

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 9, 2023

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

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

Docket No.: 2023-0583-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 50, Actions on Applications and Other Authorizations
Update to 30 TAC §50.131
Rule Project No. 2023-130-050-LS

Background and reason(s) for the rulemaking:

Recent interest in air standard permit applications has brought to light an inconsistency between the Texas Commission on Environmental Quality (TCEQ, agency, or commission) rules in Chapter 50 and statutory requirements in Texas Health and Safety Code (THSC), §382.061(b). The rulemaking would clarify that air standard permits are reviewable through the commission's motion to overturn process by deleting 30 Texas Administrative Code (TAC) §50.131(c)(1), which currently exempts decisions by the executive director on standard permit registrations from the motion to overturn process.

Scope of the rulemaking:

This is a rulemaking to conform an agency rule with statutory requirements. The rulemaking would delete 30 TAC §50.131(c)(1) and renumber the remaining parts of §50.131(c). This would remove the exemption from a motion to overturn the executive director's decision on registrations to be authorized under a standard permit. Once the change in the rule is adopted and becomes effective, it would be clear that applicants and affected persons who wish to appeal the executive director's decision to issue a registration for a standard permit may request that the commission overturn that decision through the agency's established motion to overturn process. This administrative action would be required before such decisions could be challenged in district court. Thus, the administrative remedy would have to be exhausted prior to a judicial challenge. This change is being proposed to align the agency's rules with THSC, §382.061(b), which generally requires executive director actions on air standard permits to be reviewable by the commission.

A.) Summary of what the rulemaking would do: Delete current §50.131(c)(1) and renumber the remaining parts of §50.131(c).

B.) Scope required by federal regulations or state statutes: This change is required for consistency with THSC, §382.061(b), which generally requires executive director actions on permits to be reviewable by the commission.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.

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

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(TWC), §§5.102, 5.103, 5.105, and 5.112. THSC, §§382.011, 382.017, 382.0515, 382.056, 382.058, and 382.061.

Effect on the:

A.) Regulated community: A small number of applications for air quality standard permit registrations may face additional challenge by interested parties, and executive director decisions on their permit approvals may be subject to review by the commission.

B.) Public: The public may gain clarity regarding the process for challenging executive director decisions on applications for registrations for air quality standard permits.

C.) Agency programs: This rule change is expected to have minimal impact on agency activities. Executive director decisions on applications for registrations of standard permits are currently subject to appeal before the commission pursuant to THSC §382.061(b), and the commission currently reviews appeals on their merits. Clarifying to applicants and the public that the commission's motion to overturn process is available may result in a small number of additional motions to overturn that must be reviewed each year.

Stakeholder meetings:

There were no stakeholder meetings for this rule project.

Public Involvement Plan

A Public Involvement Plan was developed for this rulemaking.

Alternative Language Requirements

Spanish.

Potential controversial concerns and legislative interest:

There has been legislative interest in this issue, including from Senators Birdwell and Alvarado. At a Senate Natural Resources & Economic Development Committee meeting during the 88th legislative session, the chairman of the committee, Senator Birdwell, indicated that the agency should work to expeditiously resolve the inconsistency between the agency's rules and the requirements of THSC, §382.061(b), which generally requires executive director actions on permits to be reviewable by the commission.

Would this rulemaking affect any current policies or require development of new policies?

This rulemaking would remove a current exemption in agency rules from the motion to overturn process for the executive director's decision on a registration for authorization under an air quality standard permit.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If this rulemaking does not go forward, it is expected that the legislature would likely act to require a similar rulemaking in the future.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: June 28, 2023

Anticipated *Texas Register* publication date: July 14, 2023

Anticipated public hearing date: August 1, 2023

Anticipated public comment period: July 14 - August 14, 2023

Anticipated adoption date: September 27, 2023

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Attachments:

None

cc: Chief Clerk, 2 copies
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