

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 27, 2017

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

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

Docket No.: 2017-0744-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 39, Public Notice
Chapter 55, Requests for Reconsideration and Contested Case Hearings;
Public Comment
SB 1045: Public Notice Requirements for Certain Air Permit Applications
Rule Project No. 2017-027-039-LS

Background and reason(s) for the rulemaking:

This rulemaking is proposed to implement Senate Bill (SB) 1045 (85th Texas Legislature, 2017). The proposed rule amendments would consolidate the Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) requirements to allow for one 30-day notice period during which comments and requests for a public meeting or contested case hearing (CCH) can be submitted. This consolidated notice would be required for air quality case-by-case permit applications that 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.

This rulemaking would ensure the existing rules include the consolidated notice added by SB 1045 when certain conditions are satisfied.

No changes to other aspects of notice and public participation are included in this rulemaking. The applicant will continue to be required to post signs and, if applicable, publish notice and post signs in alternate language(s). The executive director will notify area legislators 30 days prior to issuance of a draft permit and will prepare a Response to Comments (RTC). If a request for CCH hearing is received within the single 30-day comment period, the opportunity to request a CCH 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.

If adopted, the amendments to §§39.411(e)(10) and (11)(A)(v) and (vi) and (F), (f) (introductory paragraph), and (f)(8); 39.603; and 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 (SIP).

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Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking would consolidate publication of the NORI and NAPD for certain air quality case-by-case permit applications into one notice with a 30-day period to submit comments and requests for a public meeting or CCH.

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

The rulemaking implements SB 1045 and the Texas Clean Air Act, Texas Health and Safety Code (THSC), §382.056. No federal statute or rule directly applies. The proposed amendments will be proposed as revisions to the SIP.

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 and 382.056; 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 submit applications for a new permit or a permit amendment to construct and operate certain facilities under an air quality case-by-case permit. The rules would provide for one notice instead of two, which would apply to the English language publication and any alternative language publication. The cost savings are discussed in the proposed preamble.

B.) Public:

The public will benefit from the clarity in the type of notice that will be required for certain air quality case-by-case permit applications, and may benefit from the notice consolidation. During the proposed single notice period, the public may submit comments, requests for a public meeting, and requests for a CCH. However, the time for public response (comments or hearing requests) is reduced from the time period allowed when publication of two notices is required.

C.) Agency programs:

The Air Permits Division will have some efficiencies in permitting due to preparation of one notice instead of two.

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.

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Potential controversial concerns and legislative interest:

There is no known specific 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 SB 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 consolidation of NORI and NAPD for certain permit applications.

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

Because the statute controls over rules, the consolidated notice could be implemented for applications received on or after the effective date of SB 1045, which is September 1, 2017. However, because this consolidated notice is not in the rules, without this rulemaking there could be confusion for regulated industry and the public as to whether a consolidated notice is allowed.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 15, 2017

Anticipated *Texas Register* publication date: December 1, 2017

Anticipated public hearing date: January 3, 2018

Anticipated public comment period: November 17, 2017 - January 3, 2018

Anticipated adoption date: May 23, 2018

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Attachments:

SB 1045

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