

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§39.501, 39.503, and 39.651 *with changes* to the text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2403).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 1609, 79th Legislature, 2005, amended Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082, by making the applicant's public meeting and the TCEQ's public meeting on new hazardous waste management facilities and new municipal solid waste management facilities discretionary, rather than mandatory. In order to implement this change, the commission adopts amendments to §§39.501, 39.503, and 39.651 to reflect the change in statutory language from "shall hold a public meeting" to "may hold a public meeting."

#### SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the existing rule language into agreement with Texas Register requirements, agency guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

The adopted amendments to §39.501(e), Application for Municipal Solid Waste Permit, distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005. The mandatory public meeting requirements in paragraph (1) for applications filed before September 1, 2005, are left in place, changing the subject from the "applicant" to the "application" to conform to the language in Section 6 of HB 1609. New paragraph (2) is adopted for discretionary public meetings for applications filed on or after September 1, 2005, and removes the

45-day requirement for the applicant's public meeting. New paragraph (2)(A)(i) also specifies that the agency's public meeting will be held under 30 TAC §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of Texas Water Code (TWC), §5.554 in new clause (ii). New paragraph (3) defines "substantial public interest" in terms of a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located. Existing paragraphs (2) - (4) are renumbered as paragraphs (4) - (6), and references back to paragraph (1)(A) in renumbered paragraphs (4) and (6) are made to refer back to paragraph (1)(A) or (2)(A) while the reference back to paragraph (1)(B) in renumbered paragraph (5) is made to refer back to paragraph (1)(B) or (2)(B).

The adopted amendments to §39.503(e)(1), Application for Industrial or Hazardous Waste Facility Permit, distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the "applicant" to the

“application” to conform to the language in Section 6 of HB 1609. New paragraph (1)(A) retains the mandatory public meeting for applications filed before September 1, 2005, while new paragraph (1)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005. New paragraph (1)(B)(i) also specifies that the agency’s public meeting will be held under 30 TAC §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director’s discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii).

The adopted amendments to §39.503(e)(2) distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the “applicant” to the “application” to conform to the language in Section 6 of HB 1609 and including Class 3 modifications with major amendments. New paragraph (2)(A) retains the mandatory public meeting for applications filed before September 1, 2005, if a person affected files a request for a public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. New paragraph (2)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005, and removes the affected person requirement deleted from the statute in HB 1609. New paragraph (2)(B)(i) also specifies that the agency’s public meeting will be held under §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents

the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii). New paragraph (3) defines "substantial public interest" in terms of a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located. Existing paragraphs (3) - (6) are renumbered as paragraphs (4) - (7).

The adopted amendments to renumbered §39.503(e)(4) distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the "applicant" to the "application" to conform to the language in Section 6 of HB 1609. New paragraph (3)(A) retains the applicant's mandatory public meeting for applications filed before September 1, 2005, and retains the 45-day deadline. New paragraph (3)(B) makes the applicant's public meeting discretionary for applications filed on or after September 1, 2005.

The adopted amendments to renumbered §39.503(e)(5) and (7) make references back to paragraph (1) refer back to paragraph (1) or (2).

The adopted amendments to §39.651(e)(1), Application for Injection Well Permit, distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the “applicant” to the “application” to conform to the language in Section 6 of HB 1609. New paragraph (1)(A) retains the mandatory public meeting for applications filed before September 1, 2005, while new paragraph (1)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005. New paragraph (1)(B)(i) also specifies that the agency’s public meeting will be held under §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director’s discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii).

New §39.651(e)(2) separates the requirements for public meetings on applications for major amendments from old paragraph (1) and distinguishes between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the “applicant” to the “application” to conform to the language in Section 6 of HB 1609 and including Class 3 modifications with major amendments. New paragraph (2)(A) retains the mandatory public meeting for applications filed before September 1, 2005, if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. New paragraph (2)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005, and removes the affected person requirement deleted

from the statute in HB 1609. New paragraph (2)(B)(i) also specifies that the agency's public meeting will be held under §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii). New paragraph (3) defines "substantial public interest" in terms of a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

New §39.651(e)(4) separates the statements that a public meeting is not a contested case proceeding and that a public meeting held as part of a local review committee process meets the requirements of this subsection if public notice is provided, similar to the separation of these statements in §39.501(e)(4) and §39.503(e)(5). Existing paragraphs (2) and (3) are renumbered as paragraphs (5) and (6).

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225, because they do not meet the criteria for a “major environmental rule” as defined in that statute.

A “major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the rules is to make public meetings on applications for new, major amendments, or Class 3 modifications for hazardous waste management facilities or new municipal solid waste management facilities discretionary. It is not anticipated that the rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these rules do not meet the definition of a major environmental rule.

Furthermore, even if the rules did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an

agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the rules do not meet any of these requirements. First, the applicable federal standard calls for discretionary public meetings if there is a significant degree of public interest in a draft permit (40 Code of Federal Regulations §124.12(a)). Second, the rules do not exceed an express requirement of state law in Texas Health and Safety Code, §§361.0666(a), 361.0791(a) and (b), and 361.082(d), as amended by HB 1609. Third, there is no delegation agreement that would be exceeded by the rules. Fourth, the commission adopts these rules under the specific authority of Texas Health and Safety Code, §§361.0666(a), 361.0791(a) and (b), and 361.082(d). These rules are also adopted under the authority of Texas Health and Safety Code, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not adopt these rules solely under the commission's general powers.

The commission invited public comment on the draft regulatory impact analysis determination. No comments were received.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed a preliminary assessment of whether the rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the rules is to make public meetings for solid waste applications discretionary. The rules would substantially

advance this stated purpose by making public meetings on solid waste applications subject to the same discretionary standards used for other waste programs.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property because the rules do not affect real property. These rules exercise commission jurisdiction over public meetings for municipal solid waste and hazardous waste applications.

There are no burdens imposed on private real property, and the benefits to society are more efficient use of agency staff resources in avoiding public meetings where no one from the public attends. In addition, the rules do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

#### PUBLIC COMMENT

The proposed rules were published for comment in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2403). No public hearing was held. The comment period closed April 24, 2006. A comment

was received from the appointed representative from Red River County on the Solid Waste Advisory Committee of the Ark-Tex Council of Governments.

## RESPONSE TO COMMENTS

### Comment

The representative from Red River County commented that by making the public meeting requirement discretionary, no public meetings would occur. He asked that “shall” be preserved in the rule.

### Response

**The commission disagrees with this comment. The executive director’s discretion is restricted by §55.154 that requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. In addition, new language defines “substantial public interest” in terms of a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity’s governing body; a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council’s solid waste advisory committee, executive committee, or governing board; a homeowners’ or property owners’ association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.**

**No changes to the proposed rule were made in response to comments.**

**SUBCHAPTER I: PUBLIC NOTICE OF SOLID WASTE APPLICATIONS**

**§39.501, §39.503**

**STATUTORY AUTHORITY**

The amendments are adopted under Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082, as amended by HB 1609, which makes public meetings on solid waste applications discretionary; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

The adopted amendments implement HB 1609, which amended Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082.

**§39.501. Application for Municipal Solid Waste Permit.**

(a) **Applicability.** This section applies to applications for municipal solid waste permits that are declared administratively complete on or after September 1, 1999.

(b) **Preapplication local review committee process.** If an applicant for a municipal solid waste permit decides to participate in a local review committee process under Texas Health and Safety Code,

§361.063, the applicant shall submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing must be by certified mail.

(c) Notice of Receipt of Application and Intent to Obtain a Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located. This notice must contain the text as required by §39.411(b)(1) - (9), (11), and (12) of this title (relating to Text of Public Notice);

(B) the chief clerk shall publish Notice of Receipt of Application and Intent to Obtain Permit in the *Texas Register*; and

(C) the executive director or chief clerk shall mail the Notice of Receipt of Application and Intent to Obtain Permit, along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). The notice must be published after the chief clerk has mailed the Notice of Application and Preliminary Decision to the applicant. The notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(e) Notice of public meeting.

(1) If an application for a new facility is filed before September 1, 2005:

(A) the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; and

(B) the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.

(2) If an application for a new facility is filed on or after September 1, 2005:

(A) the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility; and

(B) the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(3) For purposes of this subsection, “substantial public interest” is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity’s governing body;

(B) a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council’s solid waste advisory committee, executive committee, or governing board;

(C) a homeowners’ or property owners’ association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1)(A) or (2)(A) of this subsection if public notice is provided under this subsection.

(5) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (1)(B) or (2)(B) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(6) For public meetings held by the agency under paragraph (1)(A) or (2)(A) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(f) Notice of hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(f)(2) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend a permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Notice under paragraphs (2) and (3)(B) of this subsection must be completed at least 30 days before the hearing.

**§39.503. Application for Industrial or Hazardous Waste Facility Permit.**

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth in 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a “significant change” is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director’s receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous

waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417). The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.45 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice must comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an application for a new hazardous waste facility is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning this application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment concerning the application if a person affected files a request for a public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(II) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) If an application for a new industrial or hazardous waste facility that would accept municipal solid waste is filed:

(A) before September 1, 2005, the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed; or

(B) on or after September 1, 2005, the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(5) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) or (2) of this subsection if public notice is provided under this subsection.

(6) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

- (A) permit application number;
- (B) applicant's name;
- (C) proposed location of the facility;
- (D) location and availability of copies of the application;
- (E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(7) For public meetings held by the agency under paragraph (1) or (2) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (concerning Contested Case Hearings).

(2) Newspaper notice.

(A) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) or have a total size of at least nine column inches

(18 square inches). The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the hearing.

(g) Injection wells. This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) apply to all applications for hazardous waste permits.

**SUBCHAPTER L: PUBLIC NOTICE OF INJECTION WELL  
AND OTHER SPECIFIC APPLICATIONS**

**§39.651**

**STATUTORY AUTHORITY**

The amendment is adopted under Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082, as amended by HB 1609, which makes public meetings on solid waste applications discretionary; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

The adopted amendment implements HB 1609, which amended Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082.

**§39.651. Application for Injection Well Permit.**

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (12) of this title (relating to Text of Public Notice). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School

Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For notice of receipt of application and intent to obtain a permit concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility; and

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. “Local governments” have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility; and

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an application for a new hazardous waste facility is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment on the application if a person affected files with the chief clerk a request for a public meeting concerning the application before the deadline to file public comment or to file requests for reconsideration or hearing; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(II) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, “substantial public interest” is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity’s governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council’s solid waste advisory committee, executive committee, or governing board;

(C) a homeowners’ or property owners’ association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (a)

of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(5) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility; and

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.