

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Adoption of Rules Review & Readoption of Chapter 91

**AGENDA REQUESTED:** May 10, 2023

**DATE OF REQUEST:** April 21, 2023

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Agenda Coordinator, (512) 239-2678

**CAPTION: Docket No. 2022-1602-MIS.** Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities. This review is in accordance with Texas Government Code, Section 2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The proposal was published in the January 6, 2023, issue of the *Texas Register* (48 TexReg 57). (Michael Wilhoit, Abigail Adkins) (Non-Rule Project No. 2023-012-091-AI)

Richard C. Chism

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**Director**

Samuel Short

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**Division Deputy Director**

Gwen Ricco

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**Agenda Coordinator**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 21, 2023

**Thru:** Laurie Gharis, Chief Clerk  
Erin E. Chancellor, Interim Executive Director

**From:** Richard C. Chism, Director *RCC*  
Office of Air

**Docket No.:** 2022-1602-MIS

**Subject:** Commission Approval for Adoption of Rules Review and Readoption of Rules  
Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities  
Rules Review of 30 TAC Chapter 91  
Non-Rule Project No. 2023-012-091-AI

**What the proposed action would do:**

This action will approve the rules review of Chapter 91, and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality, after opportunity for public review and comment, that the initial reasons for adopting the rules of this chapter continue to exist.

**Applicable law:**

The review of the rules is authorized under the requirements of Texas Government Code, §2001.039; and with the General Appropriations Act, Article IX, §9-10.13, 76th Texas Legislature, 1999, which require state agencies to review and consider for re adoption each of their rules every four years.

**Reason rules are needed:**

Executive director's staff conducted a review of the rules in Chapter 91 and determined that the reasons for adopting these rules continue to exist. The rules in Chapter 91 implement House Bill 2201, 79th Texas Legislature (2005), codified in part as new Texas Health and Safety Code, §382.0565 and Texas Water Code, §5.558. Chapter 91 implements reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile. This chapter provides the TCEQ the opportunity to use public meetings, informal conferences, or advisory committees to gather input of interested persons on an application subject to Chapter 91 when there is a significant degree of public interest. The permit processes authorized under this chapter are not subject to the requirements relating to a contested case hearing.

**Rules found to be obsolete:**

None.

**Public comment:**

A public hearing was not offered for this review. The comment period for this rules review closed on February 6, 2023. No comments were received.

Commissioners

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April 21, 2023

Re: Docket No. 2022-1602-MIS

**Affected agency programs:**

The program area responsible for implementing these rules is the Air Permits Division.

**Agency contacts:**

Michael Wilhoit, Project Manager, Air Permits Division, (512) 239-1222

Abigail Adkins, Staff Attorney, Environmental Law Division, (512) 239-2496

Booker Harrison, Senior Attorney, Environmental Law Division, (512) 239-4113

Gwen Ricco, Texas Register/Agenda Coordinator, (512) 239-2678

**Attachments:**

*Texas Register* publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Commission on Environmental Quality

### Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 91 continue to exist.

Comments regarding suggested changes to the rules in Chapter 91 may be submitted during this review but comments will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 91. Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-012-091-AI. Comments must be received by February 6, 2023. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

TRD-202205212

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 22, 2022



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 317, Design Criteria Prior to 2008.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the com-

mission will assess whether the reasons for initially adopting the rules in Chapter 317 continue to exist.

Comments regarding suggested changes to the rules in Chapter 317 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 317. Written comments may be submitted to Gwen Ricco, 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://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-014-317-OW. Comments must be received by February 5, 2023. For further information, please contact Shannon Gibson, Water Quality Division at (512) 239-4284.

TRD-202205213

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 22, 2022



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 337, Dry Cleaner Environmental Response.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 337 continue to exist.

Comments regarding suggested changes to the rules in Chapter 337 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 337. Written comments may be submitted to Gwen Ricco, 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

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the January 6, 2023, issue of the *Texas Register* (48 TexReg 57).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in 30 TAC Chapter 91 are required because the rules implement House Bill 2201, 79th Texas Legislature (2005), codified in part as new Texas Health and Safety Code, §382.0565 and Texas Water Code, §5.558. Chapter 91 implements reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile. This chapter provides the commission the opportunity to use public meetings, informal conferences, or advisory committees to gather input of interested persons on an application subject to Chapter 91 when there is a significant degree of public interest. The permit processes authorized under this chapter are not subject to the requirements relating to a contested case hearing.

### Public Comment

The public comment period closed on February 7, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 91 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

# Texas Commission on Environmental Quality



## ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2022-1602-MIS  
Non-Rule Project No. 2023-012-091-AI

On May 10, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for re-adoption each of its rules every four years. The proposed Notice of Intention to Review was published in the January 6, 2023, issue of the *Texas Register* (48 TexReg 57).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 91 is hereby adopted. The rules and the preamble to the rules approved by the Commission are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IF ANY PORTION OF THIS ORDER is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed