The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §331.202.

**Background and Summary of the Factual Basis for the Proposed Rule**

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A – E; Chapter 50, Subchapters A – C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the Texas Register (44 TexReg 3304)). As a result, the commission is
proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330, 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 331.202 is proposed to be amended by updating cross-references.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.
Section Discussion

§331.202, Public Notice, Public Meetings, and Public Comment

The commission proposes to amend §331.202(c)(1) and (d)(4) to update the cross-references from §39.11, which is concurrently proposed for repeal, to §39.411.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update cross-references.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.
Local Employment Impact Statement
The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Rural Community Impact Statement
The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment
No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses the update to obsolete cross-references.

Small Business Regulatory Flexibility Analysis
The commission reviewed this proposed rulemaking and determined that a Small
Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rulemaking is in effect.

**Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

**Draft Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely
affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §331.202 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §331.202 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code,
Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

**Takings Impact Assessment**

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §331.202 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

**Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed amendment affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC
§505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

Written comments on the consistency of this rulemaking with the CMP goals and policies may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Section §331.202 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are
planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

**Submittal of Comments**

Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.
SUBCHAPTER L: GENERAL PERMIT AUTHORIZING USE OF A CLASS I INJECTION WELL TO INJECT NONHAZARDOUS DESALINATION CONCENTRATE OR NONHAZARDOUS DRINKING WATER TREATMENT RESIDUALS

§331.202

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission’s authority to manage solid waste; THSC, §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.
The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 27.019; and THSC, §361.024.


(a) Applicability. The requirements of subsections (b) - (e) of this section apply to processing a new general permit, an amendment, renewal, revocation, or cancellation of a general permit.

(b) Notice of a draft general permit shall be published as follows:

(1) Notice shall be published in the Texas Register and in at least one newspaper of statewide or regional circulation; and

(2) The public notice shall be published not later than the 30th day before the commission considers the approval of a general permit.

(c) The contents of a public notice of a draft general permit shall:

(1) include the applicable information described in §39.411 [§39.11] of this title (relating to Text of Public Notice);
(2) include an invitation for written comments by the public to the commission regarding the proposed draft general permit; and

(3) specify a comment period of at least 30 days.

(d) Requirements relating to public meetings are as follows:

(1) The agency may hold a public meeting to provide an additional opportunity for public comment and shall hold such a public meeting when the executive director determines, on the basis of requests, that a significant degree of public interest in a draft general permit exists.

(2) Notice of a public meeting shall be by publication in the Texas Register not later than the 30th day before the date of the meeting.

(3) Notice of a public meeting shall be mailed to the following:

(A) the county judge of the county or counties in which permittees under the general permit could be located;
(B) persons who filed public comment or request for a public meeting on or before the deadline for filing public comment or request for a public meeting; and

(C) any other person the executive director or chief clerk may elect to include.

(4) The contents of a notice of a public meeting shall include the applicable information described in §39.411 [§39.11] of this title. Each notice must include an invitation for written or oral comments by the public regarding the draft general permit.

(5) The public comment period shall automatically be extended to the close of any public meeting held by the agency on the proposed general permit.

(e) If the agency receives public comment during the comment period relating to issuance of a general permit, the executive director shall respond in writing to these comments, and this response shall be made available to the public and filed with the chief clerk at least ten days before the commission considers the approval of the general permit. The response shall address all written comments received during the comment period and oral or written comments received during any public meeting held by the agency. The commission shall consider all public comment in making its
decision and shall either adopt the executive director's response to public comment or prepare its own response.

(1) The commission shall issue its written response to comments on the general permit at the same time the commission issues or denies the general permit.

(2) A copy of any issued general permit and response to comments shall be made available to the public for inspection at the agency's Austin office and also in the appropriate regional offices.

(3) A notice of the commission's action on the proposed general permit and a copy of its response to comments shall be mailed to each person who made a comment during the comment period.

(4) A notice of the commission's action on the proposed general permit and the text of its response to comments shall be published in the Texas Register.