Texas Commission on Environmental Quality  
Interoffice Memorandum  

To: Commissioners  

Date: October 17, 2019  

Thru: Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director  

From: Margaret Ligarde, Deputy Director  
Office of Legal Services  

Docket No.: 2019-0914-RUL  

Subject: Commission Approval for Proposed Rulemaking  
Chapter 39, Public Notice  
Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment  
Chapter 101, General Air Quality Rules  
Chapter 116, Control of Air Pollution by Permits for New Construction or Modification  
Post Quadrennial Review of Public Notice and Procedural Rules: Amendments and SIP Revisions  
Rule Project No. 2019-120-039-LS  

Background and reason(s) for the rulemaking:  
This rulemaking is necessary to update rules due to the concurrent proposed repeal of rules determined to be obsolete as a result of the Quadrennial Reviews of Chapters 39, 50, 55, and 80. Those rules generally apply to certain permit applications declared administratively complete before September 1, 1999. These amendments would eliminate any possible confusion as to what the applicable public participation requirements are and remove obsolete sections and text from the Texas Commission on Environmental Quality’s (TCEQ or commission) rules. These amendments would also be proposed to be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan (SIP).  

Concurrently, the commission is considering the repeal of procedural rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS), and another rulemaking project to address updates to rules primarily needed as a result of these repeals for which a revision the SIP is not required (Rule Project Number 2019-121-033-LS).  

Scope of the rulemaking:  
A.) Summary of what the rulemaking will do:  

The following rules would be submitted to the United States Environmental Protection Agency as revisions to the SIP: §§39.405(g)(3) and (h)(2) and (3); 39.411(e)(4)(A)(i) and (5), (f)(8), and (g); 39.419(e)(1); 39.420(d)(6); 39.601; 39.603; 55.154(c), (c)(3), (e), and (f); 55.156(a) and (c); 101.306; 116.111; and 116.112(a).
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B.) Scope required by federal regulations or state statutes:
The rulemaking is in response to the commission’s determination that certain rules in Chapters 39, 50, 55, and 80 are obsolete pursuant to review of the rules as required by the Texas Administrative Procedure Act, Texas Government Code, §2001.039.

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

Statutory authority:

Effect on the:

A.) Regulated community:
Applicants for certain air quality permits would have greater clarity regarding the applicable public participation requirements.

B.) Public:
The public would have a better understanding of the applicable public participation requirements for certain types of permit applications.

C.) Agency programs:
There would be no workload increase for TCEQ’s permitting or enforcement programs.

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:
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 commission directed repeal of obsolete rules prior to the next quadrennial review, scheduled for January 2023. Because most of those rules are concurrently proposed for repeal, this rulemaking is necessary to ensure the rules regarding public notice of and public participation in certain permit applications are current and complete.

Key points in the proposal rulemaking schedule:
Anticipated proposal date: October 23, 2019
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Anticipated Texas Register publication date: November 8, 2019
Anticipated public hearing date (if any): December 10, 2019
Anticipated public comment period: October 25, 2019 - December 16, 2019
Anticipated adoption date: March 25, 2020

Agency contacts:
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Attachments:
None.

cc: Chief Clerk, 2 copies
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