

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 3, 2016

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

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

Docket No.: 2016-0408-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 116, Control of Air Pollution by Permits for New Construction or
Modification
Repeal of Obsolete Notification and Comment Procedures
Rule Project No. 2016-026-116-AI

Background and reason(s) for the rulemaking:

The rules in 30 Texas Administrative Code (TAC) Chapter 116, Subchapter B, Division 3 (Public Notification and Comment Procedures), are obsolete. These rules apply to air quality case-by-case new, amendment, and renewal permit applications that were declared administratively complete before September 1, 1999. House Bill (HB) 801 (Texas Legislature, 1999) and the rules in 30 TAC Chapter 39 implementing the bill superseded the public participation rules in Chapter 116 for all applications declared administratively complete on and after September 1, 1999.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) effective February 5, 2014. Repealing the obsolete rules in Chapter 116 and requesting a SIP revision for EPA to remove them from the SIP would eliminate any possible confusion as to what public participation requirements are in the Texas SIP.

Scope of the rulemaking:

This proposed rulemaking repeals the obsolete rules in Chapter 116 to reduce confusion for the regulated community and the public. The SIP-approved public notice requirements in Chapter 39 will not be affected, and the public's opportunity to participate in the air permitting process will not change as a result of this repeal.

A.) Summary of what the rulemaking will do:

This rulemaking repeals 30 TAC §§116.130 - 116.134, 116.136, and 116.137 regarding Public Notification and Comment Procedures.

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

Repeal of the obsolete rules and the SIP revision removal of the rules from the SIP is consistent with the federal Clean Air Act requirements that a state's SIP include a permitting program consistent with Title I and EPA's regulations promulgated to implement Title I.

C.) Additional staff recommendations that are not required by federal rule or state statute: None.

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Statutory authority:

Texas Water Code, §5.103 Rules and §5.105, General Policy; Texas Health and Safety Code (THSC), §382.002, Policy and Purpose; THSC, §382.003, Definitions; THSC, §382.017, Rules; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; THSC, §382.051, Permitting Authority of Commission; Rules; THSC, §382.0511, Permit Consolidation and Amendment; THSC, §382.0518, Preconstruction Permit; THSC, §382.055, Review and Renewal of Preconstruction Permit; THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing, and; THSC, §382.058, Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption.

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 the applicable public participation requirements.

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.

Stakeholder meetings:

There were no stakeholder meetings held related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

Potential controversial concerns and legislative interest:

In order for EPA to approve removal of these rules from the SIP, this rulemaking includes a demonstration that the revision 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 requirement would be met by noting that the Texas SIP currently includes the necessary public participation requirements for minor and major New Source Review permitting.

On July 16, 1999, the commission proposed repeal of these rules and their removal 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.

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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? Without this rulemaking obsolete rules will remain in the commission's rules, codified in Title 30 of the TAC; and in the Texas SIP, codified in 40 Code of Federal Regulations §52.2270. The impact of retaining the obsolete rules is limited to potential confusion in the regulated community and public regarding which public participation requirements apply to air permit applications.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: June 22, 2016

Anticipated *Texas Register* publication date: July 8, 2016

Anticipated public hearing date (if any): August 2, 2016

Anticipated public comment period: July 8 - August 8, 2016

Anticipated adoption date: November 2, 2016

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Attachments

None.

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