

The commission proposes an amendment to §1.10, concerning Document Filing Procedures. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules.

Explanation of the Proposed Rule

The proposed amendment to §1.10, concerning Document Filing Procedures, changes subsection (c) to provide that hearing requests may be filed by United States mail. This clarifies that hearing requests may not be filed by electronic mail.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of this rule is

to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the processing of hearing requests. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

A public hearing on this proposal will be held November 25, 1996, at 2:00 p.m. in Room 254S of TNRCC Building E, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Submittal of Comments

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96170-050-AD. Comments must be received by 5:00 p.m., November 25, 1996. For further information, please contact Brian Christian, Policy

Research Division, (512) 239-1760, or Richard O'Connell, Office of the General Counsel,
(512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§1.10. Document Filing Procedures.

(a)-(b) (No change.)

(c) Documents shall be filed by United States mail, facsimile, or hand delivery. If a person files a document by facsimile, he or she must file with the chief clerk the appropriate number of copies by mail or hand delivery within three days.

(d)-(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

The commission proposes new §50.19 and §50.43, concerning motions for rehearing and returning applications. The commission also proposes amendments to §§50.31, 50.33, 50.37, 50.39, and 50.41, concerning procedural rules, executive director action on applications, and motions for reconsideration. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules, and recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation.

Explanation of the Proposed Rules

Proposed new §50.19, concerning Motion for Rehearing, provides that the procedures contained in §80.271 of this title (relating to Motion for Rehearing) apply if the commission acts on an application. The section requires a motion for rehearing to be filed within 20 days after the date of notification of the commission's final decision or order on an application. The section also provides for the appeal of a final decision under statute, and notes that the section does not apply to emergency or temporary orders or authorizations.

The proposed amendment to §50.31, concerning Purpose and Applicability, adds a new subsection (d) providing that §50.39(b)-(f) applies to motions for reconsideration of executive director actions and limiting reconsideration of executive director actions on registrations to criteria originally required to be considered by the executive director. This amendment provides a consistent process for reconsideration of executive director actions.

The proposed amendments to §50.33, concerning Executive Director Action on Application, add new §50.33(a)(5), derived from old §50.33(a)(4)(A) and (B), to provide the executive director authority to act on an application if the application is uncontested because: no timely hearing requests are filed with the chief clerk; the applicant and the persons who filed timely requests have agreed in writing to the executive director's action; or any timely requests have been withdrawn in writing or denied. The amendments now provide consistent criteria for executive director action in all media. The amendments also add a new subsection (b), concerning the distribution of notices of the signed action by the chief clerk to interested persons, redesignate old subsection (b) as subsection (c), and correct a typographical error in the old subsection (b).

The proposed amendment to §50.37, concerning Remand for Action of the Executive Director, would allow executive director action where all timely hearing requests have been withdrawn or denied. The proposed amendment also provides that the general counsel may remand an application to the executive director.

The proposed amendment to §50.39, concerning Motion for Reconsideration, provides in subsection (d) that extensions of time will be by written order.

The proposed amendment to §50.41, concerning Eligibility of Executive Director, clarifies that the section is effective upon national pollutant discharge elimination system program delegation.

Proposed new §50.43, concerning Returning the Application, requires the executive director to return an application upon the applicant's request before the application is submitted to the State Office of Administrative Hearings (SOAH) and provides for the removal of the application from a commission's agenda.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the repeal of duplicative requirements, improvement in the hearings process of the commission, and enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of these rules is to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the

processing of hearing requests. The rules will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to these rules: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

A public hearing on this proposal will be held November 25, 1996, at 2:00 p.m. in Room 254S of TNRCC Building E, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Submittal of Comments

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96170-050-AD. Comments must be received by 5:00 p.m., November 25, 1996. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760, or Richard O'Connell, Office of the General Counsel, (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The new section is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed new section implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER A : PURPOSE, APPLICABILITY, AND DEFINITIONS

§50.19. Motion for Rehearing.

If the commission acts on an application, the procedures contained in §80.271 of this title (relating to Motion for Rehearing) apply. A motion for rehearing in such a case must be filed within 20 days after the date the person or his attorney of record is notified of the commission's final decision or order on the application. If the motion is denied under §80.271 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable), the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §§361.321, 382.032, or 401.341. This section does not apply to emergency or temporary orders or temporary authorizations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

SUBCHAPTER C : ACTION BY EXECUTIVE DIRECTOR

The amendments and new section are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments and new section implement Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§50.31. Purpose and Applicability.

(a)-(c) (No change.)

(d) Notwithstanding subsections (b) or (c) of this section, §50.39(b)-(f) of this title (relating to Motions for Reconsideration) applies to motions for reconsideration of the executive director's actions where the rules governing those actions so provide. If the rules under which the executive director evaluates a registration application provide criteria by which the application is to be evaluated, the commission's reconsideration will be limited to those criteria.

§50.33. Executive Director Action on Application.

(a) The executive director may act on an application subject to this subchapter if:

(1)-(3) (No change.)

(4) the executive director's staff and public interest counsel do not raise objections; and

[(A) for other than air quality applications, no timely protests or hearing requests are filed with the chief clerk, the application has become uncontested because the applicant and the persons who filed the protests or requests have agreed in writing to the action to be taken by the executive director or the protests or requests for hearing have been withdrawn in writing; or

[(B) for air quality applications, no timely hearing requests are filed with the chief clerk, or the application has become uncontested because any timely hearing requests have been withdrawn in writing.]

(5) the application is uncontested because:

(A) no timely hearing requests are filed with the chief clerk;

(B) the applicant and the persons who filed timely requests have agreed in writing to the action to be taken by the executive director; or

(C) any timely requests have been withdrawn in writing or have been denied.

(b) If the executive director acts on an application the chief clerk shall mail to the applicant, the public interest counsel, and to other persons who submitted public comment in response to public notice, a copy of the signed action by the executive director or a summary of its contents, any response to public comment under §55.25 of this title (relating to Responding to Public Comment), and an explanation of the opportunity to file a motion under §50.39 of this title (relating to Motion for Reconsideration), if applicable. The chief clerk need not mail to persons submitting public comment who have not provided a return mailing address. The chief clerk may mail the information to a representative group of persons when a substantial number of public comments have been submitted.

(c) [b] If an application does not meet the requirements of subsection (a) of this section, the executive director shall refer the application to the chief clerk. The chief clerk shall schedule the application for [the] consideration and action by the commission.

§50.37. Remand for Action by Executive Director.

At any time during the processing of an application, if all timely [protests and] hearing requests concerning the application are withdrawn or denied, the commission or the general counsel, or the judge if SOAH holds jurisdiction over the application, may remand the application to the executive director. If the application has been scheduled for a commission meeting, the chief clerk shall remove it from the commission's agenda.

§50.39. Motion for Reconsideration.

(a)-(c) (No change.)

(d) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for reconsideration and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant.

(e)-(f) (No change.)

§50.41. Eligibility of Executive Director.

This section is effective upon delegation of national pollutant discharge elimination system (NPDES) permit authority. The executive director may issue Texas pollutant discharge elimination system (TPDES) permits or other TPDES-related approvals only if he or she does not receive, and has not during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(1)-(2) (No change.)

§50.43. Returning the Application.

Upon a request by the applicant at any time before the application is referred to SOAH, the executive director shall return the application. If the application has been scheduled for a commission meeting, the chief clerk shall remove it from the commission's agenda.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

The commission proposes amendments to §§55.21, 55.25, 55.27, and 55.31, concerning procedural rules and hearings requests. The commission also proposes new §55.26, concerning hearing requests. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the consistent processing of hearing requests.

Explanation of the Proposed Rules

The proposed amendment to §55.21, concerning Requests for Contested Case Hearings, provides that hearing requests must be in writing and be filed by United States mail, facsimile, or hand delivery, and prescribes certain content requirements to aid in the processing of requests.

The proposed amendments to §55.25 change the name of the section from "Hearing Request Processing" to "Responding to Public Comment." The amendments also provide for the delivery of all documents filed with the chief clerk in response to the public notice of an application to the Offices of Public Assistance and Alternative Dispute Resolution. The amendments also provide for the chief clerk to provide certain information to persons requesting hearings and allow the commission to designate an agency office as responsible for evaluating and responding to public comment where appropriate.

Proposed new §55.26, concerning Hearing Request Processing, incorporates language concerning hearing requests previously in §55.25, concerning Hearing Request Processing, and provides that the process only applies to timely hearing requests. It also eliminates the earlier provision that one commissioner, acting alone, could refer a case to SOAH.

The proposed amendment to §55.27, concerning Commission Action on Hearing Request, provides that the determination of the validity of a hearing request is not, in itself, a contested case subject to the Texas Administrative Procedure Act (APA). The amendment also clarifies that a hearing request referred to SOAH must be processed using the procedures designated by the commission in the referral.

The proposed amendment to §55.31, concerning Determination of Reasonableness of Hearing Request, continues to consolidate commission procedures. It provides for a consistent set of criteria to be applied to hearing requests in all media, and expressly allows certain criteria that were formerly applicable only to air quality applications to be applied to all hearing requests.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the repeal of duplicative requirements, improvement in the hearings process of the commission, and enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of these rules is to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the processing of hearing requests. The rules will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to these rules: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

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Submittal of Comments

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Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The amendments and new section are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment and new section implement Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER B : HEARING REQUESTS

§55.21. Requests for Contested Case Hearings.

(a) (No change.)

(b) A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery [in writing] with the chief clerk within the time provided by subsection (d) of this section.

(c) A hearing request must substantially comply with the following:

(1) (No change.)

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

(3)-(4) (No change.)

(d)-(e) (No change.)

§55.25. Responding to Public Comment [Hearing Request Processing].

(a) The chief clerk shall deliver or mail to the executive director, the public interest counsel, the director of the office of public assistance, the director of the alternative dispute resolution office, and the applicant copies of all documents filed with the chief clerk in response to public notice of an application.

(b) The chief clerk shall respond in writing to a timely hearing request [, protest, or other response to the notice of application] to explain how the person may submit public comment to the executive director, [and] to describe alternative dispute resolution under commission rules, and to explain the requirements of this chapter.

(c) The commission may designate an agency office to evaluate and respond to public comment, other than timely hearing requests, when appropriate. If the application and timely hearing requests are considered by the commission, the designated office should file any response to public comment no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. A response shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, the applicant, and any persons filing public comment. If the application is approved by the executive director under Chapter 50, Subchapter C of this title

(relating to Action by the Executive Director), any response to public comment should be made no later than the time of the executive director's action on the application.

[(c) The executive director shall file a statement with the chief clerk indicating that technical review of the application is complete. The executive director may file the statement with the chief clerk either before or after public notice of the application is issued.

[(d) After a hearing request is filed and the executive director has filed a statement that technical review of the application is complete, the chief clerk shall process the hearing request by both:

[(1) referring the application and hearing request to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the person making the request for hearing; and

[(2) scheduling the hearing request for a commission meeting. The chief clerk should try to schedule the request for a commission meeting that will be held approximately 40 days after the later of the following:

[(A) the deadline to request a hearing specified in the public notice of the application; or

[(B) the date the executive director filed the statement that technical review is complete.

[(e) The executive director, the public interest counsel, and the applicant may submit written responses to the hearing request no later than 20 days before the commission meeting at which the commission will evaluate the hearing request. Responses shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, the applicant, and any persons filing hearing requests.

[(f) The person who filed the hearing request may submit a written reply to a response no later than six days before the scheduled commission meeting at which the commission will evaluate the hearing request. A reply shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, and the applicant.

[(g) The executive director, a commissioner, or the applicant, may file a request with the chief clerk that the application be sent directly to SOAH for a hearing. If a request is filed under this subsection, the commission's scheduled consideration of the hearing request will be canceled.]

§55.26. Hearing Request Processing.

(a) The requirements in this section and §55.27 of this title (relating to Action on Hearing Request) apply only to hearing requests that are filed within the time period specified in §55.21(d) of

this title (relating to Requests for Contested Case Hearings). An untimely hearing request shall be processed as public comment.

(b) The executive director shall file a statement with the chief clerk indicating that technical review of the application is complete. The executive director may file the statement with the chief clerk either before or after public notice of the application is issued.

(c) After a hearing request is filed and the executive director has filed a statement that technical review of the application is complete, the chief clerk shall process the hearing request by both:

(1) referring the application and hearing request to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the person making the request for hearing; and

(2) scheduling the hearing request for a commission meeting. The chief clerk should try to schedule the request for a commission meeting that will be held approximately 40 days after the later of the following:

(A) the deadline to request a hearing specified in the public notice of the application; or

(B) the date the executive director filed the statement that technical review is complete.

(d) The executive director, the public interest counsel, and the applicant may submit written responses to the hearing request no later than 20 days before the commission meeting at which the commission will evaluate the hearing request. Responses shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, the director of the office of public assistance, the applicant, and any persons filing hearing requests.

(e) The person who filed the hearing request may submit a written reply to a response no later than six days before the scheduled commission meeting at which the commission will evaluate the hearing request. A reply may also contain additional information responding to the letter by the chief clerk required by §55.25(b) of this title (relating to Responding to Public Comment). A reply shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, and the applicant.

(f) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to SOAH for a hearing. If a request is filed under this subsection, the commission's scheduled consideration of the hearing request will be canceled.

§55.27. Commission Action on Hearing Request.

(a) The determination of the validity of a hearing request is not, in itself, a contested case subject to the APA. The commission will evaluate the hearing request at the scheduled commission meeting, and may:

(1)-(2) (No change.)

(3) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the commission refers the hearing request to SOAH on the sole question of whether the request meets the requirements of this subchapter, the evaluation of the hearing request shall be processed using the procedures designated by the commission in the referral.

(b)-(f) (No change.)

(g) If a hearing request is denied, the procedures contained in §80.271 of this title (relating to Motion for Rehearing) [applies] apply. A motion for rehearing in such a case must be filed no earlier than, and no more than 20 days after, the date the person or his attorney of record is notified of the commission's final decision or order on the application. If the motion is denied under §80.271 and

§80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable) the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

§55.31. Determination of Reasonableness of Hearing Request.

(a) The reasonableness of a hearing request shall be based on all relevant factors including the following:

(1) whether the request is based solely on concerns outside of the jurisdiction of the commission; and

(2) whether the request is based on concerns related to other media that cannot be addressed by the pending application, even though within the jurisdiction of the commission.

[(b) For hearing requests on air quality applications:

[(1) The following criteria shall also be considered in making a determination of reasonableness:]

(3) [(A)] whether the project is an emissions, discharge, or waste reduction project including:

(A) [(i)] whether there are no increases in emissions of any contaminants, discharges, or waste and the reduction project is not driven by a noncompliance situation; and

(B) [(ii)] whether the project will have both emission, discharge, or waste reductions and incidental increases where the net effect is an emission, discharge, or waste reduction;

(4) [(B)] whether the project is mandated by commission rule;

(5) [(C)] the location of the proposed project;

(6) [(D)] whether the applicant requests authority to substitute an equivalent or more efficient control device;

(7) [(E)] whether the hearing request is based solely on something other than concerns about [air] pollution;

(8) [(F)] the extent to which the person requesting a hearing is likely to be impacted by the emissions, discharge, or waste; and

(9) [(G)] the applicant's compliance history.

(b) The commission shall consider the following additional factors for hearing requests on air quality applications.

(1) [(2)] A request concerning an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted is unreasonable.

(2) [(3)] Notwithstanding paragraph (1) [(2)] of this subsection, a request may be determined reasonable if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

The commission proposes amendments to §§80.25, 80.101, 80.131, and 80.271, concerning procedural rules, withdrawing applications, and remands to the executive director. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules and provide for the consistent processing of hearing requests.

Explanation of the Proposed Rules

The proposed amendment to §80.25, concerning Withdrawing the Application, provides that applications may be withdrawn before parties are named, and that they may be withdrawn without prejudice with the consent of the executive director and public interest counsel if no parties have been named.

The proposed amendment to §80.101, concerning Remand to Executive Director, clarifies that a case referred to SOAH may be settled and remanded to the executive director before parties are named.

The proposed amendment to §80.131, concerning Interlocutory Appeals and Certified Questions, amends subsection (c) to clarify that a motion to certify a question is directed to the administrative law judge, and that the judge will file a request to answer a certified question with the commission if the motion is granted.

The proposed amendment to §80.271, concerning Motion for Rehearing, amends subsection (d) to provide that extensions of time will be by written order.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of these rules is to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the processing of hearing requests. The rules will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to these rules: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

A public hearing on this proposal will be held November 25, 1996, at 2:00 p.m. in Room 254S of TNRCC Building E, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Submittal of Comments

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96170-050-AD. Comments must be received by 5:00 p.m., November 25, 1996. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760, or Richard O'Connell, Office of the General Counsel, (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER A : GENERAL RULES

§80.25. Withdrawing the Application.

(a)-(b) (No change.)

(c) If the parties agree in writing to the withdrawal of the application without prejudice or if the request to withdraw is filed before parties are named, the judge shall remand the application and request to the executive director, who shall enter an order dismissing the application without prejudice, on the terms agreed to by the parties, or by the applicant, executive director, and public interest counsel if no parties have been named.

(d) (No change.)

(e) An applicant is entitled to an order dismissing an application without prejudice if:

(1) the parties, or the applicant, executive director, and public interest counsel if no parties have been named, agree in writing;

(2)-(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

SUBCHAPTER C : HEARING PROCEDURES

The amendments are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§80.101. Remand to Executive Director.

At the request of the applicant [After providing opportunity for all affected persons to be named parties], a judge shall [may] remand an application to the executive director if all timely hearing requests have been withdrawn or denied or, if parties have been named, all parties to a contested case reach a settlement so that no facts or issues remain controverted. After remand, the application shall be uncontested[,], and the applicant is deemed to have agreed to the action of the executive director[,], and all hearing requests are deemed withdrawn]. The executive director may act on the application or set it for a commission meeting.

§80.131. Interlocutory Appeals and Certified Questions.

(a)-(b) (No change.)

(c) If a question [motion] is certified [granted], the judge shall file a request to answer the certified question with the chief clerk and serve copies on the parties. Within five days after the request [certified question] is filed, parties to the proceeding may file briefs or replies. The chief clerk shall provide copies of the request [certified question] and any briefs or replies to the general counsel and commission. Upon the request of the general counsel or a commissioner to the general counsel, the request [certified question] will be scheduled for consideration during a commission meeting. The chief clerk shall give the judge and parties notice of the meeting. The judge may abate the hearing until the commission answers the certified question, or continue with the hearing if the judge determines that no party will be substantially harmed. If the chief clerk does not receive a request from the general counsel to set the question for consideration within 15 days after filing, the request is denied by operation of law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

SUBCHAPTER F : POST HEARING PROCEDURES

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§80.271. Motion for Rehearing.

(a)-(c) (No change.)

(d) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the decision or order.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

The commission proposes an amendment to §116.136, concerning public comment procedures on applications for air quality permits. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules and provide for the consistent processing of hearing requests.

Explanation of the Proposed Rule

The proposed amendment to §116.136, concerning Public Comment Procedures, removes provisions relating to the content and handling of hearing requests. These provisions are redundant and duplicative of provisions contained in the commission's procedural rules.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the repeal of duplicative requirements, improvement in the hearings process of the commission, and enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of this rule is to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the processing of hearing requests. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

A public hearing on this proposal will be held November 25, 1996, at 2:00 p.m. in Room 254S of TNRCC Building E, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Submittal of Comments

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96170-050-AD. Comments must be received by 5:00 p.m., November 25, 1996. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760, or Richard O'Connell, Office of the General Counsel, (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§116.136. Public Comment Procedures.

(a) Comment period. Interested persons may submit written comments, including requests for public hearings pursuant to [the] Texas Clean Air Act, §382.056, on the permit application and on the executive director's preliminary decision to issue or not to issue the permit. The public comment and timely hearing requests shall be processed under Chapter 55, Subchapter B of this title (relating to Hearing Requests) [All such comments and hearing requests must be received in writing within 30 days of the last publication date of the notices specified in §116.132 of this title (relating to Public Notice Format). The comment period for permit renewals and for concrete batch plants which meet the conditions of a standard exemption is 15 days. Any requests for a contested case hearing shall include a brief, but specific, written statement of interest and basis for challenging the application. Such statement shall convey in plain language the requestor's location relative to the proposed facility, why the requestor believes he or she will be affected by emissions from the proposed facility, what the requestor's concerns are about the emissions from the proposed facility, and how the requestor believes emissions from the facility will affect him or her if permitted. This statement shall not be used as the basis for denial of party status in any contested case hearing. Party status determinations will be made based on evidence developed at the initial prehearing conferences].

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

The commission proposes an amendment to §312.13, concerning motions for reconsideration on certain sludge applications. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules.

Explanation of the Proposed Rule

The proposed amendments to §312.13, concerning Actions on Notice, provide that §50.39(b)-(f) applies to motions for reconsideration of executive director actions, limit reconsideration to issues required to be considered by the executive director, and make conforming changes.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the repeal of duplicative requirements and enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of this rule is to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the processing of hearing requests. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

A public hearing on this proposal will be held November 25, 1996, at 2:00 p.m. in Room 254S of TNRCC Building E, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Submittal of Comments

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96170-050-AD. Comments must be received by 5:00 p.m., November 25, 1996. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760, or Richard O'Connell, Office of the General Counsel, (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER A : GENERAL PROVISIONS

§312.13. Actions and Notice.

(a)-(d) (No change.)

(e) Motion for reconsideration.

[(1)] The applicant or a person affected may file with the chief clerk a motion for reconsideration, under §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final approval of an application.

[(2)] A motion for reconsideration must be filed with the chief clerk not later than the 20th day after the date on which the chief clerk mailed to the applicant the signed registration or other approval.

[(3)] A decision by the executive director, including a registration issued by the executive director, is not affected by the filing of a motion for reconsideration under this section unless expressly so ordered by the commissioners. If a motion for reconsideration is not acted on by the commissioners within 45 days after the date on which the chief clerk mailed the signed registration or approval to the applicant, the motion shall be deemed overruled. When a motion for reconsideration is overruled by commission action or pursuant to this subsection, the Texas Government Code,

§2001.146, regarding motions for rehearing in contested cases is inapplicable and no motions for rehearing shall be filed. To the extent applicable, the commission decision may be subject to judicial review pursuant to Texas Water Code, §5.351 or the Texas Health & Safety Code, §361.321.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

The commission proposes an amendment to §321.97, concerning motions for reconsideration on applications by certain small and medium shrimp packers for certificates of registration. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules.

Explanation of the Proposed Rule

The proposed amendments to §321.97, concerning Appeal of Decisions by Executive Director, provide that §50.39(b)-(f) applies to motions for reconsideration of executive director actions, limit reconsideration to issues required to be considered by the executive director, and make conforming changes.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the repeal of duplicative requirements and enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of this rule is to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the processing of hearing requests. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

A public hearing on this proposal will be held November 25, 1996, at 2:00 p.m. in Room 254S of TNRCC Building E, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Submittal of Comments

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96170-050-AD. Comments must be received by 5:00 p.m., November 25, 1996. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760, or Richard O'Connell, Office of the General Counsel, (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER F : SHRIMP INDUSTRY

§321.97. Motion for Reconsideration [Appeal of Decisions by Executive Director].

Any person aggrieved by a decision of the executive director under this subchapter may file with the chief clerk a motion for reconsideration under §50.39(b)-(f) of this title (relating to Motion for Reconsideration) [, within 30 days of the notification of the decision, appeal the decision to the commission. Written notice shall be given to the executive director at the time such appeal is filed with the commission. If any person is denied a certificate of registration, he or she may request that a public hearing be held to consider the denial. The public hearing shall be held in accordance with the commission's procedural rules. Notice of the public hearing shall be issued in accordance with the Texas Water Code, §26.022, as amended. After notice and opportunity for a public hearing, the commission shall by order affirm, revoke or modify the decision of the executive director. Appeal to the commission is a prerequisite to judicial review].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

The commission proposes amendments to §330.70, concerning motions for reconsideration on applications for certain municipal solid waste facilities and §330.802, concerning motions for reconsideration on applications for certain scrap tire facilities. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules and provide for the consistent internal processing of hearing requests.

Explanation of the Proposed Rules

The proposed amendments to §330.70, concerning Registration of Facilities that Recover Gas for Beneficial Use, and §330.802, concerning Applicability provide that §50.39(b)-(f) applies to motions for reconsideration of executive director actions, limit reconsideration to issues required to be considered by the executive director, and make conforming changes.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the repeal of duplicative requirements and enhanced consistency in the commission's procedural requirements. There will be no

effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of these rules is to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the processing of hearing requests. The rules will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to these rules: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

A public hearing on this proposal will be held November 25, 1996, at 2:00 p.m. in Room 254S of TNRCC Building E, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Submittal of Comments

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96170-050-AD. Comments must be received by 5:00 p.m., November 25, 1996. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760, or Richard O'Connell, Office of the General Counsel, (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER E : PERMIT PROCEDURES

§330.70. Registration of Facilities that Recover Gas for Beneficial Use.

(a)-(e) (No change.)

(f) Motion for reconsideration.

[(1)] The applicant or a person affected may file with the chief clerk a motion for reconsideration, under §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final approval of an application.

[(2)] A motion for reconsideration must be filed with the chief clerk not later than the 20th day after the date on which the chief clerk mailed the applicant the signed registration. In addition to a specific motion for reconsideration, the commissioners shall consider as a motion for reconsideration any objection, protest, or request for hearing filed with the chief clerk not later than the 20th day after the date on which the chief clerk mailed to the applicant the signed registration.

[(3)] A decision by the executive director, including a registration issued by the executive director, is not affected by the filing of a motion for reconsideration under this section unless expressly so ordered by the commissioners. If a motion for reconsideration is not acted on by the commissioners within 45 days after the date on which the chief clerk mailed signed registration to the

applicant, the motion shall be deemed overruled. When a motion for reconsideration is overruled by commission action or pursuant to this subsection, the Texas Government Code, §2001.146, regarding motions for rehearing for contested cases is inapplicable and no motions for rehearing shall be filed. To the extent applicable, the commission decision may be subject to judicial review pursuant to the Texas Water Code, §5.351 or the Texas Health and Safety Code, §361.321.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

SUBCHAPTER R : MANAGEMENT OF WHOLE USED OR SCRAP TIRES

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§330.802. Applicability.

(a)-(j) (No change.)

(k) Motion for reconsideration [for approval of registration].

[(1)] The applicant or a person affected may file with the chief clerk a motion for reconsideration, under §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final approval of an application for a registration under this subchapter.

[(2) A motion for reconsideration must be filed with the chief clerk not later than the 20th day after the date on which the chief clerk mailed to the applicant the signed registration or other approval.

[(3) A decision by the executive director, including a registration issued by the executive director, is not affected by the filing of a motion for reconsideration under this section unless expressly so ordered by the commissioners. If a motion for reconsideration is not acted on by the commissioners within 45 days after the date on which the chief clerk mailed the signed registration to the applicant, the motion shall be deemed overruled. When a motion for reconsideration is overruled by commission action or pursuant to this subsection, the Texas Government Code, §2001.146, regarding motions for rehearing in contested cases is inapplicable and no motions for rehearing shall be filed. To the extent applicable, the commission decision may be subject to judicial review pursuant to Texas Water Code, §5.351 or the Texas Health and Safety Code, §361.321.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

The commission proposes an amendment to §332.35, concerning motions for reconsideration on applications for registration of certain composting facilities. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules.

Explanation of the Proposed Rule

The proposed amendments to §332.25, concerning Motion for Reconsideration, provide that §50.39(b)-(f) applies to motions for reconsideration of executive director actions, limit reconsideration to issues required to be considered by the executive director, and make conforming changes.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the repeal of duplicative requirements and enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of this rule is to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the processing of hearing requests. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

A public hearing on this proposal will be held November 25, 1996, at 2:00 p.m. in Room 254S of TNRCC Building E, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Submittal of Comments

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96170-050-AD. Comments must be received by 5:00 p.m., November 25, 1996. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760, or Richard O'Connell, Office of the General Counsel, (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER C : OPERATIONS REQUIRING A REGISTRATION

§332.35. Registration Application Processing.

(a)-(d) (No change.)

(e) Motion for reconsideration.

[(1)] The applicant or a person affected may file with the chief clerk a motion for reconsideration, under §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final approval of an application.

[(2)] A motion for reconsideration must be filed with the chief clerk not later than the 20th day after the date on which the chief clerk mailed to the applicant the signed registration or other approval.

[(3)] A decision by the executive director, including a registration issued by the executive director, is not affected by the filing of a motion for reconsideration under this section unless expressly so ordered by the commissioners. If a motion for reconsideration is not acted on by the commissioners within 45 days after the date on which chief clerk mailed the signed registration to the applicant, the motion shall be deemed overruled. When a motion for reconsideration is overruled by commission action or pursuant to this subsection, the Texas Government Code, §2001.146, regarding

motions for rehearing in contested cases is inapplicable and no motions for rehearing shall be filed. To the extent applicable, the commission decision may be subject to judicial review pursuant to Texas Water Code, §5.351 or the Texas Health & Safety Code, §361.321.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.

The commission proposes the repeal of §337.11, concerning Installment Payment of Administrative Penalty. The purpose of this proposed action is to continue to consolidate and make clarifications to procedural rules.

Explanation of the Proposed Rule

The proposed repeal eliminates §337.11, concerning Installment Payment of Administrative Penalties, the requirements of which are duplicated in 30 TAC §70.9. This will complete the repeal of 30 TAC Chapter 337 initiated in Phase II of the Procedural Rule changes.

Fiscal Note

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeal is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the repeal.

Public Benefit

Mr. Minick also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the deletion of duplicative requirements and enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of this rule is to make clarifications to procedural rules, recognize the creation of the commission's Office of Public Assistance and its role in facilitating public participation, and provide for the processing of hearing requests. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

Public Hearing

A public hearing on this proposal will be held November 25, 1996, at 2:00 p.m. in Room 254S of TNRCC Building E, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Statutory Authority

The repeal is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeal implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER A : ENFORCEMENT GENERALLY

§337.11. Installment Payment of Administrative Penalty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1996.