

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 2, 2015

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Caroline Sweeney, Deputy Director
Janis Hudson, Attorney
Office of Legal Services

Docket No.: 2015-1715-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 35, Emergency and Temporary Orders and Permits; Temporary
Suspension or Amendment of Permit Conditions
Chapter 55, Requests for Reconsideration and Contested Case Hearings;
Public Comment
Chapter 80, Contested Case Hearings
SB 1267: Commission Action on Hearing Requests
Rule Project No. 2016-008-055-LS

Background and reason(s) for the rulemaking:

Senate Bill (SB) 1267, passed by the 84th Texas Legislature, amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. This bill revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing of agency decisions, and the procedures for judicial review of agency decisions.

Rulemaking was necessary to implement several changes in the APA; most of those changes were proposed by the commission on August 5, 2015, and are scheduled for adoption on December 9, 2015. The amendments to §35.29(e) and §55.255(e) and the repeal of §80.271 are also needed to implement SB 1267. Specifically, the time period for filing a motion for rehearing will now begin on the date that the commission's decision or order is signed or as otherwise provided by the APA.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

Section 55.255(e) is proposed to be amended to update procedures for providing notice of the commission's decisions or orders and the procedures and timelines concerning motions for rehearing to ensure consistency with the APA. This section applies to water rights, radioactive materials licensing, and districts applications for which a CCH opportunity is available.

Section 35.29(e) is proposed to be amended to update a cross-reference to §80.272.

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Section 80.271 is proposed to be repealed because it will be obsolete upon adoption of amendments to §80.272 on December 9, 2015.

B.) Scope required by federal regulations or state statutes:

There is no federal law that will be implemented by this rulemaking, and the rulemaking does not affect the United States Environmental Protection Agency approval or delegation of any permitting programs.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

SB 1267 (84th Texas Legislature, 2015); Texas Water Code, §§5.013, 5.102, 5.103, 5.105, 5.115, 11.132, 11.134, and 49.011; and Texas Water Code, Chapter 5, Subchapter L. Additional relevant sections are Texas Health and Safety Code, §401.114; and Texas Government Code, §§2001.004, 2001.006, 2001.142, 2001.143, 2001.144, and 2001.146.

Effect on the:

The proposed rulemaking does not affect persons not previously affected, and there will be no fiscal impact on any of the following groups.

A.) Regulated community:

All applicants for air quality; water quality; municipal solid waste; industrial and hazardous waste; and underground injection control, water rights permits, radioactive materials licensing, districts, and temporary and emergency orders whose applications receive requests for or are subject to a CCH will be subject to changes in procedures for motions for rehearing.

B.) Public:

Those who submit hearing requests regarding applications for air quality; water quality; municipal solid waste; industrial and hazardous waste; and underground injection control, water rights permits, radioactive materials licensing, districts, and temporary and emergency orders will be subject to changes regarding motions for rehearing.

C.) Agency programs:

The Office of the Chief Clerk will have somewhat different procedures regarding the timeline concerning motions for rehearing.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

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Potential controversial concerns and legislative interest:

None.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The consequences of not going forward with this rulemaking would be that the TCEQ's rules would conflict with the changes to the APA in SB 1267, and existing commission rules, which would cause confusion for the public and the regulated community. For this reason, there are no alternatives to rulemaking. The rulemaking to implement SB 1267 is to ensure that TCEQ rules are consistent with the APA.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: December 9, 2015

Anticipated *Texas Register* publication date: December 25, 2015

Anticipated public hearing date: January 26, 2016

Anticipated public comment period: December 25, 2015 - January 29, 2016

Anticipated adoption date: March 3, 2016

Agency contacts:

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Attachments

SB 1267

cc: Chief Clerk, 2 copies
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