

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §39.411 and §39.603.

The amendment to §39.411 is adopted *with change* to the proposed text as published in the December 1, 2017, issue of the *Texas Register* (42 TexReg 6676) and, therefore, will be republished. The amendment to §39.603 is adopted *without change* to the proposed text and, therefore, will not be republished.

The amendments to §39.411(e)(10) and (11)(A)(v) and (vi) and (F), (f) (introductory paragraph), and (f)(8) and §39.603 will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan.

Background and Summary of the Factual Basis for the Adopted Rules

Applications for New Source Review (NSR) case-by-case air quality permits are subject to the public participation requirements in 30 TAC Chapters 39 and 55. The rules in these chapters implement House Bill (HB) 801 (76th Texas Legislature, 1999), which made changes to notice requirements for initial applications that were administratively complete on or after September 1, 1999. Since the rulemaking to implement HB 801 in 1999, and amendments adopted in 2010, have been in effect, the commission has required applicants to publish a Notice of Receipt of Application and Intent to Obtain Permit (NORI) which solicits comments for a 30-day period; contested case hearing (CCH) and public meeting requests are also solicited. At the same time that the NORI is published in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the

nearest municipality, applicants are required to place a copy of the permit application in a public place in the county and to post signs at the proposed facility location. Alternative language publication and signs may also be required.

After TCEQ staff complete the technical review, and after the TCEQ provides notice to state senators and representatives for the district in which the proposed facility will be located, applicants are required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments and public meeting requests for a 30-day period; hearing requests are also solicited but only if at least one such request was timely made in response to the NORI.

At the close of the comment period, the executive director prepares a written response to all timely-filed comments and files the response with the TCEQ's Office of the Chief Clerk, which, where applicable, will include information regarding changes to the draft permit based on the timely comments.

This rulemaking is adopted to implement Senate Bill (SB) 1045 (85th Texas Legislature, 2017). The adopted amendment consolidates the NORI and NAPD requirements to allow for one 30-day notice period during which comments and requests for public meeting or CCH can be submitted. This consolidated notice would be required for air quality case-by-case permit applications that are declared administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application.

No changes to other aspects of notice and public participation are included in this rulemaking. In addition to publishing newspaper notices, permit applicants will also continue to be required to post signs and, if applicable, publish notice and post signs in alternative language(s). The executive director will notify area legislators 30 days prior to issuance of a draft permit and will prepare a Response to Comments (RTC) if timely comments are received. If a request for CCH is received within the single 30-day comment period, the opportunity for additional CCH requests will extend to 30 days after the executive director files the RTC. Depending upon the date it is held, a public meeting may extend the deadline for submitting comments; however, the deadline for submitting a CCH request is not extended beyond the 30-day period after last publication of the consolidated notice unless a request for CCH is received within the 30-day period.

The consolidation of the timeframes for NORI and NAPD could apply to new permit or permit amendment applications that are solely for the addition or modification of facilities that are commonly authorized and for which the TCEQ's Air Permits Division (APD) staff has extensive experience in reviewing. However, this consolidation is available only when an application can be declared administratively and technically complete and a draft permit is prepared by the executive director within 15 days. Eligible applications would be those where, within the 15-day period following TCEQ's receipt of the application, the review would consist of checking emission calculations and control technology requirements, selecting draft permit conditions that are well established, and determining that the off-property impacts of the proposed emissions are not expected to adversely affect human

health and the environment. The number of applications and the types of facilities that would be authorized by applications that would be eligible to publish consolidated notice is dependent upon the complexity of the project for which authorization is sought and the quality of the application, both of which affect APD's ability to prepare the draft permit within 15 days of receipt of the application.

For example, applications that may be processed within 15 days are those for a new permit where an applicant failed to timely renew their permit and no changes have been made to the facilities which were previously authorized. In addition, an application for a facility that was previously authorized but was not timely constructed for which the control technology and projected off-property impacts review have recently been conducted may be a candidate for the 15-day processing time. An application to add an additional similar facility at the same location for which the control technology and projected off-property impacts review has recently been conducted will not be a candidate for the 15-day processing time in cases where additional modeling is required.

This public notice alternative would allow for a more efficient air permit application process. APD may be able to streamline applications that meet specific criteria, thereby increasing the number of permit applications that could potentially utilize the consolidated notice. An example of recent APD permit streamlining efficiencies is the development of Readily Available Permits (RAP), which are NSR permits tailored to an individual facility type based on emissions calculations, equipment variables, and site-specific parameters. More

information on RAPs is available here:

<https://www.tceq.texas.gov/permitting/air/guidance/newsourcereview/ra-permitting.html>.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting amended Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, §55.152, to provide for a 30-day notice period during which comments and requests for a public meeting or CCH can be submitted in response to the consolidated NORI and NAPD. The 30-day period begins on the last date of newspaper publication, and the comment period is automatically extended to the close of any public meeting, as required by §55.152(b). Hearing requests must be submitted within the 30-day notice period; and, as provided for in §55.201, which implements SB 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted comments.

The public participation requirements for renewals of NSR case-by-case air quality permits are not affected by the adopted amendments in Chapters 39 and 55. Therefore, a consolidated notice is not available or required for NSR case-by-case air quality permit renewal applications.

Section by Section Discussion

In addition to the amendments discussed later, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes include appropriate and consistent use of

acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

§39.411, Text of Public Notice

Section 39.411(e)(11)(A) is amended to add clause (v). This amendment adds requirements for a consolidated notice for air quality applications for a permit or a permit amendment application that the executive director has declared administratively and technically complete and has prepared a draft permit within 15 days of receipt of the application. This adopted amendment states that the text of the notice shall include the information in §39.411(e)(11)(A)(v)(I) and (II), which consists of the following: the date the application was received and the date the draft permit was completed; statements that a request for a CCH must be received by the commission before the close of the 30-day comment period following the last publication of the consolidated NORI and NAPD; if no hearing requests are received by the end of the 30-day comment period, there is no further opportunity to request a CCH; and if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a CCH is extended to 30 days after the mailing of the executive director's RTC. At adoption, proposed subclauses (III) and (IV) were consolidated into subclause (II). Existing §39.411(e)(11)(A)(v) is re-designated as clause (vi).

Section 39.411(f) is amended to add a reference to adopted §39.603(d).

§39.603, Newspaper Notice

Adopted §39.603(d) provides that owners and operators who submit applications declared by the executive director to be administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application are required to publish a consolidated NORI and NAPD. The consolidated NORI and NAPD must be published no later than 30 days after the executive director notifies the applicant of the declaration of administrative completeness and the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the applicant. In addition, the new consolidated notice must contain the text as required by §39.411(e)(11).

Existing §39.603(d) - (f) are re-lettered as subsections (e) - (g).

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to Chapters 39 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, but instead amends the notice

requirements for certain case-by-case air quality permit applications, which are procedural in nature.

Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "Major environmental rule." Specifically, the adopted amendment to Chapter 39 amends the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was developed to meet the requirements for public participation in the Texas Clean Air Act as identified in the Statutory Authority section of this preamble.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to Chapter 39 amends the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted 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 a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the adopted rules affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted rules will not require any changes to outstanding federal operating permits.

Public Comment

The commission held a public hearing on January 3, 2018. The comment period closed on January 3, 2018. The commission received comments from Broadwind Energy and the Lone Star Chapter of the Sierra Club (Sierra Club).

Response to Comments

Comment

Broadwind Energy commented that although public notices are very important to the surrounding community, most states require only one public notice for environmental permit applications.

Response

Although other states may require only one notice for environmental permit applications, Texas law differs in that respect for certain environmental permit applications. This rulemaking implements the statute that provides for a consolidated notice for applications that meet the statutory criteria that are adopted in §39.411(e)(11)(A)(v).

Comment

Broadwind Energy commented that requiring only one notice would be a huge benefit to

small businesses, stating that the \$3,000 cost for two notices for its recent application was a huge hit to its budget for the project.

Response

The commission acknowledges that excluding the cost of one newspaper publication may be significant for some small businesses.

Comment

Sierra Club commented that while the Background and Summary of Factual Basis for the Proposed Rules in the proposed preamble (Background discussion) makes it clear that consolidated notice is largely intended for applications with modest impacts that are not complex, or applications that meet the guidelines for a RAP, the Background discussion should also include a statement regarding the process for adding additional types of facilities eligible for a RAP to ensure that both industry and the public are aware of what types of facilities may qualify for the RAP or a permit with consolidated notice.

Response

The existing description of a RAP within the Background discussion serves as an example of a streamlined permit application that could potentially meet the criteria that would allow the consolidated notice option. At this time, APD has developed a simple cycle turbine RAP. When any additional types of applications are identified as those that can be processed as a RAP, the information may be made available on the commission's website. As demonstrated by the other examples of applications potentially eligible for

consolidated notice that are listed within the Background discussion, an eligible application does not necessarily have to be for a RAP. For additional information on RAPs, a link is provided within the Background discussion.

Comment

Sierra Club commented that the Background discussion should include discussion regarding applications eligible for consolidated notice cannot involve an applicant negotiating the proposed draft permit by continually sitting down with, nor presenting a draft permit to, permitting staff.

Response

If a request to discuss a prospective project or application is made by an applicant, APD's practice is to meet with applicants as requested. Although it is not standard practice for meetings to occur prior to application submittal on a continual basis, there is no rule or policy that prohibits an applicant from requesting multiple meetings with APD. If an applicant requests a meeting with APD, it is generally to discuss the permit application at a high-level and identify any potential issues that may arise. Pre-application meetings are not used to negotiate draft permit conditions.

As eligibility to publish consolidated notice is dependent upon the application being determined administratively and technically complete and having a draft permit prepared within 15 days of receipt of the application, in conjunction with the complexity of the project and quality of the application, it is unlikely that an applicant would have

the ability to continually meet with permitting staff to negotiate a proposed draft permit while still meeting all eligibility requirements. As stated earlier, consolidated notice is available only when an application can be declared administratively and technically complete and a draft permit is prepared by the executive director within 15 days, and the rule text specifically provides that the draft permit is prepared by the executive director.

Comment

Sierra Club requested §39.411(e)(11)(A)(v) should be amended to add the text "{A} member of the public, including public officials, may request a public meeting during the 30-day comment period. If the public meeting is granted by the commission, the 30-day comment period may be extended."

Response

No change to the rule was made in response to this comment. The requirements for including text in a notice, including a consolidated notice, regarding requesting a public meeting are in §39.411(e)(5). Section 55.152(b) provides that the public comment period shall automatically be extended to the close of any public meeting. The text regarding this extension is not required to be included in any commission notices for most environmental permit applications, including consolidated notices, and therefore it would be inconsistent to include it within the notice text as specified in §39.411(e)(11)(A)(v). Because not every meeting request is granted, and, if granted, notice periods may not be extended, such language could be misleading if included in a notice.

A notice of a public meeting provides that members of the public may state their formal comments into the official record, and that a written response to all formal comments will be prepared by the executive director before a decision on the application is made.

Comment

Sierra Club commented that the time available to request a CCH should be extended in cases where no hearing requests are submitted within the 30-day period following publication of the notice but the comment period is extended due to the commission holding a public meeting on the application.

Response

Requests for CCH must be received within 30 days of the publication of the consolidated notice. All timely hearing requests are considered by the commissioners in their open meeting, unless the application is directly referred to the State Office of Administrative Hearings for a CCH prior to a scheduled commission meeting. Within the 30-day period, citizens should have adequate time to become aware of the notice, review the application and draft permit, prepare and submit comments, and request a public meeting or a CCH. The commission's rules regarding the NORI for applications for minor NSR applications and consolidated notice of applications submitted for a Standard Permit for Concrete Batch Plants also require that a hearing request be submitted within the 30-day public comment period, and therefore this consolidated notice is consistent with those similar types of applications. In addition, the amount of time for and thoroughness of review of a draft permit is the same whether there is a consolidated notice or both

NORI and NAPD. For these reasons, the commission has determined that a 30-day comment period is reasonable. No change to the rule was made in response to this comment.

Comment

Sierra Club commented that although it is clear that any application that meets the requirements for a consolidated notice should be required to meet the internet requirements found in §39.411(f)(8), an explanation of internet publication should be included in the Background discussion in this preamble.

Response

The required text for a notice in §39.411(f)(8) concerns only notice of applications for a Nonattainment or Prevention of Significant Deterioration permit. Specifically, §39.411(f)(8)(E) requires that a notice for one of these applications include a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's website at the time of publication of the NAPD. A consolidated notice for such an application would include this information.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§39.411

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.115, concerning Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation

requirements for certain applications filed with the commission. In addition, the amendment is also adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.056 and Senate Bill 1045 (85th Texas Legislature, 2017).

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality

Applications and Water Quality Management Plans, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are

relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this

title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) filed on or after June 18, 2010;

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction, filed on or after June 18, 2010; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues

that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located if there is substantial public interest in the proposed activity when requested by any interested person for the following applications that are filed on or after June 18, 2010:

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards or under state standards in Chapters 111 - 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant

not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(iv) for initial registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) received on or after January 1, 2017, the following statements:

(I) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(II) if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing; and

(III) if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(v) for new air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits), for which the executive director has declared the application administratively and technically complete and prepared a draft permit within 15 days of receipt of the application, the following information:

(I) the date the application was received and the date the draft permit was completed; and

(II) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(d) of this title. If no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments; or

(vi) for all air quality permit applications other than those in clauses (i) - (v) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) if notice is for air quality permit applications described in subparagraph (A)(vi) of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;"

(15) if notice is for an application for an air quality permit under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions), a statement that any interested person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(16) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision, or the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, as provided for in §39.603(c) or (d) of this title, to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county with internet access in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and, where applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity. The notice must include a statement that the comment period will be for at least 30 days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's website;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 for permits under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits and Prevention of Significant Deterioration Review):

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications filed on or after June

18, 2010, the text of the notice must include the information in this subsection. Air quality permit applications filed before June 18, 2010, are governed by the rules in Subchapters H and K of this chapter as they existed immediately before June 18, 2010, and those rules are continued in effect for that purpose.

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (16) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, and, as applicable, preliminary determination summary, and air quality analysis may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9), and (16) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

SUBCHAPTER K: PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

§39.603

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.115, concerning Persons Affected in Commission Hearings' Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation

requirements for certain applications filed with the TCEQ. In addition, the amendment is also adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.056 and Senate Bill 1045 (85th Texas Legislature, 2017).

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit (NORI) under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(e) of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications.

(b) Notice of Application and Preliminary Decision (NAPD) under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with

the NAPD to the applicant. This notice must contain the text as required by §39.411(f) of this title.

(c) Owners and operators who submit initial registration applications on or after January 1, 2017, for authorization to construct and operate a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) shall publish a consolidated NORI under §39.418 of this title and a NAPD under §39.419 of this title no later than 30 days after the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. This notice must contain the text as required by §39.411(f) of this title.

(d) Owners and operators who submit applications that are declared administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application shall publish a consolidated NORI under §39.418 of this title and a NAPD under §39.419 of this title no later than 30 days after the executive director notifies the applicant of the declaration of administrative completeness and the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the applicant. This notice must contain the text as required by §39.411(e) of this title.

(e) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air quality permit application or registration, the applicant or

registrant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application or registration number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(f) Alternative publication procedures for small businesses.

(1) The applicant or registrant does not have to comply with subsection (d)(2) of this section if all of the following conditions are met:

(A) the applicant or registrant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's or registrant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(g) If an air application or registration is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant or registrant shall publish notice once in a newspaper as described in subsection (d) of this section, containing the information under §39.411(h) of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.