

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 21, 2016

Thru: Richard A. Hyde, P.E., Executive Director

Thru:  Steve Hagle, P.E., Deputy Director, Office of Air

From:  Michael Wilson, P.E., Division Director, Air Permits Division

Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 116, Control of Air Pollution by Permits for New Construction or Modification

Suggested short title: Repeal of obsolete public notification and comment procedures

Introduction and reason(s) for the rulemaking:

This rulemaking would repeal obsolete rules in 30 Texas Administrative Code, Chapter 116, Subchapter C, Division 3, regarding public notice and participation for air quality case by case new, amendment, and renewal permit applications. House Bill (HB) 801 (1999) and the rules in Chapter 39 to implement the bill superseded the public participation rules in Chapter 116 for all applications received on and after September 1, 1999. The HB 801 rules were approved as part of the State Implementation Plan (SIP) by the United States Environmental Protection Agency (EPA) in January 2014. Repealing the obsolete rules and submitting a request to the EPA to withdraw these rules in Chapter 116 from the SIP would eliminate any possible confusion as to what public participation requirements are in the Texas SIP.

Scope of the proposed rule:

Repeal of the obsolete rules in Chapter 116 would reduce confusion for the regulated community and the public. The SIP-approved public participation requirements in Chapter 39 will not be affected.

Potential controversial concerns and legislative interest:

On July 16, 1999, the commission proposed repeal of these rules and their withdrawal from the SIP (24 TexReg 5427). The commission did not adopt the repeal, but retained the rules for applications that were administratively complete before September 1, 1999.

In order for EPA to approve withdrawal of these rules from the SIP, this rulemaking would include a demonstration that the revisions to the SIP would not interfere with any applicable requirement concerning attainment and reasonable further progress. This is commonly known as the anti-backsliding provision (Federal Clean Air Act § 110(l)). This would be met by noting that the Texas SIP currently includes the necessary public participation requirements for minor and major new source review permitting.

Potential alternatives:

Do not repeal the rules, but allow applicants to continue to comply with public participation requirements as established and SIP-approved in Chapter 39.

Effect on the:

No fiscal impact is anticipated from this rulemaking, and it does not create a group of affected persons who were not affected previously.

A) Regulated community:

Applicants for air permits will have greater clarity regarding what the applicable public participation requirements are.

B) Public:

The public will have greater understanding of what the applicable public participation requirements are for air permitting applications.

C) Agency programs:

There will be no workload increase for the Air Permits Division or other agency programs. Repeal of the rules could result in fewer questions from the public and regulated entities about the obsolete rules.

Proposed schedule and constraints:

Anticipated Proposal Date: June 8, 2016

Anticipated Public Comment Period: June 24, 2016 to July 25, 2016

Anticipated Adoption Date: November 2, 2016

Planned stakeholder involvement:

No specific stakeholder involvement is necessary because the rules have effectively been obsolete since air permitting staff completed review of the last application received before September 1, 1999.

Statutory authority:

Texas Water Code, §5.103 Rules and §5.105, General Policy; Texas Health and Safety Code, §§382.002, Policy and Purpose; 382.003, Definitions; 382.017, Rules; 382.011, General Powers and Duties; 382.012, State Air Control Plan; 382.051, Permitting Authority of Commission; Rules; 382.0511, Permit Consolidation and Amendment; §382.0518, Preconstruction Permit; 382.055 Review and Renewal of Preconstruction Permit; and 382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing.

Direction and Guidance:

Rule or Non-Rule Project number: 2016-026-116-AI

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NOTE: TR will submit electronic notice to the following after ED Briefing:

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