Background and reason(s) for the rulemaking:
A petition for rulemaking was filed with the Texas Commission on Environmental Quality (TCEQ, agency, or commission) on November 12, 2019, by the Texas Environmental Justice Advocacy Services and Sierra Club (petitioner). The petitioner requested that the commission adopt rules that extend the existing alternative language requirement found in 30 TAC §39.405(h) to public meetings held under 30 TAC §55.154, requiring at least 30 days mailed and published notice of such public meetings, and guaranteeing professional interpretation services when commission rules require alternative language public meeting notice (Project Number 2020-012-PET-NR). This rulemaking is initiated pursuant to the commission’s order dated December 18, 2019, in which the commission granted the petition and directed the executive director to initiate rulemaking for further evaluation of the issues raised in the petition.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:
Staff evaluated extending existing alternative language requirements to additional public notice in waste, water, and air permit applications that must meet House Bill 801 notice requirements (86th Texas Legislature, 1999), beyond the requirements for alternative language publications of Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD). The public participation rules are intended to allow affected communities to participate in the permitting process for air, waste, and water quality permit applications. Communities and individuals with Limited English Proficiency (LEP) must be accommodated to allow full participation in these processes, despite the potential language barrier.

The proposed rulemaking would extend requirements for alternative language notice to notices for public meetings, when alternative language notice is required for NORI and NAPD publication. The proposed rules would also require that notice for air permit applications be mailed out by the Chief Clerk’s Office at least 30 calendar days prior to the public meeting. The proposed rules would require the executive director to provide a response to comments (RTC) in an alternative language when comments are received in an alternative language. Translated RTCs may also be provided if the executive director
determines that there is a need in the community for such a translation, or if one is requested by a local legislator. Additionally, when requests for contested case hearings are received in an alternative language, the executive director, Office of Public Interest Council, and applicant would be required to provide any responses in the alternative language. The proposed rulemaking would also require permit applicants to provide a brief plain-language summary of their proposed project; this summary would be translated and posted on the commission’s website when alternative language publication is required.

B.) Scope required by federal regulations or state statutes:
Title VI of the federal Civil Rights Act of 1964 states that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." TCEQ receives federal funds and is required to comply with the requirements of Title VI. The agency has a responsibility to ensure that equal opportunities for public participation are provided, and that LEP does not prevent interested parties from being able to participate in the permitting processes.

C.) Additional staff recommendations that are not required by federal rule or state statute:
Staff solicited comments and input from interested parties, specifically through holding statewide stakeholder meetings during the development of the proposal of the rules. Staff also recommends identifying potentially useful ways to address needs of environmental justice and LEP communities that can be addressed by the agency outside the rulemaking process.

Statutory authority:
- Texas Government Code, §2001.004;
- Texas Water Code (TWC), §§5.102, 5.103, 5.105, and 5.112;
- TWC, Chapter 5, Subchapter M;
- TWC, Chapter 26, Water Quality Control;
- TWC, Chapter 27, Injection Well Act;
- Texas Health and Safety Code (THSC), Chapter 361, Solid Waste Disposal Act;
- THSC, Texas Clean Air Act, §§382.011, 382.017, 382.0515, 382.056, and 382.058; and

Effect on the:

A.) Regulated community:
The regulated community would be required to publish additional notice on some permit applications that have public interest, or that are in areas that have LEP communities that may be affected by such applications. This could potentially increase costs of some applications. Translation of agency documents such as responses to comments could
potentially take more time to complete, which could cause some delay in the processing of permit applications.

B.) Public:
The public, particularly affected communities that may have LEP, would receive notices and assistance that should assist with public participation in the permitting process.

C.) Agency programs:
Air, water, and waste permitting programs would have to ensure that applicants meet the proposed new requirements. Programs would also have to potentially extend resources to ensure that documents are properly translated. The agency may decide to meet such requirements through a variety of mechanisms such as hiring an internal agency translator, contracting for translation services, or requesting volunteers from current agency staff for competent translators.

Stakeholder meetings:
Stakeholder meetings were originally scheduled in person across the state during March 2020. However, due to the COVID-19 pandemic those meetings were postponed. Virtual stakeholder meetings were held October 19, 20, and 22, 2020.

The notice for these meetings was translated into Spanish, and translation services were made available at these meetings. Best methods were used to ensure that notice of these meetings reached stakeholders, including publication on the commission’s website, sending out to commission listservs, requesting the United State Environmental Protection Agency’s (EPA) assistance with their environmental justice specific listservs and resources, and informing the parties that petitioned for rulemaking on these issues.

Potential controversial concerns and legislative interest:
Recent permitting actions that have had potential effects on environmental justice communities, including LEP communities, have had interest from legislators. This includes permitting actions that are currently in the notice process that have had requests from legislators for translation services at public meetings, and for such meetings to be noticed in alternative languages. In the 2019 session there were multiple bills filed that concerned environmental justice issues, including the issue of notice to potentially affected communities that have LEP.

Additionally, the parties that filed the petition for rulemaking on these issues also filed a Title VI complaint with the EPA alleging that the commission is deficient in implementing notice of public participation opportunities for communities with LEP. EPA accepted this complaint for investigation and entered into a resolution agreement process with the commission. A joint resolution agreement was signed by TCEQ and EPA on November 3, 2020.

Would this rulemaking affect any current policies or require development of new policies?
The proposed rulemaking would require the commission to provide alternative language documents explaining how to engage in the public participation process. Transmittal
letters that accompany response to comments, notice of agenda meetings, notice of draft permits, notice of hearings, and potentially others would be provided in alternative languages when such accommodations are necessary to ensure the LEP individuals and communities can participate in the permitting processes. Additionally, the agency would provide interpretation services at agenda meetings, when such services are necessary.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
The commission could decide not to implement rule changes to extend alternative notice requirements for public notice. The commission could also decide to implement rules that extend some requirements, but not others. This process, and the commission’s decisions of these potential rule changes, would likely be considered by EPA as it evaluates how the commission meets the requirements of the joint resolution agreement that resolved the Title VI complaint on these issues.

Key points in the proposal rulemaking schedule:
- **Anticipated proposal date:** March 10, 2021
- **Anticipated Texas Register publication date:** March 26, 2021
- **Anticipated public hearing date:** Virtual hearings - April 20 and April 22, 2021
- **Anticipated public comment period:** March 26, 2021- April 26, 2021
- **Anticipated adoption date:** July 28, 2021

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Attachments:
Petition Order

cc: Chief Clerk, 2 copies
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