

The Texas Commission on Environmental Quality (agency or commission) proposes an amendment to §116.603.

The amended section is proposed to be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission is proposing to revise §116.603 by requiring 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 would use press releases and appropriate electronic means to inform state and local officials. Electronic means would include, but is not limited to, the use of e-mail addresses, Web sites, or electronic bulletin boards and publications. This change would 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 the executive director by rule that will, in the executive director's judgement, provide reasonable notice throughout the state. The regulation in §116.603 requires 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 would 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 would give the commission discretion to target the specific areas affected.

The amendment would make 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 proposes an amendment to §116.603(a). The amendment would 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. This would allow 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 would 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 would no longer require 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed amendment is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government.

The proposed rule would provide an opportunity for more statewide newspaper coverage through commission press releases, posting of notice on the agency Web site, and increased notification of state and local officials through the use of electronic means. The rulemaking would reduce the number of newspapers the agency would be required to publish notices of proposed standard permits from 11 to three. The proposed rulemaking would require a public notice to be published in the Austin, Dallas, and Houston newspapers as well as any regional newspapers designated by the executive director on a case-by-case basis. Publication of notice in the *Texas Register* would continue under the proposed rule. These proposed changes are not anticipated to have significant fiscal implications for the agency. The rulemaking would result in a maximum cost savings to the agency of \$4,500 for each standard permit proposal if the public notice was published in only the Austin, Dallas, and Houston newspapers. The actual cost savings realized would be dependent upon the actual number of published public notices. The agency anticipates issuing between four and seven standard permits over the next two years. The estimated cost savings to the agency would be between \$18,000 and \$31,500.

The proposed rule would result in no fiscal implications for other units of state or local government. The rulemaking is specific to the notification requirements imposed upon the commission. The

proposed rule would provide the opportunity of select state and local officials to be notified by electronic means of notices regarding standard permits.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from the changes seen in the proposed rule will be a more efficient method of notifying the public as well as state and local officials regarding standard permits proposed to be issued by the agency.

No fiscal implications are anticipated for businesses and individuals as a result of the proposed rulemaking. The rulemaking would reduce the number of newspapers the agency would be required to publish notices of proposed standard permits from 11 to three. The proposed rulemaking would require a public notice to be published in the Austin, Dallas, and Houston newspapers as well as any regional newspapers designated by the executive director on a case-by-case basis. Publication of notice in the *Texas Register* would continue under the proposed rule.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small and micro-businesses would experience the same improved notification benefits as larger businesses but would realize no fiscal benefit as a result of the proposed amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is 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 this proposal 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 proposed 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 designated by the executive director by rule that will, in the executive director's judgement, provide reasonable notice throughout the state. This proposed amendment provides more efficient public notice of proposed standard permits. The proposed 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 draft regulatory impact analysis is not required because the proposed 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 proposed requirements are consistent with applicable federal standards. In addition, this proposal 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.

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

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 the executive director by rule that will, in the executive director's judgement, 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 proposed 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 proposed 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 proposed rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

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

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 12, 2006, at 10:00 a.m. in Building B, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons with special needs who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-038-116-PR.

Comments must be received by 5:00 p.m., June 14, 2006. Copies of the proposed rule can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.

For further information, please contact Phil Harwell, Air Permits Division, at (512) 239-1517.

SUBCHAPTER F: STANDARD PERMITS

§116.603

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; §5.103, 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, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code, 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 proposed amendment implements Texas Health and Safety Code, §§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: [Amarillo,] Austin, [Corpus Christi,] Dallas, [El Paso,] and Houston and any other regional newspapers designated by the executive director on a case-by-case basis [, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, and Tyler]. In all [both] 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) - (f) (No change.)