

Texas Commission on Environmental Quality

Interoffice Memorandum

Date: May 3, 2023

To: Erin E. Chancellor, Interim Executive Director

Thru: Charmaine K. Backens, Acting Director
Office of Legal Services

From: Guy Henry, Acting Division Deputy Director
Environmental Law Division

Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 50, Actions on Applications and Other Authorizations

Suggested short title: Update to 30 Texas Administrative Code (TAC) §50.131

Introduction and reason(s) for the rulemaking:

The executive director has identified a conflict between statutory language in Texas Health and Safety Code (THSC), §382.061(b) and the implementing rules in 30 TAC §50.131 related to air quality standard permits.

Scope of the proposed rule:

The proposed rule would delete 30 TAC §50.131(c)(1). This would ensure that the commission's rules in Chapter 50 allow for an opportunity for the commission to review the executive director's (ED) decisions on air quality standard permits, in accordance with THSC, §382.061(b).

A.) Scope required by federal regulations or state statutes:

The proposed change is required to align commission rules with statutory requirements that permitting decisions made by the ED are subject to review by the commission.

B.) Additional staff recommendations:

Potential controversial concerns and legislative interest:

This rule proposal has legislative interest and has been specifically requested by members of the legislature.

Potential alternatives:

The commission could not pursue rulemaking on this issue. However, if rulemaking is not undertaken at this time, a legislative change is expected that would ensure that this rulemaking is necessary.

Effect on the:

A.) Regulated community: Increased likelihood of motions to overturn being submitted on air quality standard permits issued by the ED.

B.) Public: Increased opportunities to request review of issued air quality standard permits.

C.) Agency programs: Air Permits Division and the Environmental Law Division could face increase in agenda notices (and related briefing) for motions to overturn on approved registrations for authorization under an air quality standard permit.

Proposed schedule and constraints: Expediated timeline for this rulemaking.

Anticipated Proposal Date: June 28, 2023

Anticipated Public Comment Period: July 14 - August 14, 2023

Anticipated Adoption Date: September 27, 2023

Planned Stakeholder involvement:

No

Public Involvement Plan

Yes.

Alternative Language Requirements

Yes. Spanish language notice is required.

Statutory authority:

Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

Texas Water Code (TWC), §§5.102, 5.103, 5.105, and 5.112.

THSC, Texas Clean Air Act, §§382.011, 382.017, 382.0515, 382.056, 382.058, and 382.061.

Direction and Guidance:

Rule or Non-Rule Project number: 2023-130-050-LS

Electronic cc: Deputy Executive Director
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Attachments:

NOTE: *TR will submit electronic notice to the following after ED Briefing:*

Office of General Counsel
Office of Public Interest Counsel