Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners

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

From: Margaret Ligarde, Deputy Director
Office of Legal Services

Docket No.: 2019-0913-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 33, Consolidated Permit Processing
Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions
Chapter 39, Public Notice
Chapter 50, Action on Applications and Other Authorizations
Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment
Chapter 60, Compliance History
Chapter 70, Enforcement
Chapter 80, Contested Case Hearings
Chapter 90, Innovative Programs
Chapter 205, General Permits for Waste Discharges
Chapter 285, On-Site Sewage Facilities
Chapter 294, Priority Groundwater Management Areas
Chapter 305, Consolidated Permits
Chapter 321, Control of Certain Activities by Rule
Chapter 330, Municipal Solid Waste
Chapter 331, Underground Injection Control
Chapter 332, Composting
Chapter 334, Underground and Aboveground Storage Tanks
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
Chapter 350, Texas Risk Reduction Program
Amendments and New Rules to Implement Quadrennial Review of Public Notice and Procedural Rules
Rule Project No. 2019-121-033-LS

Background and reasons 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, 80, and 116 (Rule Project Numbers 2019-120-039-LS and 2019-062-116-Al). Those rules generally apply to certain permit applications declared administratively complete before September 1, 1999. The amendments and new rules would eliminate any possible confusion as to what the applicable public participation requirements are and would remove obsolete sections and text from the Texas Commission on Environmental Quality (TCEQ or commission) rules.

Concurrently, the commission is considering the repeal of procedural rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-120-039-LS), and another rulemaking project to address updates to rules primarily needed as a result of these repeals for
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which a revision to the State Implementation Plan is required (Rule Project Number 2019-119-039-LS).

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:
The proposed rulemaking would update cross-references and remove or replace obsolete text in twenty chapters referenced above. It would also relocate text from obsolete rules to improve clarity and readability of the rules for certain waste and underground injection control applications that require notice but are not subject to contested case hearing.

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, 80, and 116 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:
Permit applicants 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 public hearing will be held in Austin during the 30-day comment period.

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 scheduled quadrennial review. 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
  Anticipated Texas Register publication date: November 8, 2019
  Anticipated public hearing date (if any): December 10, 2019
  Anticipated public comment period: November 8, 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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