

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Jon Black, Major NSR Permitting Section Manager; Alan Humpherys, Minor NSR Permitting Section Manager; and David Beatty, Title V Permitting Section Manager

DATE: September 1, 2021

SUBJECT: PROPOSE FOR PUBLIC COMMENT: Amend R307-401-7. Public Notice, R307-401-19. General Approval Order, and R307-415-7i. Public Participation.

As R307-401 is currently written, the Division of Air Quality (DAQ) notices permitting actions in physical newspapers only, providing the full text of the notice with any other required information. The proposed rule amendments change the required newspaper public notices for permitting actions (major and minor new source review, general approval orders, and Title V permitting) to electronic public notices under Section 42-1-101(2) of the Utah Code. Under this Section, electronic notices are published by the newspapers on the utahlegals.com website, a comprehensive database for all legal notices in Utah. In addition, the notices may also be published in the physical newspapers directing the public to the utahlegals.com website for a full text of each notice.

Further, the proposed amendments will require the DAQ to post notices and information on the DAQ's website. Specifically, a notice of a permitting action and a draft permit with the administrative record or information on how to access the administrative record. DAQ must post this information for the entire duration of the public comment period. Previously, DAQ had been posting the draft permits and other related information on the DAQ's website as a courtesy to the public, but it was not required.

These amendments make Utah rules the same as the federal rules for public notices of permitting actions. EPA issued a final rule on this subject on October 18, 2016, effective November 17, 2016, making a change to e-notices.¹ EPA's October 2016 rule removed the mandatory public notice requirement for New Source Review and Title V programs (and a few other programs) to publish draft permits and other program actions in the newspaper and replaced it with electronic notices.² The rule also allowed authorities implementing EPA-approved programs or federal permitting rules to meet the publication requirement through e-notice.³ This means that DAQ's currently proposed rule amendments are authorized by this federal regulation. EPA made this change in part to increase access to permitting information.⁴

On June 10, 2021, the DAQ issued an advance notice of proposed rulemaking for these rule amendments to solicit stakeholder input. The stakeholder comment period ran until June 30, 2021. DAQ received one comment from Sean Hales, Managing Editor of Box Elder News

¹ See Revisions to Public Notice Provisions in Clean Air Act Permitting Programs, 81 Fed. Reg. 71,613 (Oct. 18, 2016).

² See *id.*, 81 Fed. Reg. at 71,613.

³ See *id.*

⁴ See *id.* ("The EPA further anticipates that e-access will expand access to permit-related documents.")

Journal, opposing the proposed amendments. The commenter opposed the amendments for three reasons: (1) lack of transparency and accountability if the DAQ is allowed to publish its own notices of permitting actions and run its own notice website; (2) difficulties for the public in locating the notice information because it is available only on the DAQ's website and not in the newspapers; and (3) decline in revenues to the newspapers (especially local newspapers) who are necessary sources of information and act as watchdogs on the local governments

In response to (1) and (2), the DAQ is not allowed by statute to run its own public notice website. Section 42-1-101(2) of the Utah Code requires that the DAQ publishes electronic notices of permitting actions on the utahlegals.com website and additional optional notices in physical newspapers directing the public to the website notice for the full text of the notices. This means that under the amended rules, the DAQ will continue working with the newspapers to publish electronic notices. The DAQ will only be publishing notices and draft permits with administrative records on its own website as an additional notice. This amendment increases transparency and reaches more members of the public because the notices will now be published in two places online. With the increased use of online resources, more people will have the opportunity to see these notices if the rules are amended. As noted above, EPA made the same observation when removing newspaper publication requirement and replacing it with e-notices for federal permitting actions.⁵

To further increase transparency, the rule amendments make it easier for the public to view draft permits and the corresponding administrative records because they are published online and available for the duration of the public comment period. This was not previously a requirement although the DAQ typically posted notices on its website as a courtesy. The amended rules make this optional process a mandatory requirement.

In response to (3), the newspapers are allowed to charge up to 15% “of the newspaper’s average advertisement rate for publishing five column lines in the newspaper to publish legal notice on the public legal notice website.”⁶ Consequently, the newspapers will continue to receive revenue by publishing electronic notices and optional short notices in the physical newspapers.

The DAQ performed a fiscal analysis to determine the impact of this rulemaking on small and non-small businesses as required by the rulemaking process. A small business is defined as a company employing fewer than 50 persons.⁷ All other businesses employing 50 or more persons are non-small businesses. The DAQ publishes notices with the newspapers that are both small and non-small businesses and will continue to publish electronic notices of permitting actions with these newspapers.

The DAQ collected data by calling individual newspapers to determine the cost of the electronic notices and calculated approximate savings to its budget based on the previous expenditures and new decreased charges going forward. The approximate impact is going to be a \$3,125 annual decrease in revenues for small businesses and an \$8,350 annual decrease in revenues for non-small businesses with the total decrease in revenue for all businesses at \$11,475 annually.

⁵ See 81 Fed. Reg. at 71,163 and footnote 4 of this Memorandum.

⁶ Utah Code § 45-1-101(6)(a) (West 2021).

⁷ *Id.* § 63G-3-102(21).

Conversely, the DAQ will save approximately \$11,475 annually in its budget by switching to electronic notices.

Overall, the proposed amendments have a net-zero fiscal impact, increase transparency, potentially reach more people with two online notices, and create easier access to draft permits proposed for public comment and the corresponding administrative records. The rule amendments also align state rules with the federal regulations.

Recommendation: Staff recommends that the Board propose amended R307-401-7, R307-401-19, and R307-415-7i for public comment.