

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners Date: June 17, 2016

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

From: Caroline Sweeney, Deputy Director
Office of Legal Services

Docket No.: 2016-0484-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 39, Public Notice
Chapter 55, Requests for Reconsideration and Contested Case Hearings;
Public Comment
Concrete Batch Plant Notice
Rule Project No. 2016-030-039-LS

Background and reason(s) for the rulemaking:

On February 25, 2016, Texas Aggregates and Concrete Association submitted a petition requesting that the Texas Commission on Environmental Quality (commission or TCEQ) conduct rulemaking to amend public notice rules applicable to registration requests for authorization under the Air Quality Standard Permit for Concrete Batch Plants. The petition requested amendments to existing rules to provide for one 30-day public notice of registration. On April 6, 2016, the commission considered the petition and directed the executive director to examine the request and initiate rulemaking.

Currently, persons registering for authorization under this specific standard permit must publish the Notice of Receipt of Application and Intent to Obtain Permit (NORI) which provides a 15-day period to submit comments, request a public meeting, and request a contested case hearing. When technical review is complete, these registrants are required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments 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.

Registrations for concrete batch plants, generally, have been subject to comment and contested case hearing since 1985. The requirement for NAPD was added in 1999 and expanded in 2010. Although the comment period was lengthened by the addition of the NAPD requirement, the public has expressed concerns that the 15-day NORI period is often not enough time to review the registration, determine whether to comment, request a public meeting or contested case hearing, and then to timely submit the information to the TCEQ.

This rulemaking proposes to consolidate the NORI and NAPD requirements to allow for one 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. The current rule that allows for extension of the comment period from 30 days after the last publication date of the notice to the close of a public meeting will continue to apply to these registrations. If a request for a contested case hearing is received within the single 30-day comment period, the opportunity to

Re: Docket No. 2016-0484-RUL

request a hearing will extend to 30 days after the executive director files the Response to Comments.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking would consolidate publication of the NORI and NAPD for registrations under the Air Quality Standard Permit for Concrete Batch Plants into one notice with a 30-day period to submit comments and requests for a public meeting or contested case hearing.

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

The rulemaking implements the requirements of the Texas Clean Air Act, Texas Health and Safety Code (THSC), §382.056 and §382.058. No federal statute or rule directly applies. Most of the proposed amendments will be proposed as revisions to the State Implementation Plan.

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

None.

Statutory authority:

Texas Water Code, §§5.013, 5.102, 5.103, 5.105, and 5.115; THSC, §§382.002, 382.011, 382.012, 382.017, 382.056, and 382.058; Texas Government Code, §2001.004; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*

Effect on the:

The rulemaking will not create a group of affected persons who were not affected previously.

A.) Regulated community:

There will be cost savings for owners and operators who apply for authorization to construct and operate concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants. The rule would provide for one notice instead of two, which would apply to English language publication and any alternative language publication. The cost savings are discussed in the proposed preamble.

B.) Public:

While the public currently has the initial 15-day period and then a later 30-day period to submit comments, the opportunity to request a contested case hearing during the current 30-day period is very limited. The public may benefit from the notice consolidation, because it will reduce confusion about the restrictions on the time to submit hearing requests. During the proposed 30-day period, the public may submit comments, requests for a public meeting, and requests for a contested case hearing.

Commissioners

Page 3

June 17, 2016

Re: Docket No. 2016-0484-RUL

C.) Agency programs:

The consolidated NORI/NAPD instead of two (a NORI and a NAPD) notices, will be prepared and distributed to owners and operators who register to construct and operate concrete batch plants. However, this is not anticipated to have any significant fiscal implication for the agency.

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.

Potential controversial concerns and legislative interest:

Some persons may view the change from two notices to one as limiting public participation. There is no known legislative interest in this rulemaking. In addition to the consolidated notice, legislators will continue to receive the 30-day advance notice of the draft permit as required by Senate Bill 709 (84th Texas Legislature, 2015).

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

The scope of this change in public participation is limited to the Air Quality Standard Permit for Concrete Batch Plants.

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

The public participation requirements for registrations for the Air Quality Standard Permit for Concrete Batch Plants will remain the same. There are no alternatives to rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 6, 2016

Anticipated *Texas Register* publication date: July 22, 2016

Anticipated public hearing date (if any): August 10, 2016

Anticipated public comment period: July 8, 2016 - August 22, 2016

Anticipated adoption date: December 7, 2016

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