of this section not later than the 30th day before the date of the

meeting. The public comment period shall automatically be extended to the close of any public meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission will issue a written response to the comments at the same time the commission issues or denies the permit. The commission will make the response available to the public, and shall mail the response to each commenter.

(e) The commission will publish notice of its final action on the proposed standard permit and the text of its response to comments in the *Texas Register*.

(f) The commission will make a copy of any issued standard permit and response to comments available to the public for inspection at the commission's Office of Permitting, Remediation, and Registration in its Austin office, and also in the appropriate regional offices.