

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §55.152.

If adopted, the amendment to §55.152(a)(3), (4), (7), and (8) 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 Proposed Rule

This rulemaking is proposed to implement Senate Bill (SB) 1045 (85th Texas Legislature, 2017). Proposed §55.152(a)(3) would provide for a 30-day notice period during which comments and requests for a public meeting or contested case hearing (CCH) can be submitted in response to the consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Receipt of Application and Preliminary Decision (NAPD). The 30-day period begins on the last date of newspaper publication, and the public comment period is automatically extended to the close of any public meeting, as required by §55.152(b). As provided for in §55.201(c), which implements SB 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted comments. 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 Response to Comments (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.

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. These rules 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 NORI which solicits comments for a 30-day period; CCH and public meeting requests are also solicited. At the same time the NORI is published in a newspaper of general circulation in the municipality or in the nearest municipality in which the plant will be located, 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 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.

No changes to other aspects of notice and public participation are included in this rulemaking. Permit applicants will 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 an 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 which 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 prepared 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 proposal, and published in this issue of the *Texas Register*, the commission is proposing amendments to Chapter 39, Public Notice, to provide for a consolidated NORI and NAPD.

The public participation requirements for renewals of case-by-case permits are not affected by the proposed 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 Discussion

§55.152, Public Comment Period

Proposed §55.152(a)(3) would provide that the close of the public comment period is 30 days after the last publication of the consolidated notice concurrently proposed in §39.603(d) for new permit or permit amendment applications issued under Chapter 116, Subchapters B and G, which 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. Existing §55.152(a)(3) - (7) is proposed to be re-numbered as paragraphs (4) - (8).

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are

anticipated for TCEQ, and no fiscal implications are anticipated for other units of state or local government as a result of the implementation or administration of the proposed rule.

The proposed rule implements SB 1045 (85th Texas Legislature, 2017). The proposed rule would consolidate the NORI and NAPD requirements to allow for one 30-day notice period during which comments and requests for public meetings or CCHs can be submitted. This consolidated notice would be required for air quality case-by-case permit applications which can be declared as administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application. The APD may be able to streamline applications that meet specific criteria, thereby increasing the number of permit applications which could potentially utilize the consolidated notice.

Under the proposed rulemaking, instead of two separate notices (a NORI and a NAPD), the consolidated NORI and NAPD will be prepared and distributed to owners and operators who apply for permits to construct and operate facilities for which a draft permit can be prepared within 15 days of receipt of the application. Permit applicants make arrangements and pay for their own newspaper publication and then provide proof of publication to TCEQ. This is true for both English-language newspapers and, where applicable, for alternative language publications. The proposed consolidation is not anticipated to significantly reduce agency workload or costs for APD to issue the permits.

Other units of state or local government are rarely permit applicants, but if they are, the

impact of this rulemaking is the same as for non-governmental applicants, which will incur a cost savings (as discussed in the Public Benefits and Costs section).

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules is in effect, the public benefit anticipated from the changes seen in the proposed rules will be clarity in the type of notice that will be required for certain air quality permit applications. The public may benefit from the notice consolidation because the review of the application and draft permit will be available sooner than for applications that are subject to the requirement to publish two notices. This reduces the public's need for two reviews under the regular notice procedures (first notice for application only, second notice for application and draft permit). However, the time for public response (comments or hearing requests) is reduced from the time period allowed when publication of two notices is required.

No fiscal implications are anticipated for individuals as a result of the implementation or administration of the proposed rule. The proposed rule is expected to result in some cost savings and revenue losses for certain businesses. Owners or operators submitting applications for case-by-case permits may experience cost savings due to being required to secure only one newspaper publication notice, though in general these cost savings are not anticipated to be significant for some applicants. The newspaper publication notice costs will be reduced by approximately 50% for applications meeting the criteria to publish a consolidated notice, because only one round of publication will be required instead of the currently required two (for English language publication and also for any required

alternative language publication). One round of publication costs may be between \$674 and \$9,759 depending on which newspaper (newspapers in larger cities have higher costs), the day of the week, and how many words are in the notice. One applicant would then be estimated to be able to save between \$674 and \$9,759 in publication costs, and newspapers around the state would lose a like amount in revenue for each instance of consolidated notice.

These costs are based on a survey of newspaper publication costs conducted in March 2016. No significant changes in charges by newspapers since that time are expected; and therefore, this data is reasonable for use in this fiscal note.

The opportunity to have a consolidated notice is only available for specific applications. The consolidated notice is required for specific applications for which the executive director can declare the application administratively and technically complete and prepare a draft permit within 15 days of receipt of the application. Because the ability for the TCEQ to prepare the draft permit is dependent upon the complexity of the project for which authorization is sought and the quality of the application, the number and type of facilities or businesses that will be affected cannot be estimated.

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.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect a rural community in a material way for the first five years that the proposed rule is in effect. The state-wide rule will not affect rural communities in any way different from non-rural communities. Because the ability for the TCEQ to prepare the draft permit is dependent upon the complexity of the project for which authorization is sought and the quality of the application, the number and type of regulated entities in rural communities cannot be estimated.

Small and Micro-Business Impact Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. Because the ability for the TCEQ to prepare the draft permit is dependent upon the complexity of the project for which authorization is sought and the quality of the application, the number of small and micro-businesses that will be affected cannot be estimated.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect small or micro-businesses for the first five-year period the proposed rule is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rule does not create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; or expand, limit, or repeal an existing regulation. The rule amends current newspaper publication requirements by reducing the number of publications if certain conditions, which are not mandatory for applicants or TCEQ, are met. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability. Finally, the rule does not positively or adversely affect the state's economy. This is because the number of notices and costs of notice are not anticipated to be significant, particularly when the rule has state-wide effect. Further, although publication of one notice is mandatory, it is required only when certain criteria, which are not mandatory for permit applicants or TCEQ, are met.

Draft 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 proposed amendments to Chapters 39 and 55 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, but instead would amend 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 proposed amendments to Chapters 39 and 55 would amend the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature. This proposed 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 sections of this preamble.

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments to Chapters 39 and 55 would amend the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed 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 proposed rule and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendment is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact

person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rule will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 3, 2018, at 10:00 a.m. in Building E, Room 201S, 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 prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments

being submitted via the eComments system. All comments should reference Rule Project Number 2017-027-039-LS. The comment period closes on January 3, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at:

http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Janis Hudson, Environmental Law Division, at (512) 239-0466.

SUBCHAPTER E: PUBLIC COMMENT AND PUBLIC MEETINGS

§55.152

Statutory Authority

The amendment is proposed 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 or other laws; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC or other laws; 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 proposed 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 proposed 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 proposed amendment implements THSC, §382.056 and Senate Bill 1045.

§55.152. Public Comment Period.

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to

Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title (relating to Newspaper Notice) for a registration for 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), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project;

(3) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title for an application for a new permit or permit amendment under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits);

(4) [(3)] 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(5) [(4)] 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(6) [(5)] 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(7) [(6)] the time specified in commission rules for other specific types of applications; or

(8) [(7)] as extended by the executive director for good cause.

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