

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§39.1, 39.101, 39.151, 39.201, 39.251, 39.253, and 39.301 and new §§39.302, 39.351, 39.401, 39.403, 39.405, 39.407, 39.409, 39.411, 39.413, 39.418-39.421, 39.423, 39.425, 39.501, 39.503, 39.509, 39.551, 39.553, 39.601-39.606, 39.651, 39.653, 39.701-39.703, 39.705, 39.707, 39.709, 39.711, and 39.713, concerning public notice. The commission also proposes the repeal of §39.401 (renumbering it as new §39.351).

## BACKGROUND

The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, SB 1308, and HB 1479, 76th Legislature (1999). Certain portions of the proposed amendments and new sections are proposed to clarify the applicability of existing notice provisions, to correct, clarify, or update certain public notice rules with regard to notices for air quality applications and the air quality permit amendment process. Also, certain rules concerning a portion of the proposal will constitute a revision to the state implementation plan (SIP). Specifically, the following sections are proposed to be added to the SIP: §§39.201, 39.401, 39.403, 39.405, 39.409, 39.411, 39.418-39.420, 39.423, and 39.601-39.606. Specific rules from Chapters 55 and 116 are also being proposed as SIP revisions. In addition, existing §§116.124 and 116.130-116.137 are proposed to be deleted from the SIP. Concurrently with this rulemaking, the commission is proposing the review of Chapter 39, concerning public notice, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Notices relating to certain air quality permit

and permit exemption public notification and public participation requirements currently under Chapters 116 and 106 are proposed to be incorporated into Chapter 39 as part of this consolidation.

#### OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to the Texas Clean Air Act (TCAA), THSC, §382.056; and revisions to Texas Government Code, §2003.047. The changes in law made by HB 801 apply to certain permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit 30 days after declaration of administrative completeness. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county, and, in most cases, to publish newspaper notice of the executive director's preliminary decision of the application. In addition, the bill requires the commission to establish by rule the form and content of the notices and to mail notice to certain persons. It also authorizes the executive director to hold public meetings regarding

applications which are required if requested by a legislator or if the executive director determines there is substantial public interest in the proposed activity. The executive director is also required to prepare responses to relevant and material public comment received in response to the notices or at public meetings, and file the responses with the chief clerk. It requires the commission to prescribe alternative cost-effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

#### OVERVIEW OF SB 7 AND IMPLEMENTATION

SB 7, also enacted by the 76th Legislature, restructures electric utility service in Texas. Owners of grandfathered facilities that generate electric energy for compensation are required to apply for an electric generating facility permit from the commission by September 1, 2000. These permits are subject to notice under §382.056 of the Texas Health and Safety Code. SB 7 provides that initial

issuance of these permits require notice and comment proceedings. However, amendment and renewal of these permits requires notice, comment, and opportunity for contested case hearing.

The notice provisions for electric generating facility permits are implemented through changes to Chapters 39 and, to a limited extent, to Chapters 50 and 55. Amendments and renewals are subject to Chapters 50, 55, and 80 as amended. Additional implementation of the requirements of SB 7 is expected in future rulemaking proposals by the commission.

#### OVERVIEW OF SB 766 AND IMPLEMENTATION

SB 766, enacted by the 76th Legislature, also amends TCAA, Chapter 382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission reduction permit (VERP) for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to VERPs under SB 766 are included in these chapters, specifically §39.403(11) and §39.606. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

#### OVERVIEW OF SB 1308 AND IMPLEMENTATION

SB 1308 allows the executive director to approve water quality management plans (WQMP) and revisions, so long as an opportunity for public participation has been provided. This bill, which amends Texas Water Code, §26.037, also requires rules to provide for commission review of the executive director's decision on a plan approval or revision. This proposal incorporates these requirements through §§39.401, 39.403, and 39.553.

In addition to the changes required by legislation, the TNRCC is making several other changes to the public notice rules in Chapter 39.

#### OVERVIEW OF HB 1479 AND IMPLEMENTATION

HB 1479 amended §26.028 of the Texas Water Code and allows the commission to approve an application to renew or amend a permit without the necessity of a public hearing if the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or changing materially the pattern or place of discharge; the activities to be authorized will maintain or improve the quality of waste; and the applicant's compliance history raises no issues regarding the applicant's ability to comply with a material term of its permit; and for Texas Pollutant Discharge Elimination System (TPDES) permits, notice and opportunity to comment is provided in accordance with federal program requirements. This proposal implements these provisions.

## OVERVIEW OF SB 211 AND IMPLEMENTATION

SB 211 amends §2001.142(c) of the Texas Government Code relating to notice of decision in an administrative hearing and provides that a party is presumed to have been notified on the third day after notice has been mailed. The requirement in SB 211 regarding presumed notice within three days of mailing has also been implemented and has guided rule drafting in Chapters 39, 50, 55, and 80.

## OVERVIEW OF CHANGES NOT RELATED TO HB 801

For air permits, there are several changes regarding notice. First, all permit amendment applications for construction of new facilities or for modifications of existing permits which have significant emission increases must comply with the notice requirements in Chapter 39. The rules also clarify when alternative language publication for an air application is required and the appropriate locations of notice signs. The requirement that notice for certain air applications be published in two consecutive issues of a newspaper has been changed to publication in one issue of a newspaper. Other changes made in this rulemaking proposal which are not related to HB 801 include those revisions necessary to incorporate by rule those changes made by SB 766 to the TCAA regarding exemptions from permitting and permits by rule and public notification and comment procedures for voluntary emission reduction permits. This proposal also incorporates public notification and current procedures required under SB 7 for electric generating facility permits. The notice text for air applications has also been changed to make clear which air contaminants should be included in the text of the notice.

Chapter 39 also incorporates a procedure that allows the agency to suspend review of and return an application to an applicant if the applicant does not publish notice. A second application fee will not be

required if the applicant wishes to resubmit the application within six months. This change in procedure is not required by HB 801. However, it is consistent with the goal of ensuring the most effective use of agency resources, avoiding unwarranted delay in permit processing, and encouraging early public participation in the permit process.

The rules have been revised to reflect that there is no right to a contested case hearing on weather modification permits or licenses under Chapter 18, Texas Water Code, reflecting the interpretation of law given in commission orders which have addressed hearing requests on these applications.

The proposed changes made in this rule proposal would also, in most cases, provide that judges will no longer accept public comment at evidentiary hearings. If there is significant public interest in an application, the agency will hold a separate public meeting. This change is intended to provide a forum for public comment that is more appropriate and more informal than a proceeding subject to formal rules of evidence and civil procedure. The rules regarding freezing the process for certain hearings in Chapter 80, Subchapter E, are also proposed to be deleted because the commission has found that these rules have not been used and does not believe they are needed for future proceedings. Further, the goals sought to be achieved by these rules (i.e., streamlining the contested case hearing process) is achieved by the proposed rules implementing HB 801. Finally, the commission has determined that the executive director and public interest counsel should not be aligned with any other party in a contested case hearing.

## EXPLANATION OF PROPOSED RULES

### ORGANIZATION OF CHAPTER

HB 801 applies only to certain applications that are administratively complete on or after September 1, 1999. Thus, in the proposed rules, Subchapters A-F are amended to apply only to applications that were administratively complete *before* September 1, 1999. At the same time, new Subchapters H-M apply only to applications that are administratively complete *on or after* September 1, 1999. Generally, Subchapters H-M are duplicated versions of the existing rules in Subchapters A-F, modified to incorporate substantive changes either related to HB 801 implementation, implementation of other bills, or other changes proposed under this chapter. To facilitate this reorganization, §39.401 (related to Public Notice for Applications for Consolidated Permits) is repealed and renumbered as §39.351. Section 39.351 applies to all permit applications, regardless of when they become administratively complete.

In this proposal, only the applicability sections of Subchapters A-F are reproduced. For Subchapters H-M, the entire new subchapters are printed. Many of the sections of Subchapters H-M are the same or very similar to sections in Subchapters A-F. Where possible, section numbers are parallel; for example, §39.5 (General Provisions) is similar to §39.405 (General Provisions). Nonetheless, since Subchapters H-M are entirely new, it may be difficult to quickly see the differences between those new and existing Subchapters. In the section-by-section analysis in this preamble, the agency has tried to point out any important differences. Additionally, to facilitate review, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be

obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis, and Assessment, at (512) 239-1932 and on the TNRCC website at: <http://www.tnrcc.state.tx.us/oprd/forum.html#hb801>.

Generally, Chapter 39 is proposed to be changed to incorporate certain statutory requirements of HB 801, to clarify and modify certain requirements for public notification and public participation, and to modify the processing of applications for air quality permits.

The proposed revisions to Chapter 39 contain general provisions that apply to all affected programs and program-specific requirements. The latter are largely derived from statutory differences related to various programs included in HB 801 and applicable statutes. Generally, the provisions of Subchapters H-M apply to permit applications issued under Chapters 26 and 27 of the Texas Water Code and 361 and 382 of the Texas Health and Safety Code that are administratively complete on or after September 1, 1999.

Portions of Chapter 39 are proposed to be changed to incorporate some aspects of SB 766 and SB 7. For example, the proposal includes reference to permits and public notification requirements for VERPs under THSC, §382.0519, permits for electric generating facilities subject to §39.264 of the Utilities Code, and the use of exemptions from permitting and permits by rule for construction of facilities and modification of existing facilities under TCAA, §382.057 and §382.058. Portions of Chapter 39 are proposed to implement SB 1308 relating to water quality management plan approval.

#### COMMENTS REQUESTED

The commission solicits, in particular, comments regarding the requirements in §39.101(e)(2) and §39.501(d)(2) (Municipal Solid Waste applications); §39.503(d)(2)(B) (Industrial or Hazardous Waste applications); §39.651(d)(2) and §39.651(e)(2)(B) (Injection Well applications); and §39.603(a)(2) (Air Quality Permit applications) on the size of newspaper notice. The commission recognizes that the measurements in the rules do not necessarily reflect the measurements that newspapers use for advertisements. Recommendations on more appropriate terminology would be appreciated.

#### SECTION BY SECTION ANALYSIS

The commission proposes to amend §§39.1, 39.101, 39.151, 39.201, 39.251, 39.253, and 39.301 and to renumber §39.401 to §39.351. The commission also proposes new §§39.302, 39.351, 39.401, 39.403, 39.405, 39.407, 39.409, 39.411, 39.413, 39.418-39.421, 39.423, 39.425, 39.501, 39.503, 39.509, 39.551, 39.553, 39.601-39.606, 39.651, 39.653, 39.701-39.703, 39.705, 39.707, 39.709, 39.711, and 39.713, concerning public notice.

The commission proposes amended §39.1 (Applicability) to provide that permit applications declared administratively complete before September 1, 1999 are subject to Subchapters A-F of Chapter 39 and that Subchapters H-M apply to permit applications declared administratively complete on or after September 1, 1999. This amendment also provides that consolidated permit applications declared administratively complete before or on or after September 1, 1999 are subject to Subchapter G. The amendments proposed by this section are intended to conform with the changes made by HB 801 and which provide that former law is continued in effect for applications declared administratively complete

before September 1, 1999 and that the changes made by the new law are applicable only to applications administratively complete on or after September 1, 1999.

Amended §39.101 (Application for Municipal Solid Waste Permit), §39.151 (Application for Wastewater Discharge Permit), §39.201 (Application for a Preconstruction Permit), §39.251 (Application for Injection Well Permit), §39.301 (Notice of Declaration of Administrative Completeness), and §39.302 (Applicability) are proposed to likewise reflect that rules in effect before September 1, 1999 continue to apply to applications declared administratively complete before that date. These amendments also provide that Subchapters H-M apply to applications administratively complete on or after that date. These changes are intended to incorporate the effective date and savings clause of HB 801.

Existing §39.401 (Public Notice for Applications for Consolidated Permits) is proposed to be repealed and renumbered as §39.351. No limiting applicability provision is added to this section since it will apply to all applications regardless of when they become administratively complete. This section provides that combined notice for consolidated applications can be provided so long as all statutory and regulatory requirements for public notice are met.

Proposed new §39.401 (Purpose), states that the purpose of Chapter 39 is to specify notice requirements for certain applications, including notices for public meetings, contested case hearings, comment hearings, and WQMPs. This provision is very similar to existing §39.3 except that it updates this provision to reflect the applicability to comment hearings for certain permit applications (notice of

which is currently covered by Chapter 39) and WQMPs (incorporating changes made by SB 1308 which modified the procedures for notice and public participation for these actions).

Proposed §39.403 (Applicability) identifies the applications and actions to which Subchapters H and M apply. Proposed §39.403(a) explains that Subchapters A-F apply to applications that were administratively complete before September 1, 1999, while Subchapters H-M apply to applications that were administratively complete on or after September 1, 1999. Proposed §39.403(b) includes most of the language in existing §39.1 with some additions and clarifications, including those necessary to reflect that notice requirements for air applications are now contained in Chapter 39 rather than Chapter 116 and to incorporate some of the changes resulting from SB 7 and SB 766. Those types of applications which would be newly subject to the provisions in the proposed additions to Chapter 39 include: (1) applications for air quality permits under §382.0518 and §382.055 of the Texas Health and Safety Code, unless otherwise specified in this section; (2) applications subject to the requirements of Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction; (3) concrete batch plants (CBP) registered under 30 TAC Chapter 106 (relating to Exemptions from Permitting) unless the facility is to be located in, or contiguous to, the right-of-way of a public works project; (4) applications for voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code; (5) applications for permits for electric generating facilities under §39.264 of the Utilities Code; (6) applications subject to the requirements of Chapter 116, Subchapter G of this title (relating to Flexible Permits); and (7) permit amendments under §116.116(b) of Chapter 116 for: (A) construction of any new facility, (B) modification of an existing

facility which results in a significant increase in allowable emissions of any air contaminant, or (C) other changes when required by the executive director; and (8) Water Quality Management Plan updates processed under Texas Water Code, Chapter 26, Subchapter B.

Proposed new §39.403(c) generally mirrors the language in existing §39.1(2)(b) regarding those applications that are not subject to Chapter 39. In addition, since certain air notice requirements are now included in Chapter 39, it specifies that the following are not subject to Chapter 39 (such as applications under Chapter 122, relating to Federal Operating Permits), standard permits under Chapter 116, Subchapter F, and exemptions from permitting and permits by rule under Chapter 106, with the exception of concrete batch plants, as described in §39.403(b)(10).

Proposed new §39.403(d) states that applications for initial issuance of voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code and initial issuance of permits for electric generating facilities under §39.264 of the Utilities Code are subject only to §§39.405, 39.409, 39.411, 39.418 39.419, 39.602, 39.603, 39.604, and 39.605 of proposed Subchapter K. This is consistent with TCAA, §382.0519 and §382.05191 and the provisions of SB 7 (§39.264 of the Utilities Code). These permit applications are subject to notice, public comment, and public meetings, but not contested case hearings or requests for reconsideration of the executive director's decision.

Proposed §39.403(e) includes in one provision all of those sections in Chapter 39 that do not apply to radioactive materials licenses, and reflects the somewhat unique notice requirements for these applications. This section states that radioactive material licenses under Chapter 336 of this title are not

subject to the public notice requirements in §§39.405(c), 39.405(f), 39.405(h), 39.413, 39.418, 39.419, and 39.420. Radioactive material licenses are generally subject to applicable public notice requirements in Subchapter A, and specific public notice requirements under new Subchapter M. Subchapter M contains equivalent requirements for §39.405(c) and (f) in §39.705 and §39.711 respectively. Requirements in §39.405(h) for broadcast notice of applications do not apply to applications for radioactive material licenses under Chapter 336. Additionally, as radioactive materials licenses are not affected by the changes in law made by HB 801, proposed requirements implementing HB 801 in new §39.420, relating to Transmittal of Executive Director's Response to Comments and Preliminary Decision, do not apply to Chapter 336 applications for radioactive material licenses. The changes made related to notice for radioactive materials licenses are primarily organizational in nature and are made to improve readability.

Proposed new §39.405 contains general notice provisions that apply to more than one program area and has some similarities to existing §39.5. However, § 39.405(a) adds the requirement that notice must be published within 30 days after the executive director declares the application administratively complete. The amendment reflects the notice requirement in new Texas Water Code, §5.552, as added by HB 801.

Not related to HB 801, but included to avoid undue delay in permit processing, this section adds a provision that, for applications subject to Chapter 39, Subchapters H-M, the executive director may suspend further processing and return the application for failure to publish notice in a timely manner. This procedure is already available for air quality permits. This rule as proposed would provide that a

new permit application fee will not be required if the applicant resubmits the application within 6 months of its being returned.

Proposed new §39.405(b) and (c) mirror existing §39.5(b) and (c) with only slight modifications.

Proposed new §39.405(d) reflects the consolidation of air notice requirements into Chapter 39 consistent with the goal of putting all permitting notice requirements in one place, and also reflects the applicability of Subchapters H-M to permit applications.

Proposed new §39.405(e) is similar to existing §39.5(e) except that changes are proposed to allow a combination of notices under any circumstances as long as all applicable notice requirements are satisfied. This change is intended to maximize the flexibility allowed for issuing notice while ensuring compliance with applicable requirements.

Proposed new §39.405(f) is similar to existing §39.5(f) except that new §39.405(f) is proposed to impose a 10 business day deadline for submitting an affidavit with the chief clerk as proof of publication. While the requirement in existing §39.5(f) allowed, in some cases, up to 30 days for submission of the affidavit, the time period for filing was shortened since the 10 business day time frame was considered sufficient to allow an applicant to show that it has complied with the notice requirements and in order to avoid undue delay in permit processing.

Proposed new §39.405(g) is similar to existing §39.5(g); however, changes are made to make the notice requirements for solid waste applications consistent with the notice requirements of HB 801 and with applicable statutory requirements including §361.0791 and §361.0665 of the Texas Health and Safety Code.

The commission proposes new §39.407 (Mailing Lists) which mirrors the language in existing §39.7 which allows persons who have participated in past agency permit proceedings to request to be on a mailing list. A conforming change is proposed which will replace all references to “commission” with “agency” in order to be consistent with the terms defined in 30 TAC Chapter 3. As defined in the commission’s rules, “agency” means the commission, the executive director, and their staffs.

Proposed new §39.409 (Deadline for Public Comment, Requests for Reconsideration and Contested Case Hearing or Notice and Comment Hearing) is similar to existing §39.9 (Deadline for Public Comment and Hearing Requests) except that it adds deadlines for filing requests for reconsideration (a new public participation mechanism allowed under HB 801) as well as requests for notice and comment hearings since some air applications which currently fall within the scope of Chapter 39 include this requirement. The amendment is necessary to implement the requirements of HB 801 that require the commission, by rule, to establish the time period for filing hearing requests and requests for reconsideration. Proposed §39.411 incorporates the requirements in §5.552, Texas Water Code and §382.056, Texas Health and Safety Code, as amended by HB 801. This section includes the requirements necessary when notice by publication or by mail is required by this chapter.

New proposed §39.411(a) is similar to existing §39.11. However, it adds a new requirement that applicants shall use the notice text provided and approved by the agency. The executive director may approve changes before notice is given. The more significant changes proposed to §39.411, as compared to current §39.11, include: (1) a brief description of public comment procedures, including a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The description of public comment procedures shall be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice must also include the time and place of any public meeting or public hearing, if known at the time of notice; (2) either a statement of procedures by which the public may participate in the final permit decision, including how to request a contested case hearing (or reconsideration) of the executive director's decision, or a statement that later notice will describe procedures for public participation. The statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; (3) a statement that a contested case hearing request must include the requestor's location relative to the proposed facility or activity; (4) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless a contested case hearing request (if applicable) is filed with the chief clerk; (5) the deadline to file comments, or requests for reconsideration or hearing; (6) a statement of the executive director's preliminary decision and whether the executive director has prepared a draft permit, if applicable; (7) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application or executive director's preliminary decision is available for review and copying; and

(8) a description of how a person may be placed on a mailing list in order to receive additional information about the application.

These changes incorporate, in part, a number of requirements imposed for the text of notices issued for applications subject to the requirements of HB 801. In addition, certain changes are made in the provisions relating to notices of air applications in this section indicating which criteria pollutants will be emitted under the permit.

Proposed new §39.413 (Mailed Notice) is similar to existing §39.13, except that the reference providing that the section does not apply to applications for radioactive material licenses is removed since it is now reflected in proposed new §39.705.

Proposed new §39.418 (Notice of Receipt of Application and Intent to Obtain Permit), describes the requirements and procedures for an applicant to publish the notice of receipt of application and notice of intent to obtain a permit, a new requirement imposed by HB 801 to §5.552 of the Texas Water Code and §382.056(a) of the Texas Health and Safety Code. These proposed rules implement this newspaper publication requirement in different ways for different programs. It is proposed that the applicant be required to publish the notice of intent to obtain a permit once in the newspaper of largest circulation in the county, except for air applications which publish in a paper of general circulation in the municipality nearest the facility. Slightly different newspaper publication requirements are proposed for solid waste permit applications to satisfy both the amendments made by HB 801 and Texas Health and Safety Code, Chapter 361 requirements. The chief clerk would also mail this notice to those listed in

proposed new §39.413, and for air applications, the chief clerk would also mail notice according to proposed new §39.602.

Proposed new §39.419 (Notice of Application and Preliminary Decision) follows the requirements in Texas Water Code, §5.553 and Texas Health and Safety Code, §382.056(g), as added by HB 801. It requires that, after technical review is complete, the executive director files the preliminary decision and the draft permit with the chief clerk, except for certain air applications that follow different procedures specified in §39.419(f). It requires that an applicant publish notice of the preliminary decision in a newspaper at least once in the same paper as the notice of intent unless otherwise required in Chapter 39. The requirement that an applicant publish in the same newspaper as that used for the notice of intent is established as a matter of convenience and consistency. Proposed §39.419 also includes a list of those circumstances where an applicant for an air quality permit is not required to publish notice of the preliminary decision consistent with the language in §382.056(g) as amended by HB 801. Applicants would not have to publish this notice if the following occurs: (1) as a result of publication of Notice of Receipt of Application and Intent to Obtain a Permit, no hearing requests have been received or all hearing requests have been withdrawn by the time the executive director has made a preliminary determination; or (2) the application is for any amendment, modification, or renewal application which does not result in an increase in allowable emissions nor the emission of a new air contaminant. In accordance with TCAA, §382.056(p), a new proposed §39.419(f)(3) has been added to require this notice (for air quality permit applications) to meet federal program requirements. This includes nonattainment permits, prevention of significant deterioration permits, and actions relating to Hazardous Air Pollutants for Major Sources.

Proposed new §39.420 relates to transmittal of the executive director's response to comments and opportunity to request reconsideration or hearing, and mirrors the requirements in Texas Water Code, §5.553 and Texas Health and Safety Code, §382.056(m) as added by HB 801. This section establishes the duties of the chief clerk to transmit the executive director's preliminary decision, responses to comments, and instructions for requesting that the commission reconsider the executive director's decision to hold a contested case hearing.

To mirror existing §39.21 (Notice of Commission Meeting to Evaluate a Hearing Request on an Application), the commission proposes new §39.421 (Notice of Commission Meeting to Evaluate a Request for Reconsideration or Hearing on an Application). However, new §39.421 adds a requirement to notify all persons who commented (or a representative of a group or association) to the list of persons who receive notice of a commission agenda when a hearing request will be considered. The title of the section is modified to indicate that it applies to requests for reconsideration provided for under HB 801, as well as to hearing requests.

New §39.423 (Notice of Contested Case Hearing) mirrors existing §39.23, but is changed to clarify the requirements for the notice of a contested case hearing on a commission referral to the State Office of Administrative Hearings on the sole question of whether a hearing requestor is an affected person.

Section 39.423 is also proposed to be changed to reflect the concept in SB 211, that when a notice is mailed, a party is presumed to actually receive notice 3 days after mailing. Thus, instead of requiring the chief clerk to mail notice 10 days before a hearing, the proposed rule requires notice to be mailed 13 days before the hearing.

Proposed new §39.425 (Notice of Contested Enforcement Case Hearing) is similar to current §39.25. However, while §39.25 simply says that the chief clerk shall give notice, as required under §2001.052 of the APA; proposed §39.425 reflects both the 10 days notice required under the Administrative Procedure Act (APA), §2001.051(1), and adds the additional 3 days for mailed notice, to harmonize with SB 211.

The commission proposes new §39.501 (Application for Municipal Solid Waste Permit). This new section is similar to existing §39.101, but replaces the current requirement for Notice of Intent to Obtain a Permit with the new HB 801 requirement for Notice of Receipt of Application and Notice of Intent to Obtain a Permit. Thus, the requirements in §39.501 will satisfy the statutory requirements of §331.0665, Health and Safety Code. However, it will not satisfy §361.067, which requires that the agency mail a copy of the application or a summary of its contents to the mayor, county judge, and health authority. Although, under HB 801, they also receive the concurrent Notice of Receipt of Application and Intent to Obtain Permit, the §361.067 requirement is retained in §39.501(b)(2)(C), since the notice under HB 801 is expressly in addition to any notice required under Chapter 361.

Proposed new §39.501 does not include subsection (c) from current §39.101, because requirements for the notice of draft permit are replaced by the requirements in proposed §39.419 (Notice of Application and Preliminary Decision). The language in existing §39.101(d), relating to notice of public meeting, is proposed to be included in the new §39.501(d), and has a grammatical change from §39.101(d). Section 39.501(e)(3)(B) contains grammatical changes from its counterpart in §39.101(e)(3)(B).

Proposed §39.503 (Application for Industrial or Hazardous Waste Facility Permit) parallels current §39.103, except that §39.503 has been modified to more closely mirror the statutory provisions. As required under HB 801, amending §5.553, Texas Water Code, the proposed rule adds an additional published notice in §39.503(b)(2)(A), which requires Notice of Receipt of Application and Intent to Obtain Permit under proposed §39.418. Proposed §39.503(b)(2)(B) also retains the requirement that the agency mail a copy of the application or a summary of its contents to the mayor, county judge, and health authority. Although under HB 801 those persons also receive the concurrent Notice of Receipt of Application and Intent to Obtain Permit, the requirement, from §361.067, Texas Health and Safety Code, is retained in §39.501(b)(2)(C), since the notice under HB 801 is expressly in addition to any notice required under Chapter 361.

The proposed rule also significantly changes the notice requirements for a Class 3 modification of an industrial or hazardous waste permit, currently in §39.109 and proposed for §39.509. Currently, pursuant to federal regulations, applicants for Class 3 modifications must publish notice of receipt of application no later than 7 days after the commission receives the application. Now, in addition, HB 801 appears to require applicants for Class 3 modifications to publish Notice of Receipt of Application and Intent to Obtain Permit, as well as the Notice of Application and Preliminary Decision. The Notice of Receipt of Application and Intent to Obtain Permit must be published within 30 days after the application is declared administratively complete. While §39.405(e) allows applicants to combine notices, it will be rare that the application will be administratively complete soon enough to allow the applicant to publish within 7 days after the agency receives the application. Comments on this section are invited.

The commission proposes new §39.551 to implement the HB 801 requirements for Notice of Receipt of Application and Intent to Obtain Permit in proposed §39.418 and the Notice of Application and Preliminary Decision in proposed new §39.419. Under this proposal, the Notice of Receipt of Application and Intent to Obtain Permit replaces the notice of administrative completeness. Also, the Notice of Receipt of Application and Intent to Obtain Permit would be required to be published by the applicant no later than the 30th day after the date the executive director determines the application to be administratively complete.

Proposed §39.551 clarifies that water quality applications have certain requirements in addition to those listed in §39.418. Section 39.461(b) reflects requirements that are in addition to those listed in §39.419. The commission also proposes to include the section to notify persons that the Notice of Application and Preliminary Decision may be combined with the notice in §39.418. The deadline for hearing requests is not included because at that point in the process the only thing the commission is seeking is public comment. In addition, proposed changes are made throughout the section to reflect the new Notice of Application and Preliminary Decision required by sections in Chapter 5, Texas Water Code as amended by HB 801 and to delete language in §39.551(c)(1)(B) and replace it with a reference to §39.413. The deleted language is redundant in that the persons listed are also included in §39.413.

Proposed §39.551(c)(1)(C) explains that the Notice of Application and Preliminary Decision must include a deadline for a person to file a public comment or to request a public meeting. Under this proposal, this notice will not include an opportunity to request a contested case hearing. Under proposed new §39.420, persons who submit comments subsequent to this notice will be included in the

transmittal of the executive director's preliminary decision and the executive director's response to comments, and will be instructed on how to request a reconsideration of the executive director's decision or request a contested case hearing.

New §39.551(d) is proposed to incorporate the requirements in HB 801 in the notice for a minor amendment of a water quality permit. The proposed amendment further states that the executive director shall prepare a response to all relevant and material or significant public comments received by the commission under §55.152 (Public Comment Processing).

The commission proposes new §39.551, relating to WQMP updates. This new proposed section mandates that the commission's chief clerk publish public notice of the WQMP updates in the *Texas Register*. The chief clerk would mail notice to persons known by the commission to be interested in the WQMP update or identified on mailing lists maintained by the chief clerk. The proposed rule identifies the specific contents of the text of the public notice, provides a 30-day public comment period, and allows for a public meeting on a WQMP update, in accordance with §55.25 (Public Comment Processing). A 30-day public comment period is consistent with the public notice period for other water quality permitting matters, federal requirements for processing of TPDES permits, and federal guidelines governing the state Continuing Planning Process. This new section also identifies procedures for the executive director to respond to all significant public comments received by the commission before the end of the comment period. Finally, new §39.463 identifies that the executive director may certify the WQMP update and provides for the commission's chief clerk to mail a copy of the response to comments as well as the certified WQMP update, to all persons who submitted timely comments.

Proposed new §39.601 will make Subchapter K apply to certain new source review air permit applications. Section 39.601 is proposed to be amended to explain that Chapter 39, Subchapters H-M will apply to any air application or registration that is declared to be administratively complete by the executive director on or after September 1, 1999. All other applications shall be subject to the requirements of the version of §116.130 that was effective March 21, 1999 or the version of §106.5 that was effective December 24, 1998.

Proposed §39.602 clarifies the requirements for mailed notice of air quality permit applications. To codify existing commission practice, only certain provisions of proposed §39.413 apply to permits for air quality. The section is also proposed to require that mailed notice be given to the state senator and representative who represent the area in which the facility is or will be located when Notice of Receipt of Application and Intent to Obtain Permit is mailed by the chief clerk, as required by Texas Health and Safety Code, §382.0516.

Proposed §39.603 (Newspaper Notice) incorporates the requirements in Texas Health and Safety Code, §382.056(a) and (g), regarding newspaper notices required for air quality applications. The proposed language also incorporates provisions currently set out in §116.132(b). The proposal includes a description of the requirements for general newspaper notice, alternative language newspaper notice which has been revised to reflect current practice, and alternative publication procedures for small businesses. The requirements for general newspaper notice and alternative language newspaper notice are incorporated from §116.132 which is being proposed for repeal. However, the requirement to publish in two consecutive issues of a newspaper has been deleted to lessen the financial burden on

applicants. The alternative publication procedures for small businesses is authorized by language in §382.056(a), Texas Health and Safety Code, as amended by HB 801. This procedure allows small businesses to be exempt from the requirement to publish the display notice.

There are two criteria for defining small business to qualify for the reduced notice. First, the business must be a “small business stationary source, “ and second, it must “not have a significant effect on air quality.” Section 382.0365 of the Texas Health and Safety Code defines “small business stationary source” as having the meaning assigned by §507(c) of the Federal Clean Air Act (42 United States Code §7551f), as added by §501 of the federal Clean Air Act Amendments of 1990 (Public Law Number 101-549). Meanwhile, HB 801 adds the condition that, to qualify for the reduced notice, the source must not have a significant effect on air quality. It is left to the agency to determine what a “significant effect” is. The rule proposes to use the agency’s existing practice of the quantities defined for the exemptions from permitting under Chapter 106 to delineate those emissions that will not cause or contribute to a condition of air pollution. Proposed §39.603(c)(2) provides that the executive director may post certain information concerning pending air permit applications on the agency’s website.

Proposed §39.604 lists the requirements that an applicant for an air quality permit must follow regarding the posting of a sign or signs notifying the public about the filing of an application for the air quality permit and how the commission may be contacted. The sign posting requirements in the proposed section are similar to the language in existing §116.133, relating to sign posting requirements, except for §39.604(c). The term “thoroughfare” has been replaced with the terms “public highway”

and “road,” in order to clarify that a sign is not required to be posted on a waterway following Air Rule Interpretation Memo R6-133.001. Sign posting certification is required 10 business days after the end of the comment period.

Proposed §39.605 (Notice to Affected Agencies) incorporates the language in existing §116.134, relating to notification of affected agencies. In addition, proposed §39.605(c) requires an applicant to furnish a copy of an alternative language waiver certification to those persons listed in subsection (b)(1)-(3) when alternative language waiver certifications are required under the section.

Proposed new §39.606 implements the notice requirements of SB 766, which adds TCAA, §382.05191. This section provides that the executive director may approve variations from the requirements of this chapter for voluntary emission reduction permit applications which are also small business stationary sources if the alternative publication results in equal or better communication with the public.

Proposed new §39.651 (Application for Injection Well Permit), is similar to §39.251, but changes subsection (b) by deleting language pertaining to notice of receipt of an application, because the language is included in proposed new §39.418. Section 39.651(b) reflects the changes, including the new Notice of Application and Preliminary Decision, mandated by Chapter 5, Texas Water Code as amended by HB 801. Proposed §39.651(c) includes a clarification that there are requirements in addition to those in proposed §39.419 and that the additional notice required in §39.651(c) may be combined with the notice in §39.418, if the newspaper meets the requirements of both rules.

New §39.651(c)(4) also clarifies that the Notice of Application and Preliminary Decision is required to comply with §39.411. Language in current §39.201(d)(4) regarding the deadline to file comments or hearing requests is replaced in proposed §39.651(c)(4) with a reference to §39.411. Likewise, §39.651(e)(3)(B), which essentially mirrors existing 39.251(f)(3)(B), does not itself include the requirement that an applicant file an affidavit of compliance with notice requirements, because this requirement is included in §39.405(f).

Proposed Subchapter M mirrors current Subchapter F, except for minor changes to correct references to Subchapter F and Subchapter H of Chapter 336. New §39.701 clarifies that proposed Subchapter M only applies to those radioactive material licenses declared administratively complete on or after September 1, 1999. Current Subchapter F will remain effective and apply to all applications declared administratively complete before September 1, 1999.

Proposed new §39.702 (Notice of Declaration) mirrors language in §39.301 regarding mailing of Notice of Declaration of Administrative Completeness, except for the renumbering of the section to accommodate the applicability section. All other sections in this proposed subchapter mirror the language in Subchapter F, except that references in §39.707(c) and §39.709(b) to Chapter 336, Subchapters F and H have been corrected to state the full titles of those subchapters.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal

implications for units of state and local government as a result of administration or enforcement of the proposed amendments. A proposed amendment requires the applicant for a permit to make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. It is anticipated that the number of permit applications received will vary greatly depending on the number of total permit applications generated by applicants in the county. The TNRCC anticipates reviewing over 9,600 permit applications statewide in fiscal year 1999. It is anticipated that units of local government or other facilities choosing to provide storage and copying facilities for the proposed permits and amendments, will charge and collect fees to offset the costs of storage and copy services.

The proposed rules establish new procedures for providing public notice, public comment, and public hearings. The proposed amendments to the rules would implement certain provisions contained in: House Bill 801, 76th Legislature, Regular Session (R.S.), 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC, and portions of the provisions in Senate Bills 7, 76th Legislature, R.S., 1999, an act relating to electric utility restructuring; Senate Bill 211, 76th Legislature, R.S., 1999, an act relating to the notice of a decision in an administrative hearing before a state agency; and Senate Bill 766, 76th Legislature, R.S., 1999, an act relating to the issuance of certain permits for the emission of air contaminants.

In addition, the proposed amendments consolidate procedures for public notice for air, water, and waste programs, provide continuity between Chapter 39, Public Notice, and other chapters with references to public notice, public meetings, the scope and level of discovery in contested cases, permits by rule, and

requirements for certain concentrated animal feeding operations. The proposed amendments also provide Chapter 39 continuity with changes to: Chapter 50, Actions on Applications; Chapter 55, Requests for Contested Case Hearings; Chapter 80, Contested Case Hearings; Chapter 106, Exemptions from Permitting, regarding public notice; Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, regarding general applications, application review schedule, changes to facilities, and public notice and comment; Chapter 122, Federal Operating Permits, regarding public notice; and Chapter 305, Consolidated Permits, regarding applicability and renewal.

The proposed amendments also incorporate various changes from the review mandated by the General Appropriations Act, Article IX.

The proposed amendments to the rules affect permitting processes for air, water, and waste programs. It is anticipated that all applicants for permits under Chapters 26, Water Quality Control; Chapter 27, Injection Wells, of the Texas Water Code; applicants for permits under Chapter 361, Solid Waste Disposal Act; and certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations will be affected by the proposed amendments to the rules. Persons involved in the permitting process including members of the general public will also be affected.

#### PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 39 are in effect the public benefit anticipated from enforcement of, and compliance with, the

proposed amendments will be increased opportunity for public participation in the permitting processes conducted by TNRCC, increased standardization for notice requirements, more efficient contested case hearings, and enhanced conformance of state and federal public notice requirements.

The proposed amendments to the rules are not anticipated to have a significant impact on current public notice procedures for water and waste permits. Currently, Texas applicants for air permits are required to publish notice of intent to obtain an air permit in two successive issues of a newspaper. The public notice consists of a Legal Notice and a larger Display Notice regarding their intent to apply for an air quality permit. Generally, notice is required to be published in a newspaper of general circulation that is published in the municipality in which the facility is located or proposed to be located. If a newspaper is not published in the municipality, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. In addition, there is a requirement for applicants to publish notice once in each language for which bilingual education programs are required by the Texas Education Code in the elementary or middle school nearest to the facility or proposed facility.

The costs for public notice may vary significantly depending on the location of the permitted facility and its proximity to large metropolitan areas. Small town/city newspapers generally charge much less for publication of a public notice. A recent survey indicated that a large city newspaper would charge approximately \$3,000 for the Display Notice and approximately \$450 for the Legal Notice. A smaller city newspaper would charge approximately \$210 for the Display Notice and \$20 for the Legal Notice. The cost for alternative language publication is estimated to be approximately \$150 for each notice. It

is estimated that total current costs for public notice for each application are in the range of \$610 to \$7,050 for large and small businesses requiring two legal and display notices and one alternative language notice.

The proposed amendments specify that the air permit applicant publish notice in one issue of the newspaper of general circulation in the municipality in which the facility is located or proposed to be located. The proposed amendments have the effect of eliminating half of the required public notices for most large businesses. Alternate language provisions remain unchanged. The impact on small business is contained in the Small Business Analysis of this fiscal note.

With the proposed amendments, it is estimated that 85% of large businesses will only be required to publish one Display Notice instead of two, one Legal Notice instead of two, and the alternative language notice when applicable. Some large businesses will not be significantly affected by the proposed amendments because an estimated 15% of large businesses will require a second notice because of their federal permit or will require a second notice in the event of a hearing request. With the proposed amendments, it is estimated that total cost of public notice for each permit application for large businesses will be approximately 50% to 60% of current costs or in the range of \$380 to \$3,600. These costs are inclusive of alternate language notice. In addition, the proposed amendments will also require an applicant for an amendment to an existing permit due to construction of a new facility or for some modifications to existing facilities to publish notice and provide the opportunity for a hearing. It is anticipated that an additional 420 facilities will be required to publish notice. Using current statistics,

it is anticipated that the number of additional hearings resulting from these notices will not be significant.

#### SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 39 of the rules because public notice requirements for small business have been significantly reduced. With the proposed amendments, most small businesses will be required to publish one Display Notice, one Legal Notice, and the alternative language notice when applicable. The proposed amendments have the effect of eliminating approximately three-fourths of the currently required notices for most small businesses. It is also anticipated that some small businesses whose emissions do not have a significant effect on air quality will only be required to publish the Legal Notice and the alternate language notice when applicable. The total cost of public notice for each application for these stationary source small businesses will be approximately 9% to 27% of current costs inclusive of the alternate language notice. It is anticipated that the proposed amendments will provide significant cost reductions in costs of public notice and will have a positive fiscal impact.

#### REGULATORY IMPACT EVALUATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing as well as consolidate existing notice procedures for some air permitting programs, the rulemaking does not meet the definition of a “major environmental rule.”

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the Statutory Authority section of this preamble. This proposal does not 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 because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Water Code, Chapter 5, Subchapter M and Texas

Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting contested case hearings as well as specific procedures for hearings. The rule would also consolidate already existing notice procedures for some of the air quality permitting programs, correct, clarify, and/or update the air quality permit amendment process, requirements relating to sign posting for concrete batch plants, and clarification of requirements relating to bilingual education notices; and consolidate commission procedural rules. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules rather than substantive requirements.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

#### PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of TNRCC Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

## STATUTORY AUTHORITY

The amendment is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's

authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §39.264 of the Texas Utilities Code.

The proposed amendment implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 of the Texas Government Code.

## CHAPTER 39 - PUBLIC NOTICE

### SUBCHAPTER A : APPLICABILITY AND GENERAL PROVISIONS

#### §39.1

##### §39.1. Applicability.

Any permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A-F of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications, Public Notice of Air Quality Applications, Public Notice of Other Specific Applications, and Public Notice for Radioactive Material Licenses). Any permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), regardless of when they were declared administratively complete. [This chapter applies to:]

(1) - (8) (No change.)

## **SUBCHAPTER B : PUBLIC NOTICE OF SOLID WASTE APPLICATIONS**

### **§39.101**

#### **STATUTORY AUTHORITY**

The amendment is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include:

§5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for

waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which

establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

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

(a) Any permit application that is declared administratively complete before September 1, 1999 is subject to this subchapter. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter I of this chapter (relating to Public Notice of Solid Waste Applications).

(b) [(a)] 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 must 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 shall 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 shall be by certified mail.

(c) [(b)] Notice of intent to obtain a 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, the following actions shall be taken.

(A) The applicant shall publish notice of intent to obtain a permit at least once under §39.5(g) of this title (relating to General Provisions).

(B) The chief clerk shall publish notice of the application in the *Texas Register*.

(C) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(D) The executive director 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) [(c)] Notice of draft permit.

- (1) The applicant shall publish notice at least once under §39.5(g) of this title.
- (2) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).
- (3) The notice shall specify the deadline to file public comment or hearing requests, which shall be not less than 30 days after newspaper publication.

(e) [(d)] Notice of public meeting.

- (1) If the application proposes a new facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (b) [(a)] of this section meets the requirements of this subsection if public notice is provided under this subsection.
- (2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f) [(e)] Notice of hearing.

(1) This subsection applies if an application is referred to SOAH 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 §39.5(g) 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 shall 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 must file an affidavit certifying compliance with this paragraph with the chief clerk. Filing an affidavit certifying facts that constitute compliance with the notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes an amendment of a permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

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

## **SUBCHAPTER C : PUBLIC NOTICE OF WATER QUALITY APPLICATIONS**

### **§39.151**

#### **STATUTORY AUTHORITY**

The amendment is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for

waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which

establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

**§39.151. Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.**

(a) Any permit application that is declared administratively complete before September 1, 1999 is subject to this subchapter. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter J of this chapter (relating to Public Notice of Water Quality Applications and Water Quality Management Plans).

(b) [(a)] Notice of receipt of application and administrative completeness. The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115(c) apply to an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), except that mailed notice to adjacent or downstream landowners is not required for:

(1) an application to renew a permit; or

(2) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(c) [(b)] Notice of draft permit. For all draft permits except those in subsection (d) [(c)] of this section, the following provisions apply.

(1) The applicant shall publish notice that the executive director has prepared a draft permit at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit. For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.13 of this title, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has

requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(3) The notice must set a deadline to file public comment or hearing requests with the chief clerk that is not less than 30 days after newspaper publication. However, the notice may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment or hearing requests.

(4) For TPDES permits, the text of the notice shall include:

(A) everything that is required by §39.11 of this title (relating to Text of Public Notice); and

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(d) [(c)] Notice of certain draft TPDES permits. For a new TPDES permit for which the discharge is authorized by an existing state permit issued before September 14, 1998, the following shall apply. [:]

(1) If the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the following mailed and published notice is required.

(A) The applicant shall publish notice that the executive director has prepared a draft permit at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(B) The chief clerk shall mail notice of the application and draft permit, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutant are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists);

(vii) any other person the executive director or chief clerk may elect to include; and

(viii) if applicable, the secretary of the Coastal Coordination Council.

(C) The notice must set a deadline to file public comment, to request a public meeting, or to request a public hearing with the chief clerk that is at least 30 days after newspaper publication.

(D) The text of the notice shall include:

(i) everything that is required by §39.11 of this title;

(ii) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(iii) for applications concerning the disposal of sludge:

(I) the use and disposal practices;

(II) the location of the sludge treatment works treating domestic sewage sludge; and

(III) the use and disposal sites known at the time of permit application.

(2) If the application proposes any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the applicant must follow the notice requirements of subsection (c) [(b)] of this section.

(e) [(d)] Notice for other types of applications. Except as required by subsections (b), (c), and (d) [(a), (b), and (c)] of this section, the following notice is required for certain applications.

(1) For an application for a minor amendment to a permit other than a TPDES permit, or for an application for a minor modification of a TPDES permit, under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice, that the executive director has determined the application is technically complete and has prepared a draft permit, to the mayor and health authorities for the city or town, and to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment, which shall be no earlier than ten days after mailing notice.

(2) For an application for a renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, for which the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal, no notice is required.

(3) For an application for a minor amendment to a TPDES permit under Chapter 305, Subchapter D of this title (relating to Amendment, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the following requirements apply.

(A) The chief clerk shall mail notice of the application and draft permit, providing an opportunity to submit public comments and to request a public meeting to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutants are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 CFR §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists); and

(vii) any other person the executive director or chief clerk may elect to include.

(B) For TPDES major facility permits, notice shall be published in the *Texas Register*.

(C) The text shall meet the requirements in §39.11 of this title and subsection (b)(4) of this section.

(D) The notice shall provide at least a 30-day public comment period.

(E) The executive director shall prepare a response to all significant public comments received by the commission under §55.25 of this title (relating to Public Comment Processing).

(f) [(e)] Notice of hearing.

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

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) everything that is required by §39.11 of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(g) [(f)] Notice for discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 CFR Part 124, Subpart D,

§124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the library of the agency, Park 35, 12015 North Interstate 35, Austin.

## **SUBCHAPTER D : PUBLIC NOTICE OF AIR QUALITY APPLICATIONS**

### **§39.201**

#### **STATUTORY AUTHORITY**

The amendment is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for

waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which

establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

**§39.201. Application for a Preconstruction Permit.**

(a) Applicability. This section applies to the following types of actions that are declared administratively complete before September 1, 1999:

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

(b) (No change.)

(c) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter K of this chapter (relating to Public Notice of Air Quality Applications).

## **SUBCHAPTER E : PUBLIC NOTICE OF OTHER SPECIFIC APPLICATIONS**

### **§39.251, §39.253**

#### **STATUTORY AUTHORITY**

The amendments are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for

waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which

establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendments implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

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

(a) Any permit applications that are declared administratively complete before September 1, 1999 are subject to this subchapter. Any permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapter L of this chapter (relating to Public Notice of Injection Well and Other Specific Applications).

(b) [(a)] 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 must 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 shall be mailed to the mayor of the municipality.

(c) [(b)] Notice of receipt of application. When the executive director receives an application for, 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.

(d) [(c)] Notice of administratively complete application.

(1) The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115 apply concerning an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(2) After the executive director determines that the application is administratively complete, the executive director shall 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. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.

(e) [(d)] Notice of draft permit.

(1) 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 which is adjacent or contiguous to each county in which the facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title [(relating to Mailed Notice)], to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title, and to local governments located in the county of the facility. "Local governments" shall have the meaning provided for that term in Texas Water Code, Chapter 26.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title (relating to General Provisions).

(4) The notice shall specify the deadline to file public comment or hearing requests. The deadline shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(f) [(e)] Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous

waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (b) [(a)] of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(g) [(f)] Notice of hearing.

(1) This subsection applies if an application is referred to SOAH 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 which is adjacent or contiguous to each county wherein 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 §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall 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 §39.13 of this title, and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(B) 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 shall 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 must 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 subsection.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title.

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

**§39.253. Application for Production Area Authorization.**

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control) that is declared administratively complete before September 1, 1999. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter L of this chapter (relating to Public Notice of Injection Well and Other Specific Applications).

(b) - (d) (No change.)

## **SUBCHAPTER F : PUBLIC NOTICE OF RADIOACTIVE MATERIAL LICENSE**

### **APPLICATIONS**

#### **§39.301, §39.302**

#### **STATUTORY AUTHORITY**

The amendment and new section are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality

standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the

commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment and new section implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

**§39.301. Notice of Declaration of Administrative Completeness.**

Any permit applications that are declared administratively complete before September 1, 1999 are subject to this subchapter. Any applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapter M of this chapter (relating to Public Notice of Radioactive Material License Applications). When an application under Chapter 336 of this title (relating to Radioactive Substance Rules) has been declared administratively complete, the chief clerk shall mail notice in accordance with the requirements of this subchapter.

**§39.302. Applicability.**

Any permit applications that are declared administratively complete before September 1, 1999 are subject to this subchapter. Any applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapter M of this chapter (relating to Public Notice of Radioactive Material License Applications).

**SUBCHAPTER G : PUBLIC NOTICE FOR APPLICATIONS FOR CONSOLIDATED**

**PERMITS**

**§39.351**

**STATUTORY AUTHORITY**

The new section is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality

standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the

commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new section implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

**§39.351. Public Notice for Applications for Consolidated Permits.**

Combined public notices shall be given for applications consolidated under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing) only when:

(1) combined notice is requested by the applicant; and

(2) combined notice satisfies all statutory and regulatory requirements that would apply if each application had been processed separately, including, without limitation, all requirements for notice content, publication, mailing, broadcasting, and the posting of signs.

**SUBCHAPTER G : PUBLIC NOTICE FOR APPLICATIONS FOR CONSOLIDATED  
PERMITS  
§39.401**

**STATUTORY AUTHORITY**

The repeal is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include:

§5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality

standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the

commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed repeal implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

**§39.401. Public Notice for Applications for Consolidated Permits.**

**SUBCHAPTER H : APPLICABILITY AND GENERAL PROVISIONS**

**§§39.401, 39.403, 39.405, 39.407, 39.409, 39.411, 39.413, 39.418, 39.419, 39.420, 39.421, 39.423,  
39.425**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality

standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the

commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

**§39.401. Purpose.**

Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) specify notice requirements for applications and certain other actions described in these subchapters such as notices for public meetings, contested case hearings on permit applications and enforcement cases, comment hearings, and Water Quality Management Plan (WQMP) updates.

**§39.403. Applicability.**

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications, Public Notice

of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A-F of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Other Specific Applications, and Public Notice for Radioactive Material Licenses). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits).

(b) Subchapters H-M of this chapter apply to:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code, Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations);

(3) applications for underground injection well permits under Texas Water Code, Chapter 27, or under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(4) applications for production area authorizations under Chapter 331 of this title (relating to Underground Injection Control);

(5) hearings on contested cases under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules);

(7) applications for consolidated permit processing and consolidated permits processed under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing);

(8) applications for air quality permits under §382.0518 and §382.055 of the Texas Health and Safety Code, unless otherwise specified in this section;

(9) applications subject to the requirements of Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(10) concrete batch plants registered under Chapter 106 of this title (relating to Exemptions from Permitting) unless the facility is to be located in or contiguous to the right-of-way of a public works project;

(11) applications for voluntary emission reduction permits under Texas Health and Safety Code, §382.0519;

(12) applications for permits for electric generating facilities under §39.264 of the Utilities Code;

(13) applications for initial issuance of permits subject to the requirements of Chapter 116, Subchapter G of this title (relating to Flexible Permits);

(14) applications for permit amendments under §116.116(b) of this title (relating to Amendments) or §116.710(a)(2) and (3) of this title (relating to Applicability) for:

(A) construction of any new facility as defined in §116.10(4) and (10) of this title (relating to Definitions);

(B) changes to an existing facility as defined in §116.10(9) of this title which results in an increase in allowable emissions of any air contaminant emitted equal to or greater than the

emission quantities defined in §§106.4(a)(1) and of sources defined in §106.4(a)(2) and (3) of this title (relating to Requirements for Exemptions from Permitting); or

(C) other changes when required by the executive director; and

(15) Water Quality Management Plan (WQMP) updates processed under Texas Water Code, Chapter 26, Subchapter B.

(c) Notwithstanding subsection (b) of this section, Subchapters H-M of this chapter do not apply to:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Subchapter B of that chapter;

(2) applications for registrations and notifications under Chapter 312 of this title (relating to Control of Certain Activities by Rule);

(3) applications under Chapter 332 of this title (relating to Composting);

(4) applications under Chapter 122 of this title (relating to Federal Operating Permits);

(5) applications under Chapter 116, Subchapter F of this title (relating to Standard Permits); or

(6) applications under Chapter 106 of this title, except for concrete batch plants specified in §39.403(b)(11) of this title (relating to Applicability) .

(d) Applications for initial issuance of voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code and initial issuance of electric generating facility permits under §39.264 of the Texas Utilities Code are subject only to §39.405 of this title (relating to Applicability), §39.409 of this title (relating to General Provisions), §39.411 of this title (relating to Text of Public Notice), §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), and §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting.), and §39.605 of this title (relating to Notice to Affected Agencies), except that any reference to requests for reconsideration in §39.411 of this title (relating to Text of Public Notice) and §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) shall not apply.

(e) Applications for Radioactive Materials Licenses under Chapter 336 of this title are not subject to §39.405(c) and (f) of this title (relating to General Provisions), §39.413 of this title (relating to Mailed Notice), §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.419 of this title (relating to Notice of Application and Preliminary Decision), and

§39.420 of this title (relating to Notice of Commission Meeting to Evaluate a Request for Reconsideration or Hearing on an Application).

**§39.405. General Provisions.**

(a) If the chief clerk prepares a newspaper notice that is required by Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) or Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication. If the applicant fails to publish notice or fails to submit the affidavit required in subsection (f) of this section, the executive director may suspend further processing and return the application. If the application is resubmitted within six months of the date of the return of the application, it shall be exempt from any application fee requirements.

(b) The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) When Subchapters H-L of this chapter or Subchapter G of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Unless otherwise provided in Subchapters H-M of this chapter or Subchapter G of this chapter, public notice requirements apply to applications for new permits, concrete batch plant air quality exemptions from permitting or permits by rule, and applications to amend, modify or renew permits.

(e) Notice may be combined to satisfy more than one applicable section of this chapter.

(f) When Subchapters H-L of this chapter or Subchapter G of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and an affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file the affidavit is 10 business days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice.

(g) When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located; and

(2) for applications for solid waste permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of §39.405(g)(1) and (2) of this title (relating to General Provisions) may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county.

**§39.407. Mailing Lists.**

The chief clerk shall maintain mailing lists of persons requesting notice of certain applications. Persons, including participants in past agency permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to remain on the list, and may delete from the list the name of any person who fails to respond to such request.

**§39.409. Deadline for Public Comment and Requests for Reconsideration and Contested Case Hearing or Notice and Comment Hearing.**

Notice given under this chapter will specify a deadline to file public comment and, if applicable, requests for reconsideration, contested case hearing, or notice and comment hearing. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications).

**§39.411. Text of Public Notice.**

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When notice by publication or by mail is required by Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Mailed Notice for Radioactive Material Licenses) or Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), the text of the notice must include the applicable information in paragraphs (1)-(18) of this subsection:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) a statement of procedures by which the public may participate in the final permit decision and how to request a contested case hearing, reconsideration of the executive director's decision, or a notice and comment hearing, as applicable, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(6) a statement that a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(7) for notices of public meetings or hearings, the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures;

(8) the application or permit number;

(9) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless a contested case hearing request or a request for reconsideration (if applicable) is filed with the chief clerk;

(10) the deadline to file comments, or requests for reconsideration or hearing;

(11) a statement of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(12) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(13) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the

application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted;

(14) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application and the executive director's preliminary decision is available for review and copying;

(15) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(16) for notices of air applications:

(A) at a minimum, a listing of criteria pollutants regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Control of Air Pollution from Toxic Materials, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(B) if notice is for applications described in §39.403(b)(11) or (12) of this title (relating to Applicability), a statement that any person is entitled to request a hearing from the commission. If notice is for any air application, a statement that a person who may be affected by

emissions of air contaminants from the facility or proposed facility is entitled to request a hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a hearing;

(D) the statement: “The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Natural Resource Conservation Commission;” and

(17) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(18) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program.

**§39.413. Mailed Notice.**

When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

(1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;

(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(3) The county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;

(4) the Texas Department of Health;

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations, §124.10(c);

(8) if applicable, persons on a mailing list developed and maintained in accordance with 40 Code of Federal Regulations, §124.10(c)(1)(ix);

(9) the applicant;

(10) if the application concerns an injection well, the Water Well Drillers Advisory

Council;

(11) persons on a relevant mailing list kept under §39.407 of this title (relating to

Mailing Lists);

(12) any other person the executive director or chief clerk may elect to include;

(13) if applicable, the secretary of the Coastal Coordination Council; and

(14) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests.

**§39.418. Notice of Receipt of Application and Intent to Obtain Permit.**

Not later than 30 days after the executive director declares an application administratively complete:

(1) the applicant shall publish Notice of Receipt of Application and Intent to Obtain Permit once under §39.405 (g)(1) of this title (relating to General Provisions) and, for solid waste applications only, also under §39.405(g)(2) of this title (relating to General Provisions);

(2) the chief clerk shall mail Notice of Receipt of Application and Intent to Obtain Permit to those listed in §39.413 of this title (relating to Mailed Notice), and to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(B) the river authority in which the facility is located or proposed to be located if the application is under Chapter 26, Texas Water Code;

(3) for air applications, paragraphs (1) and (2) of this section do not apply. The applicant shall publish notice in the newspaper and post signs as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Applications). The chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice); and

(4) the notice must include the applicable information required by §39.411 of this title (relating to Text of Public Notice).

**§39.419. Notice of Application and Preliminary Decision.**

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the chief clerk, except for air applications under subsection (f)(1) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision in a newspaper at least once in the same paper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit.

(c) The chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include:

(1) the applicable information required by §39.411 of this title (relating to Text of Public Notice);

(2) a summary of the executive director's preliminary decision;

(3) the location, in a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and executive director's preliminary decision is available for review and copying;

(4) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted; and

(5) any other information required by the executive director or needed to satisfy public notice requirements of any federally authorized program.

(e) The applicant shall make a copy of the complete application and executive director's preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(f) For air applications:

(1) the applicant is not required to publish Notice of Application and Preliminary Decision, if:

(A) no hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit;

(B) a hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued; or

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted;

(2) the agency shall mail notice according to §39.602 of this title (relating to Mailed Notice); and

(3) Notice of Application and Preliminary Decision shall be published as specified in Subchapter K of this chapter (relating to Public Notification of Air Quality Applications) for permits that are not exempt under (1)(A)-(C) of this section or are for the following federal preconstruction approvals:

(A) applications under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review);

(B) applications under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review); and

(C) applications under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

**§39.420. Transmittal of Executive Director's Response to Comments and Decision.**

After the close of the comment period, the chief clerk shall transmit the executive director's decision, the executive director's response to public comments, and except for air applications under

§39.419(f)(1)(C) of this title (relating to Notice of Application and Preliminary Decision), instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action;

(4) any person who timely filed a request for a public hearing in response to the Notice of Receipt of Application and Intent to Obtain Permit for an air application;

(5) Office of Public Interest Counsel; and

(6) Office of Public Assistance.

**§39.421. Notice of Commission Meeting to Evaluate a Request for Reconsideration or Hearing on an Application.**

If, under Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment), a request for reconsideration or hearing on an application is set for

consideration during a commission meeting, the chief clerk shall mail notice to the applicant, executive director, public interest counsel, all persons who commented (or a representative of a group or association), and the persons making the request, no later than 30 days before the first meeting at which the commission considers the request.

**§39.423. Notice of Contested Case Hearing.**

(a) The chief clerk shall mail notice of a contested case hearing to the applicant, executive director, and public interest counsel. The chief clerk shall also mail notice to persons who filed public comment, or requests for reconsideration or contested case hearing. The notice shall be mailed to the parties no less than 13 days before the hearing. The chief clerk may combine the mailed notice required by this section with other mailed notice of hearing required by this chapter. If the commission refers an application to SOAH on the sole question of whether the requestor is an affected person, the notice in this subsection shall be the only notice required.

(b) For specific types of applications, additional requirements for notice of hearing are in Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses).

(c) After an initial preliminary hearing, the judge shall give reasonable notice of subsequent prehearing conferences or the evidentiary hearing by making a statement on the record in a prehearing conference or by written notice to the parties.

**§39.425. Notice of Contested Enforcement Case Hearing.**

For any contested enforcement case hearing, the chief clerk shall mail notice to the parties no less than 13 days before a hearing in accordance with the APA, §2001.052. In addition, public notice and opportunity for comment before the commission regarding a proposed enforcement action shall be given under Chapter 10 of this title (relating to Commission Meetings).

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

**§§39.501, 39.503, 39.509**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for

waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which

establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

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

(a) 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 must 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 shall 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 shall be by certified mail.

(b) Notice of receipt of application and intent to obtain a 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:

(A) notice shall be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice:

(i) in a newspaper of the largest general circulation in the county in which the facility is located or proposed to be located; and

(ii) in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located;

(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 notice of the determination of administrative completeness, 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.

(c) Notice of application and preliminary decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) shall be published once under §39.405(g)(2) of this title (relating to General Provisions).

(d) Notice of public meeting.

(1) If the application proposes a new facility, the agency shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. A public meeting is not a contested case proceeding under the APA. 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 under this subsection.

(2) The applicant shall publish notice of the public meeting, under §39.405(g)(2) of this title (relating to General Provisions), once each week during the three weeks preceding a public meeting. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(e) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH 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(g)(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 shall 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.

(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 shall be completed at least 30 days before the hearing.

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

(a) 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 must 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 shall also be mailed to the mayor of the municipality. Mailed notice shall 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.

(b) 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:

(A) notice shall be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit);

(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.

(c) Notice of application and preliminary decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) shall be published once under §39.405(g)(2) of this title (relating to General Provisions). In addition to the requirements of §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 which is adjacent or contiguous to each county in which the proposed facility is located. This notice may be combined with the notice in §39.405(g)(2) of this title, 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 shall comply with §39.411 of this title (relating to Text of Notice). The deadline for public comments on industrial solid waste applications shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(d) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies 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. A public meeting is not a contested case proceeding under the APA. 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 under this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting. The applicant shall publish notice under §39.405(g)(2) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to General Provisions).

(e) Notice of hearing.

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

(2) Newspaper notice.

(A) If the application concerns an industrial solid 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 which 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(g)(2) of this title (relating to General Provisions). The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall 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 shall 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.

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

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

(f) This section does not apply to applications for an injection well permit.

**§39.509. Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit.**

In addition to complying with §39.418 and §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision), the applicant for a Class 3 modifications shall comply with §305.69(d)(2) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

**SUBCHAPTER J : PUBLIC NOTICE OF WATER QUALITY APPLICATIONS AND WATER  
QUALITY MANAGEMENT PLANS**

**§39.551, §39.553**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality

standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the

commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

**§39.551. Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.**

(a) Notice of receipt of application and intent to obtain permit. In addition to the requirements of §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), the chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115(c) apply to an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. Mailed notice to adjacent or downstream landowners is not required for:

(1) an application to renew a permit; or

(2) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by an existing state permit issued before September 14, 1998 for

which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(b) Notice of application and preliminary decision. In addition to §39.419 of this title (relating to Notice of Application and Preliminary Decision), for all applications except applications to renew permits and those in subsection (c)(1) of this section, the following provisions apply.

(1) The applicant shall publish notice of application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. This notice may be combined with the notice in §39.419 of this title. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice). For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.413 of this title, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(3) The notice must set a deadline to file public comment with the chief clerk that is not less than 30 days after newspaper publication. However, the notice may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment.

(4) For TPDES permits, the text of the notice shall include:

(A) everything that is required by §39.11 of this title (relating to Text of Public Notice);

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(c) Notice of application and preliminary decision for certain TPDES permits. For a new TPDES permit for which the discharge is authorized by an existing state permit issued before September 14, 1998, the following shall apply:

(1) If the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment), the following mailed and published notice is required.

(A) The applicant shall publish notice of the application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(B) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing to those listed in §39.413 of this title.

(C) The notice must set a deadline to file public comment, or to request a public meeting, with the chief clerk that is at least 30 days after newspaper publication.

(D) The text of the notice shall include:

(i) everything that is required by §39.411 of this title (relating to Text of Public Notice);

(ii) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(iii) for applications concerning the disposal of sludge:

(I) the use and disposal practices;

(II) the location of the sludge treatment works treating domestic sewage sludge; and

(III) the use and disposal sites known at the time of permit application.

(2) If the application proposes any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the applicant must follow the notice requirements of subsection (b) of this section.

(d) Notice for other types of applications. Except as required by subsections (a), (b), and (c) of this section, the following notice is required for certain applications.

(1) For an application for a minor amendment to a permit other than a TPDES permit, or for an application for a minor modification of a TPDES permit, under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice, that the executive director has determined the application is technically complete and has prepared a draft permit, to the mayor and health authorities for the city or town, and to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment, which shall be no earlier than ten days after mailing notice.

(2) For an application for a renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, for which the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal, no notice is required.

(3) For an application for a minor amendment to a TPDES permit under Chapter 305, Subchapter D of this title, the following requirements apply.

(A) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments and to request a public meeting to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutants are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists); and

(vii) any other person the executive director or chief clerk may elect to include.

(B) For TPDES major facility permits, notice shall be published in the *Texas Register*.

(C) The text shall meet the requirements in §39.411 of this title and subsection (b)(4) of this section.

(D) The notice shall provide at least a 30-day public comment period.

(E) The executive director shall prepare a response to all relevant and material or significant public comments received by the commission under §55.152 of this title (relating to Public Comment Processing).

(e) Notice of contested case hearing.

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

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice), except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) everything that is required by §39.411 of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(f) Notice for discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 CFR Part 124, Subpart D,

§124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the library of the agency, Park 35, 12015 North Interstate 35, Austin.

**§39.553. Water Quality Management Plan Updates.**

(a) Notice of Water Quality Management Plan (WQMP) updates.

(1) The chief clerk shall publish notice of the WQMP update in the *Texas Register*.

(2) The chief clerk shall mail the notice of the WQMP update to persons known to the commission to be interested in the WQMP update, and to persons requesting notices of the WQMP identified on mailing lists maintained by the chief clerk, in accordance with §39.407 of this title (relating to Mailing Lists).

(3) Section 39.411 of this title (relating to Text of Public Notice) does not apply to WQMP updates. However, the notice of the WQMP update shall:

(A) include the name and address of the agency;

(B) provide an opportunity to submit written comments on the proposed

WQMP update;

(C) describe the public comment procedures and the time and place of any public meeting; and

(D) include the name, address, and telephone number of an agency contact person from whom interested persons may obtain information.

(4) The notice shall provide at least a 30-day public comment period.

(5) Any public meeting shall be held and conducted in accordance with the requirements and procedures of §55.156 of this title (relating to Public Comment Processing).

(b) The executive director shall prepare a response to all significant public comments received by the commission before the end of the comment period. The executive director may revise the WQMP update based on public comment, if appropriate.

(c) As described in §50.133 of this title (relating to Executive Director Action on Application or WQMP Update), the executive director may certify the WQMP update.

(d) After the executive director certifies a WQMP update, the Chief Clerk shall mail a copy of the Response to Comments and certified WQMP update to all persons who submitted timely comments.

**SUBCHAPTER K : PUBLIC NOTICE OF AIR QUALITY APPLICATIONS**

**§§39.601-606**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for

waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which

establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

**§39.601. Applicability.**

Applications or registrations that are declared administratively complete before September 1, 1999 are subject to the requirements of Chapter 116, Subchapter B, Division 3 (relating to Public Notification and Comment Procedures) (effective March 21, 1999) or §106.5 of this title (relating to Public Notice) (effective December 24, 1998). Applications or registrations that are declared administratively complete by the executive director on or after September 1, 1999 are subject to this subchapter.

**§39.602. Mailed Notice.**

When this subchapter requires mailed notice, the chief clerk shall mail notice only to those persons listed in §39.413 (a)(9), (11), (12), and (14) of this title (relating to Mailed Notice). When Notice of Receipt and Intent to Obtain a Permit is required, mailed notice shall be sent to the state senator and representative who represent the area in which the facility is or will be located.

**§39.603. Newspaper Notice**

(a) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air application, the applicant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice shall be published in the public notice section of the newspaper and shall comply with §39.411 of this title (relating to Text of Notice).

(2) Another notice shall be published in a prominent location elsewhere in the same issue of the newspaper, with a size of at least 96.8 square centimeters (15 square inches) and with the shortest dimension of at least 7.6 centimeters (three inches). This notice shall contain the following information:

(A) permit application number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(b) Alternative language newspaper notice.

(1) This subsection applies whenever either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Chapter 29, Subchapter B, Education Code, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) the school that otherwise would be required to provide a bilingual education program waives out of this requirement under 19 TAC §89.1205(g).

(2) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.

(3) The notice shall be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.

(4) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located. Notice under this subsection shall only be required to be published within the United States.

(5) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(6) Each alternative language publication shall follow the requirements of this chapter that are consistent with this section.

(7) If a waiver is received under this section, the applicant shall complete a certification and submit it as required under §39.605(c) of this title (relating to Notice to Affected Agencies).

(c) Alternative publication procedures for small businesses.

(1) The applicant does not have to comply with subsection (a)(2) of this section if all of the following conditions are met:

(A) the applicant and source meets the definition of a small business stationary source in §382.0365 of the Texas Health and Safety Code including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) the application will not have a significant effect on air quality if total actual emissions from the proposed facility shall not exceed 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO<sub>x</sub>); or 25 tpy of volatile organic compounds (VOC) or sulfur dioxide (SO<sub>2</sub>) or inhalable particulate matter (PM<sub>10</sub>); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(2) The executive director may post information regarding pending air permit applications with notice on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

**§39.604. Sign-Posting.**

(a) At the applicant's expense, a sign or signs shall be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements.

(1) Signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches.

(2) Signs shall be headed by characters of no less than two-inch bold face block printed capital lettering.

(3) Signs shall be headed by the words:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(4) Signs shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch bold-face block printed capital lettering. More than one application number may be included on the signs if the respective public comment periods coincide.

(5) Signs shall include the words "for further information contact" in no less than 1/2-inch lettering.

(6) Signs shall include the words "Texas Natural Resource Conservation Commission," and the address of the appropriate commission regional office in no less than one-inch boldface capital lettering and 3/4-inch boldface lower case lettering.

(7) Signs shall include the telephone number of the appropriate commission office in no less than two-inch boldface numbers.

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant must provide a certification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership which are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.603(b)(1) and (2) of this title (relating to Newspaper Notice). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs shall be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection shall be satisfied without regard to whether alternative language newspaper notice is waived under

§39.703(b)(5) of this title (relating to Newspaper Notice). The alternative language signs shall meet all other requirements of this section.

**§39.605. Notice to Affected Agencies.**

In addition to the requirements in §39.405(f) of this title (relating to General Provisions):

(1) when newspaper notices are published under this section, the applicant shall furnish a copy of the notices and affidavit to:

(A) the EPA regional administrator in Dallas;

(B) all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; and

(C) the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility;

(2) when sign posting is required under this section, the applicant shall furnish a copy of sign posting certifications, within 10 business days after the end of the comment period, to:

(A) the chief clerk;

(B) the executive director; and

(C) those listed in paragraph (1)(A)-(C) of this section; and

(3) when alternative language waiver certifications are required under this section, the applicant shall furnish a copy to those listed in paragraph (2)(A)-(C) of this paragraph.

**§39.606. Alternative Means for Certain Actions.**

(a) An applicant for a voluntary emission reduction permit, under §382.05191 of the Texas Health and Safety Code, for a facility that constitutes or is part of a small business stationary source, as defined in §382.0365(g)(2) of the Texas Health and Safety Code, may request approval of alternative means from the notice methods required under this subchapter.

(b) The executive director may approve the request upon a determination that the alternative means will result in equal or better communication with the public, considering the following factors:

(1) the effectiveness of the method of notice in reaching potentially affected persons;

(2) the cost of the method of notice; and

(3) whether the method is consistent with federal requirements.

(c) The applicant may not use the alternative means of notice until the executive director gives written approval.

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

**APPLICATIONS**

**§39.651, §39.653**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality

standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the

commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

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

(a) 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 must 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 shall be mailed to the mayor of the municipality.

(b) 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, the following persons shall be notified:

(A) the School Land Board if the requirements of Texas Water Code, §5.115 apply to an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section;

(B) the persons listed in §39.413 of this title (relating to Mailed Notice); and

(C) the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(3) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to:

(A) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and

(B) county judge and the health authority of the county in which the facility is located.

(c) Notice of application and preliminary decision. The notice required by §39.419 of this title (relating to Application and Preliminary Decision) shall be published once under §39.405(g)(2) of this title (relating to General Provisions). In addition to the requirements of §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 which is adjacent or contiguous to each county in which the proposed facility is located. This notice may be combined with the notice in §39.419 of this title, if the newspaper meets the requirements of both rules and that section.

(2) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice), to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title, and to local governments located in the county of the facility. “Local governments” shall have the meaning provided for that term in Texas Water Code, Chapter 26.

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

(4) The notice shall comply with §39.411 of this title (relating to Contents of Notice). The deadline for public comments on industrial solid waste applications shall be not less than 30 days

after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(d) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment or requests for reconsideration or hearing. A public meeting is not a contested case proceeding under the APA. 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.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(g)(2) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

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

(e) Notice of contested case hearing.

(1) This subsection applies if an application is referred to SOAH 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 which is adjacent or contiguous to each county wherein 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(g)(2) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall 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, and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title.

(B) 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 shall 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.

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

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

**§39.653. Application for Production Area Authorization.**

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control).

(b) Notice of administratively complete application. The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(c) Notice of executive director's preparation of draft production area authorization. The chief clerk shall mail notice to the persons listed in §39.413 of this title. The notice shall specify the deadline to file with the chief clerk public comment, which is 30 days after mailing.

(d) Notice of contested case hearing.

(1) This subsection applies if an application is referred to SOAH 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(g)(2) of this title (relating to General Provisions).

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

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

**SUBCHAPTER M : PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES**

**§39.701, §39.702, §39.703, §39.705, §39.707, §39.709, §39.711, §39.713**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for

waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which

establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

**§39.701. Applicability**

Any license application under Chapter 336 of this title (relating to Radioactive Substance Rules) that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

**§39.702. Notice of Declaration of Administrative Completeness.**

When an application under Chapter 336 of this title (relating to Radioactive Substance Rules) has been declared administratively complete, the chief clerk shall mail notice under this subchapter.

**§39.703. Notice of License Applications Upon Completion of Technical Review.**

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules) or for a minor amendment issued under Chapter 336, Subchapter H of

this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), notice shall be mailed and published under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For any other application for a minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), notice shall be mailed under this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

**§39.705. Mailed Notice for Radioactive Material Licenses.**

When notice by mail is required under this subchapter, the chief clerk shall mail notice under only §39.413(2), (3), (8), (9), and (12) of this title (relating to Mailed Notice), and to each owner of property adjacent to the proposed site. For purposes of determining the ownership of property adjacent to the proposed site under this subchapter, the applicant shall provide the chief clerk with the names of the landowners from the county tax rolls that are available no more than 30 days before the date of newspaper publication of the notice.

**§39.707. Published Notice.**

(a) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), when notice is required to be published under this

subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), when notice is required to be published under this subchapter, the applicant shall publish notice in a newspaper published in the county or counties in which the facility is or will be located. If no newspaper is published in the county or counties in which the facility is or will be located, a written copy of the notice shall be posted at the courthouse door and five other public places in the immediate locality to be affected. The notice shall be posted for at least 31 days.

(c) In addition to published notice requirements in subsection (b) of this section, for an amendment of a license under Chapter 336, Subchapter H of this title, the chief clerk shall publish notice once in the *Texas Register*.

**§39.709. Notice of Contested Case Hearing on Application.**

(a) The requirements of this section apply when an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), notice shall be mailed no later than 30 days before the

hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

**§39.711. Proof and Certification of Notice.**

(a) Notice shall be mailed by certified mail, return receipt requested. Proof of mailing to the proper address on the return receipt shall be accepted as conclusive evidence of the fact of the mailing.

(b) The applicant shall file proof of publication with the chief clerk within 30 days after publication. Acceptance of an affidavit executed by the publisher accompanied by a printed copy of the notice as published creates a rebuttable presumption of compliance with the requirement to publish notice.

(c) The applicant shall file proof of posting with the chief clerk within 30 days of posting. Proof of posting may be made by the return affidavit of the sheriff or constable, or, by the affidavit of a credible person made on a copy of the posted notice showing the fact of the posting.

**§39.713. Public Notification and Public Participation.**

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site under §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions) or §336.609 of this title (relating to Alternate Criteria for License Termination), or whenever the commission deems notice to be in the public interest, the commission shall:

(1) notify and solicit comments from:

(A) local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(B) the United States Environmental Protection Agency for cases where the licensee proposes to release a site under §336.609 of this title (relating to Alternate Criteria for License Termination); and

(2) publish a notice in the *Texas Register* and in a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§50.2, 50.13, and 50.31, and new §§50.102, 50.113, 50.115, 50.117, 50.119, 50.131, 50.133, 50.135, 50.137, 50.139, 50.141, 50.143, and 50.145 concerning action on applications.

## BACKGROUND

The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, and SB 1308, 76th Legislature (1999). This proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Concurrently with this rulemaking, the commission is proposing the review of Chapter 50, concerning Action on Applications, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

## OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code, Chapter 5, Subchapter M; revised Texas Health and Safety Code, Solid Waste Disposal Act, §361.088; revisions to the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.056; and revisions to Texas Government Code, §2003.047. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of

commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment received in response to the notices or at public meetings, and file the responses with the chief clerk. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment, or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

#### OVERVIEW OF SB 7 AND IMPLEMENTATION

SB 7, also enacted by the 76th Legislature, restructures electric utility service in Texas. Owners of grandfathered facilities that generate electric energy for compensation are required to apply for an electric generating facility permit from the commission by September 1, 2000. These permits are subject to notice under §382.056 of the Texas Health and Safety Code. SB 7 provides that initial issuance of these permits requires notice and comment proceedings. However, amendment and renewal of these permits requires notice, comment and opportunity for contested case hearing.

The notice provisions for electric generating facility permits are implemented through changes to Chapters 39 and to a limited extent to Chapters 50 and 55. Amendments and renewals are subject to Chapters 50, 55, and 80 as amended. Additional implementation of the requirements of SB 7 is expected in future rulemaking proposals by the commission.

#### OVERVIEW OF SB 766 AND IMPLEMENTATION

SB 766, enacted by the 76th Legislature, also amends TCAA Chapter 382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission reduction permit (VERP) for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to VERPs

under SB 766 are included in these chapters, specifically §39.403(11) and §39.606. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

#### OVERVIEW OF SB 1308 AND IMPLEMENTATION

SB 1308 allows the executive director to approve water quality management plans (WQMP) and revisions, so long as an opportunity for public participation has been provided. This bill, which amends Texas Water Code §26.037, also requires rules to provide for commission review of the executive director's decision on a plan approval or revision. This proposal incorporates these requirements through §§39.401, 39.403, and 39.553.

#### OVERVIEW OF HB 1479 AND IMPLEMENTATION

HB 1479 amended §26.028 of the Texas Water Code and allows the commission to approve an application to renew or amend a permit without the necessity of a public hearing if the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or changing materially the pattern or place of discharge; the activities to be authorized will maintain or improve the quality of waste; and the applicant's compliance history raises no issues regarding the applicant's ability to comply with a material term of its permit; and for TPDES permits, notice and opportunity to comment is provided in accordance with federal program requirements. This proposal implements these provisions.

## OVERVIEW OF SB 211 AND IMPLEMENTATION

SB 211 amends §2001.142(c) of the Texas Government Code relating to notice of decision in an administrative hearing and provides that a party is presumed to have been notified on the third day after notice has been mailed. The requirement in SB 211 regarding presumed notice within three days of mailing has also been implemented and has guided rule drafting in Chapters 39, 50, 55, and 80.

## EXPLANATION OF PROPOSED RULES

### ORGANIZATION OF CHAPTER

HB 801 applies only to certain applications that are administratively complete on or after September 1, 1999. Thus, in the proposed rules in Chapter 50, Subchapters A-C are amended to apply only to applications that were administratively complete *before* September 1, 1999. Subchapter D is not used here; it is reserved for future rulemaking. At the same time, new Subchapters E-G apply only to applications that are administratively complete *on or after* September 1, 1999. Generally, new Subchapters E-G are duplicated versions of the existing rules in Subchapters A-C, modified to incorporate substantive changes either related to HB 801 implementation, implementation of other bills, or other changes proposed under this chapter.

In this proposal, only the applicability sections of Subchapters A-C are reproduced. For Subchapters E-G, the entire new subchapters are printed. Many of the sections of Subchapters E-G are the same or very similar to sections in Subchapters A-C. Where possible, section numbers are parallel; for example, §50.13 (Action on Applications) is similar to §50.113 (Action on Applications). Nonetheless,

since Subchapters E-G are entirely new, it may be difficult to quickly see the differences between those new and existing subchapters. In the section-by-section analysis in this preamble, the agency has tried to point out any important differences. Additionally, to facilitate review, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and Assessment, at (512) 239-1932 and on the commission's website at:

<http://www.tnrcc.state.tx.us/oprd/forum.html#hb801>

#### SECTION BY SECTION ANALYSIS

Proposed §50.2 (Applicability) states that Subchapter A applies to any application for a permit that is declared administratively complete before September 1, 1999, and that the similar Subchapter E applies to any application that is declared administratively complete on or after September 1, 1999. Section 50.2(c) clarifies that this chapter does not apply to Federal Operating Permits, which continue to be regulated under the provisions of Chapter 122 (Federal Operating Permits).

Proposed §50.13 (Action on Application) states that Subchapter B applies to any application for a permit that is declared administratively complete before September 1, 1999, and that Subchapter F applies to any application that is declared administratively complete on or after September 1, 1999.

Proposed §50.31(b) (Purpose and Applicability) states that Subchapter C applies to any application for a permit that is declared administratively complete before September 1, 1999, and that Subchapter G applies to any application that is declared administratively complete on or after September 1, 1999.

Proposed §50.102 (Applicability) which parallels current §50.2, states that applications declared administratively complete on or after September 1, 1999 are subject to the requirements of Subchapters E-G; while those declared administratively complete before September 1, 1999 are subject to Subchapters A-C. Paralleling proposed §50.2(c), proposed new §50.102(f) states that Subchapters E-G do not apply to air quality applications for Federal Operating Permits, which continue to be regulated under Chapter 122 of this title (Federal Operating Permits). Voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code, and emission reduction permits for electric generating facilities under §39.264 of the Texas Utilities Code, are only subject to §§50.117, 50.131, 50.133, 50.135, and 50.145 of this chapter.

Proposed §50.113, while mirroring current §50.13 (Action on Application), introduces the request for reconsideration provided by HB 801. Requests for reconsideration are considered on the same schedule as hearing requests, so in most sections where a hearing request is mentioned in current rules, provision for requests for reconsideration is added. Under proposed §50.113 (Action on Application), the commission may act on an application without holding a contested case hearing (1) when no timely hearing requests have been received, (2) when all timely filed requests for reconsideration or contested case hearing have been withdrawn or denied, or (3) when an application has been remanded because of a settlement. Additionally, proposed §50.113(a)(4) departs from current §50.13 by adding the HB 801 provisions that allow the commission to act on certain applications without a contested case hearing only if the commission finds that there are no issues involving disputed questions of fact, that were raised during the comment period, and that are relevant and material to the decision on the application.

Proposed §50.113(b) provides that the commission may act on an application for a renewal, modification, or amendment of an air permit if doing so will not result in an increase of emissions or the emission of an air contaminant not previously emitted. However, this does not include air applications involving a facility with unresolved, recurring, or egregious compliance violations. See §382.056(o), Texas Health and Safety Code. Similarly, proposed §50.113(b)(2) implements Section 4 of HB 801, allowing the commission to act without a contested case hearing on hazardous waste permit renewals under §305.631(a)(8). Similarly, implementing HB 1479, this section allows the commission to act without a hearing on wastewater discharge permit renewals or amendments under §26.028(d) of the Texas Water Code. While 26.028 has long allowed the commission to act on certain permit amendments without offering the opportunity for a hearing, HB 1479 granted that option to renewal applications.

New §50.115 (Scope of Proceedings) proposes to substantially change current §50.15 to implement HB 801. Proposed §50.115 (Scope of Proceedings) requires the commission to specify the number and scope of issues that may be referred to hearing. Section 50.115(b) states that an issue may not be referred for contested case hearing unless the commission determines that the issue involves a disputed question of fact which is relevant and material to a decision on the application. Section 50.115(c) requires the commission to estimate the maximum expected duration of each hearing. The commission proposes to interpret the maximum expected duration to end when the judge submits the proposal for decision to the commission. Additionally, the commission proposes to specify that the maximum duration, for the most complex hearings, should not exceed one year. Less complex hearings should take less time. Subsection (d) of proposed §50.115 mirrors the language in current §50.15, and (d)(2)

incorporates existing statutory requirements from Texas Health and Safety Code §382.055. Finally, subsection (e) applies to those applications that are not under Chapters 26 and 27 of the Texas Water Code or Chapters 361 or 382 of the Texas Health and Safety Code. Subsection (e) implements Section 6 of HB 801, which amends Texas Government Code §2003.047 and requires the commission to submit a list of disputed issues. The rule proposes, for those programs other than those under Chapters 26 and 27 of the Texas Water Code or Chapters 361 or 382 covered by Section 2 and 5 of HB 801, that the list of disputed issues shall be those issues defined by the law governing those applications. This is proposed because it does not appear to be the intent of HB 801 to involve those applications in all of the procedures required by HB 801.

Proposed §50.117(a)-(e) mirrors current §50.17 (Commission Action). To comply with HB 801 and the requirements of federally authorized programs, proposed §50.117(f) (Commission Actions) provides that the commission shall consider all public comments received on an application, and shall either adopt the executive director's response to comments or prepare its own response.

Proposed §50.119 (Notice of Commission Action, Motion for Rehearing) substantially parallels current §50.19, but §50.119(a) adds persons who submit requests for reconsideration to the list of people who get notice of a commission action. Section 50.119(b) refers to proposed §80.272, rather than the current §80.271, to which §50.19 refers. Subsection (b) also provides that a person is presumed to have been notified of the commission's decision three days after the decision is mailed by first class mail, in conformity with §2001.42(c), Texas Government Code, which was enacted by SB 211.

Proposed Subchapter G of Chapter 50 parallels current Subchapter C (Action by the Executive Director). Proposed §50.131 (Purpose and Applicability) parallels current §50.31, except in three respects. First, proposed §50.131(b) delegates to the executive director the authority to certify WQMP updates, implementing SB 1308. Second, proposed §50.131(c) does not contain the statement that this subchapter does not apply to air federal operating permits under Chapter 122. This was deleted because §50.2 and §50.102 are proposed to contain a more general statement that none of Chapter 50, except §50.17 and §50.117, apply to federal operating permits. Third, the current reference to §50.39 in §50.31(d) is changed in proposed §50.139 to the parallel §50.131(d).

Proposed §50.133 (Executive Director Action on Application and WQMP Update) parallels current §50.33 and sets out the circumstances under which the executive director may act on an application. New §50.133 differs slightly from §50.33 because it implements certain provisions of HB 801 and SB 1308. §50.133(a)(1) adds the requirement that the executive director must consider public comment and prepare a response before acting on an application. New language is proposed under §50.133(a)(5)(D) and (E) to provide that an application is also considered uncontested if it (1) has been remanded because of a settlement, or a contested case hearing request has been filed but no opportunity for hearing is provided by law, or (2) when the application for renewal, modification or amendment of an air permit would not result in an increase in emissions or the emission of a new contaminant. Proposed §50.133(b) and (c) mirror current §50.33(b) and (c), describing how persons who submit comments will be notified of the executive director's action and the opportunity to file a motion for reconsideration.

Proposed §50.133(d) incorporates a new requirement allowing the executive director to certify a WQMP update after notice and, if appropriate, after revisions have been made to the WQMP in response to those comments. Additionally, the title of the section is proposed to be amended to include a reference to WQMP updates. These proposed changes implement requirements in SB 1308.

Proposed §50.135 (Effective Date of Executive Director Action) parallels current §50.35, providing that a permit is effective when signed by the executive director, but adding “unless otherwise specified in the permit,” to allow flexibility.

Proposed new §50.137 (Remand for Action by Executive Director), mirrors current §50.37, stating that an application subject to this subchapter may be remanded to the executive director if all timely filed requests for reconsideration and requests for hearing are withdrawn or denied. The departure from §50.37 is the addition of request for reconsideration to implement HB 801.

Proposed new §50.139 (Motion for Reconsideration of Executive Director’s Action), like current §50.39, allows a motion for reconsideration of the executive director’s decision on an application or WQMP update certification. This section also identifies the manner in which an interested person may seek commission review of an executive director’s action on a WQMP update. The title of the section is proposed to be changed to add “of Executive Director’s Action” to emphasize that a Motion for Reconsideration is filed in response to the executive director’s final action on an application, whereas a Request for Reconsideration, provided for in Chapter 55, is properly filed while an application is still subject to commission consideration. A *Request* for Reconsideration is not a prerequisite to a *Motion*

for Reconsideration, but a *Request* for Reconsideration would come first in time before a *Motion* for Reconsideration.

A Motion for Reconsideration must be filed no later than 20 days after notice of the executive director's action is mailed. Persons who file timely comments on WQMP update certifications, and who wish to file a motion for reconsideration, must do so within 20 days after the executive director's response to comments is mailed. The executive director's action on an application is not affected by a motion for reconsideration, unless the commission otherwise orders. Procedures relating to motions for rehearing do not apply to motions for reconsideration.

Proposed §50.141 deletes language pertaining to the pendency of delegation of the National Pollutant Discharge Elimination System authority because the commission received authorization to operate the program on September 14, 1998.

Proposed §50.143 is unchanged from current §50.43 except for the removal of the sentence allowing the agency to return classified or confidential portions of an application to an applicant. This change conforms to changes to §1.5 (Records of the Agency) and to the Texas Public Information Act. A cross reference to Commission Action on Hearing Request has been updated to refer to proposed §80.272 rather than current §80.271.

Proposed §50.145 (Corrections to Permits), mirrors §50.15 of this title and includes no substantive changes. This section, like many others, is added solely so that, after all applications that were

administratively complete before September 1, 1999 have been processed, Subchapters A-C may be repealed. At that time, Subchapters E-G will contain all of the then-current rules for Action on Application.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 50, Actions on Applications, would implement certain provisions contained in HB 801, 76th Legislature, Regular Session, 1999, an act relating to public participation in certain environmental permit proceedings of the commission. It also incorporates changes required by SB 1308, an act relating to approval of WQMPs, and changes required by SB 211, an act relating to the notice of a decision in an administrative hearing, and changes required by HB 1479, an act relating to wastewater permits.

The proposed amendments establish the circumstances when the commission may act on an application without holding a contested case hearing; require the commission to limit the number and scope of issues in permit applications referred to hearing; establish procedures regarding public comment on permit applications; clarify procedures regarding Motions for Rehearing or Reconsideration; delegate authority to the executive director to take action on certain applications and certifications; establish circumstances when the executive director may act on an application; establish the effective date of a permit; clarify when the State Office of Administrative Hearings may remand an application to the

executive director. The proposed amendments also provide that the executive director may certify WQMP updates, and that a party is presumed to have been notified on the third day after a final order is mailed.

The proposed amendments affect permitting processes for air, water, and waste programs. It is anticipated that all applicants for permits under Chapters 26, Water Quality Control; Chapter 27, Injection Wells, of the Texas Water Code; applicants for permits under Chapter 361, Solid Waste Disposal Act; and certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations will be affected by the proposed amendments to the rules. Additionally, applicants for any other permit or approval subject to commission or executive director action may be affected by these amendments. Persons involved in the permitting process, including members of the general public, will also be affected.

#### PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 50 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the permitting processes conducted by the commission, increased standardization in the application process, and more efficient contested case hearings.

The purpose of the proposed amendments is to establish procedures that will enhance public participation in certain commission permitting processes, as well as to implement recent legislation

allowing the executive director to approve WQMP updates; allowing commission action without a hearing on certain air, hazardous waste, and wastewater permit renewals and amendments; and adding three days to the time a person is presumed to have received mailed notice of a final order or decision. No significant additional costs are anticipated to any person associated with the proposed amendments because the amendments do not create new regulatory burdens but only modify or clarify procedures currently in existence.

#### SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 50 of the rules because the amendments modify or clarify requirements currently in existence.

#### REGULATORY IMPACT EVALUATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in

nature and establishes procedures associated with actions on permit applications, the rulemaking does not meet the definition of a “major environmental rule.”

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not 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 because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Water Code, Chapter 5, Subchapter M, and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the commission's rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting public hearing. The rule would also consolidate already existing notice procedures for some of the air quality permitting programs; correct, clarify, and/or update the air quality permit amendment process, requirements relating to sign posting for concrete batch plants, and clarification of requirements relating to bilingual education notices; and consolidate commission procedural rules. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program. The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a

coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §281.40, et seq).

#### PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

## STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192,

which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and 2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

**CHAPTER 50 - ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS**

**SUBCHAPTER A : PURPOSE, APPLICABILITY, AND DEFINITIONS**

**§50.2**

**§50.2. Applicability.**

(a) Subchapters A - C of this chapter (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by Executive Director) apply [This chapter applies] to any application to issue, amend, modify, renew, correct, endorse, or transfer a permit, license, registration, or other authorization or approval that is declared administratively complete before September 1, 1999. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter E of this chapter (relating to Purpose, Applicability, and Definitions).

(b) (No change.)

(c) Subchapters A - C of this chapter do not apply to air quality applications under Chapter 122 of this title (relating to Federal Operating Permits).

## **SUBCHAPTER B : ACTION BY THE COMMISSION**

### **§50.13**

#### **STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit

conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and

2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

**§50.13. Action on Application.**

Any permit application that is declared administratively complete before September 1, 1999 is subject to this subchapter. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter F of this chapter (relating to Action by the Commission).

After the time for filing a hearing request as provided in §55.21 [§55.21(d)] of this title (relating to Requests for Contested Case Hearings, Public Comment), the commission may act on an application without holding a contested case hearing when:

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

## **SUBCHAPTER C : ACTION BY EXECUTIVE DIRECTOR**

### **§50.31**

#### **STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit

conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and

2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

**§50.31. Purpose and Applicability.**

(a) (No change.)

(b) This subchapter applies to applications for new permits, or to renew, modify, amend, correct, endorse, or transfer permits and to applications seeking orders that have the effect of issuing, renewing, modifying, amending, or transferring permits. Any application that is declared administratively complete before September 1, 1999 is subject to this subchapter. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

(1) - (20) (No change.)

(c) - (d) (No change.)

**SUBCHAPTER E : PURPOSE, APPLICABILITY, AND DEFINITIONS**

**§50.102**

**STATUTORY AUTHORITY**

The new section is proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit

conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and

2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new section implements Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

**§50.102. Applicability.**

(a) Any permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - C of this chapter (relating to Purpose, Applicability and Definitions; Action by the Commission; and Action by Executive Director). Any permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters E - G of this chapter (relating to Purpose, Applicability and Definitions; Action by the Commission; and Action by the Executive Director).

(b) This chapter applies to any permit application to issue, amend, modify, renew, correct, endorse, or transfer a permit.

(c) This chapter applies to certification of water quality management plan (WQMP) updates.

(d) Only the following sections of this subchapter apply to initial applications for voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code or electric generating facility permits under §39.264 of the Texas Utilities Code:

(1) §50.117 of this title (relating to Commission Actions);

(2) §50.131 of this title (relating to Purpose and Applicability);

(3) §50.133 of this title (relating to Executive Director Action on Application or WQMP update);

(4) §50.135 of this title (relating to Effective Date of Executive Director Action); and

(5) §50.145 of this title (relating to Corrections to Permits)

(e) This chapter does not apply to applications for emergency or temporary orders or temporary authorizations.

(f) Subchapters E - G of this chapter do not apply to air quality applications under Chapter 122 of this title (relating to Federal Operating Permits).

**SUBCHAPTER F : ACTION BY THE COMMISSION**

**§§50.113, 50.115, 50.117, 50.119**

**STATUTORY AUTHORITY**

The new sections are proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit

conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and

2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

**§50.113. Action on Application.**

(a) After the deadline for filing a request for reconsideration or contested case hearing under §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing), the commission may act on an application without holding a contested case hearing or acting on a request for reconsideration, if:

(1) no timely request for reconsideration or hearing has been received;

(2) all timely requests for reconsideration or hearing have been withdrawn or denied by the commission;

(3) a judge has remanded the application because of settlement; or

(4) for applications under Chapters 26 and 27 of the Texas Water Code and 361 and 382 of the Texas Health and Safety Code, the commission finds that there are no issues that:

(A) involve a disputed question of fact;

(B) were raised during the public comment period; and

(C) are relevant and material to the decision on the application.

(b) Without holding a contested case hearing, the commission may act on an application for:

(1) any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. This does not include applications that involve a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(2) hazardous waste permit renewals under §305.631(a)(8) of this title (relating to Renewal); and

(3) wastewater discharge permit renewal or amendments under §26.028(d) of the Texas Water Code, unless the commission determines that an applicant's compliance history for the preceding five years raises issues regarding the applicant's ability to comply with a material term of its permit.

**§50.115. Scope of Proceedings.**

(a) When the commission grants a request for a contested case hearing, it shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.

(b) The commission may not refer an issue to SOAH for a hearing unless the commission determines that the issue:

(1) involves a disputed question of fact;

(2) was raised during the public comment period; and

(3) is relevant and material to the decision on the application.

(c) Consistent with the nature and number of the issues to be considered at the hearing, the commission by order shall specify the maximum expected duration of the hearing by stating the date by which a proposal for decision is expected to be issued by the judge. For any matter referred, the time period from the first day of the preliminary hearing to the date the proposal for decision is issued shall

be no longer than one year unless an extension is granted by the judge. An extension may be granted if the judge determines that failure to grant an extension will deprive a party of due process or another constitutional right.

(d) The commission may limit the scope of the proceedings:

(1) to only those portions of a permit for which the applicant requests action through an amendment or modification. All terms, conditions, and provisions of an existing permit remain in full force and effect during the proceedings, and the permittee shall comply with an existing permit until the commission acts on the application; and

(2) to only those requirements in §382.055 of the Texas Health and Safety Code for the review of a permit renewal.

(e) subsections (a)-(c) of this section do not apply to applications other than those under Chapters 26 and 27 of the Texas Water Code and Chapters 361 and 382 of the Texas Health and Safety Code. When referring a case to SOAH, applications other than those under Chapters 26 and 27 of the Texas Water Code and Chapters 361 and 382 of the Texas Health and Safety Code, the commission or executive director shall provide a list of disputed issues. For hearings on these applications, the disputed issues are deemed to be those defined by law governing these applications.

**§50.117. Commission Actions.**

(a) The commission may grant or deny an application in whole or in part, suspend the authority to conduct an activity or dispose of waste for a specified period of time, dismiss proceedings, amend or modify a permit or order, or take any other appropriate action.

(b) For applications involving hazardous waste under the Texas Solid Waste Disposal Act, the commission may issue or deny a permit for one or more units at the facility. The interim status of any facility unit compliant with the provisions of Texas Health and Safety Code, §361.082(e), and §335.2(c) of this title (relating to Permit Required) for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(c) If the commission directs a person to perform or refrain from performing any act or activity, the order shall set forth the findings on which the directive is based. The commission may set a reasonable compliance deadline in its order in which to:

(1) terminate the operation or activity;

(2) cease disposal, handling, or storage of any waste;

(3) conform to the permit requirements, including any new or additional conditions imposed by the commission; or

(4) otherwise comply with the commission's order.

(d) For good cause, the commission may grant an extension of time to a compliance deadline upon application by the permittee.

(e) For applications involving radioactive material licenses under the Texas Radiation Control Act, the commission may incorporate in any license at the time of issuance, or thereafter by appropriate rule or order, additional requirements and conditions as it deems appropriate or necessary to:

(1) protect and minimize danger to public health and safety or the environment;

(2) require reports and the keeping of records and to provide for inspections of activities under the license as may be appropriate or necessary; and

(3) prevent loss or theft of radioactive material subject to this subchapter.

(f) Consistent with Chapter 5, Subchapter M of the Texas Water Code (for applications under Chapter 26 or 27 of the Texas Water Code and Chapter 361 of the Texas Health and Safety Code), and for applications under Chapter 382 of the Texas Health and Safety Code, the commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

**§50.119. Notice of Commission Action, Motion for Rehearing.**

(a) If the commission acts on an application, the chief clerk shall mail notice of the action to the applicant, executive director, public interest counsel, and to other persons who timely filed public comment, or requests for reconsideration or contested case hearing. The notice shall explain the opportunity to file a motion under §80.272 of this title (relating to Motion for Rehearing). The chief clerk need not mail to persons submitting public comment or requests for reconsideration or contested case hearing 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.

(b) If the commission acts on an application, §80.272 of this title (relating to Motion for Rehearing) applies. A motion for rehearing must be filed within 20 days after the date the person is notified of the commission's final decision or order on the application. A person is presumed to have been notified on the third day after the date that the decision or order is mailed by first class mail. If the motion is denied under §80.272 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.

**SUBCHAPTER G : ACTION BY THE EXECUTIVE DIRECTOR**

**§§50.131, 50.133, 50.135, 50.137, 50.139, 50.141, 50.143, 50.145**

**STATUTORY AUTHORITY**

The new sections are proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit

conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and

2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

**§50.131. Purpose and Applicability.**

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to applications for new permits, or to renew, modify, amend, correct, endorse, or transfer permits and to applications seeking orders that have the effect of issuing, renewing, modifying, amending, or transferring permits and to certifications of Water Quality Management Plan (WQMP) updates. Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

(4) certificates of convenience and necessity;

(5) district matters under Chapters 49 - 66 of the Texas Water Code;

(6) districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(7) extensions of time to commence or complete construction;

(8) industrial and hazardous waste permits;

(9) municipal solid waste permits;

(10) on-site wastewater disposal system permits;

(11) radioactive waste or radioactive material permits or licenses;

(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;

(13) underground injection control permits;

(14) water rights permits;

(15) wastewater permits;

(16) weather modification measures permits;

(17) driller licenses under Texas Water Code, Chapter 32;

(18) pump installer licenses under Texas Water Code, Chapter 33;

(19) irrigator or installer registrations under Texas Water Code, Chapter 34; and

(20) municipal management district matters under Texas Local Government Code, Chapter 375;

(c) This subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Exemptions from Permitting) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(3) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(4) district matters under Texas Water Code, Chapters 49 - 66, as follows:

(A) an appeal under Texas Water Code, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under Texas Water Code, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under Texas Water Code, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under Texas Water Code, §54.239, of a board decision involving the cost, purchase, or use of facilities;

(E) an application under Texas Water Code, §49.351 for approval of a fire department or fire-fighting services plan; or

(F) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(5) emergency or temporary orders or temporary authorizations;

(6) actions of the executive director under Chapters 101, 111, 112, 113, 114, 115, 117, 118, and 119 of this title (relating to General Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; Control of Air Pollution Episodes; and Control of Air Pollution From Carbon Monoxide);

(7) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting);

(8) concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);

(9) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375; and

(d) Notwithstanding subsections (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b)-(f) of this title (relating to Motion for Reconsideration of Executive Director's Action) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

**§50.133. Executive Director Action on Application or WQMP update.**

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

(1) public notice requirements have been satisfied and the executive director has considered the public comment and filed a response;

(2) the application meets all relevant statutory and administrative criteria;

(3) the application does not raise new issues that require the interpretation of commission policy;

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

(5) the application is uncontested because:

(A) no timely requests for reconsideration or contested case hearing 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;

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

(D) a settlement was reached in a contested case hearing, and the application has been remanded from SOAH; or

(E) a contested case hearing request has been filed but no opportunity for hearing is provided by law.

(6) the application is for any air permit 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.

(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 timely filed public comment in response to public

notice, notice of the action, and an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion for Reconsideration of Executive Director's Action), 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. If there were timely filed hearing requests that the commission denied, the chief clerk should also mail to the persons who timely filed hearing requests.

(c) 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 consideration and action by the commission.

(d) The executive director may certify a water quality management plan (WQMP) update if:

(1) public notice has been issued as required by law and commission rules; and

(2) all significant comments received by the end of the comment period are considered by the executive director's staff and, if appropriate, revisions are made to the WQMP in response to those comments.

**§50.135. Effective Date of Executive Director Action.**

A permit or other approval is effective when signed by the executive director, unless otherwise specified in the permit.

**§50.137. Remand for Action by Executive Director.**

At any time during the processing of an application, if all timely requests for reconsideration or hearing on 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.

**§50.139. Motion for Reconsideration of Executive Director's Action.**

(a) The applicant, public interest counsel or other person may file with the chief clerk a motion for reconsideration of the executive director's action on an application or water quality management plan (WQMP) update certification.

(b) A motion for reconsideration must be filed no later than 20 days after the signed permit approval, or other written notice of the executive director's action is mailed to the applicant.

(c) For WQMP updates, a motion for reconsideration must be filed no later than 20 days after the response to comments and the WQMP update, certified by the executive director, is mailed to persons who timely commented on the WQMP update.

(d) An action by the executive director under this subchapter is not affected by a motion for reconsideration filed under this section unless expressly ordered by the commission.

(e) 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.

(f) Disposition of motion.

(1) Unless an extension of time is granted, if a motion for reconsideration is not acted on by the commission within 45 days after the date the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant, the motion is denied.

(2) In the event of an extension, the motion for reconsideration is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date

the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant.

(g) Section 80.272 of this title (relating to Motion for Rehearing) and Texas Government Code, §2001.146, regarding motions for rehearing in contested cases do not apply when a motion for reconsideration is denied under subsection (f) of this section and no motions for rehearing shall be filed. If applicable, the commission decision may be subject to judicial review under Texas Water Code, §5.351, or the Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

**§50.141. Eligibility of Executive Director.**

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) For the purposes of this section:

(A) "Significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement pension, or similar arrangement.

(B) "Permit holders or applicants for a permit" does not include any department or agency of a state government, such as a Department of Parks or a Department of Fish and Wildlife.

(C) "Income" includes retirement benefits, consultant fees, and stock dividends.

(2) For purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

**§50.143. Withdrawing the Application.**

Upon a request by the applicant at any time before the application is referred to SOAH, the executive director shall allow the withdrawal of the application and shall file a written acknowledgment of the withdrawal with the chief clerk. If the application has been scheduled for a commission meeting, the chief clerk shall remove it from the commission's agenda. For purposes of this rule, an application is referred to SOAH when the commission votes during a public meeting for referral or when the executive director or the applicant file a request to refer with the chief clerk under §55.255 of this title (relating to Commission Action on Hearing Request).

**§50.145. Corrections to Permits.**

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits). The executive director, on his own motion or at the request of the permittee, may make a nonsubstantive correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue nonsubstantive permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

(4) to describe more accurately the location of the area certificated under a certificate of convenience and necessity;

(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;

(6) to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

(7) to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(8) to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;

(9) to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or

(10) to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §55.1 and §55.21 and new §§55.101, 55.103, 55.150, 55.152, 55.154, 55.156, 55.201, 55.203, 55.205, 55.206, 55.209, 55.211, 55.250, 55.251, 55.252, 55.253, 55.254, 55.255, and 55.256, concerning Requests for Contested Case Hearing; Public Comment.

## BACKGROUND

The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, and HB 1479, 76th Legislature (1999). The proposed amendments and new sections are intended to establish avenues for public participation in the permitting process for water, waste, and air applications. This proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Also, certain rules concerning a portion of the proposal will constitute a revision to the state implementation plan (SIP). Specifically, the following sections are proposed to be added to the SIP: §§55.1, 55.21, 55.25, 55.101, 55.150, 55.152, 55.154, 55.156, 55.200, 55.201, 55.203, 55.205, 55.206, 55.209, and 55.211. Specific rules from Chapters 39 and 116 are also being proposed as SIP revisions. Concurrently with this rulemaking, the commission is proposing the review of Chapter 55, concerning Requests for Contested Case Hearing; Public Comment, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

## OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code, (THSC), Solid Waste Disposal Act, §361.088; revisions to TCAA, THSC §382.056; and revisions to Texas Government Code, §2003.047. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment received in response to the notices or at public meetings, and file the responses with the chief clerk. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be

implemented in Chapters 39, 50, 55 and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305 and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

#### OVERVIEW OF SB 7 AND IMPLEMENTATION

Senate Bill (SB 7), also enacted by the 76th Legislature, restructures electric utility service in Texas. Owners of grandfathered facilities that generate electric energy for compensation are required to apply for an electric generating facility permit from the commission by September 1, 2000. These permits are subject to notice under §382.056 of the Health and Safety Code. SB 7 provides that initial issuance of these permits requires notice and comment proceedings. However, amendment and renewal of these permits requires notice, comment and opportunity for contested case hearing.

The notice provisions for electric generating facility permits are implemented through changes to Chapters 39 and to a limited extent to Chapters 50 and 55. Amendments and renewals are subject to Chapters 50, 55, and 80 as amended. Additional implementation of the requirements of SB 7 is expected in future rulemaking proposals by the commission.

#### OVERVIEW OF SB 766 AND IMPLEMENTATION

SB 766, enacted by the 76th Legislature, also amends TCAA, Chapter 382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission reduction permit (VERP) for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to VERPs under SB 766 are included in these chapters, specifically §39.403(11) and §39.606. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

#### OVERVIEW OF HB 1479 AND IMPLEMENTATION

House Bill (HB) 1479 amended §26.028 of the Texas Water Code and allows the commission to approve an application to renew or amend a permit without the necessity of a public hearing if the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or changing materially the pattern or place of discharge; the activities to be authorized will maintain or improve the quality of waste; and the applicant's compliance history raises no issues regarding the applicant's ability to comply with a material term of its permit; and for TPDES permits, notice and opportunity to comment is provided in accordance with federal program requirements. This proposal implements these provisions.

## OVERVIEW OF SB 211 AND IMPLEMENTATION

Senate Bill (SB) 211 amends §2001.142(c) of the Texas Government Code relating to notice of decision in an administrative hearing and provides that a party is presumed to have been notified on the third day after notice has been mailed. The requirement in SB 211 regarding presumed notice within three days of mailing has also been implemented and has guided rule drafting in Chapters 39, 50, 55 and 80.

## ORGANIZATION OF CHAPTER

HB 801 applies only to certain applications that are administratively complete on or after September 1, 1999. Thus, in the proposed rules in Chapter 50, Subchapters A-B are amended to apply only to applications that were administratively complete before September 1, 1999. At the same time, new Subchapters D-G apply only to applications that are administratively complete *on or after* September 1, 1999. More specifically, Subchapter G applies to applications other than those under Chapter 26 or 27, Texas Water Code and Chapter 361 or 382, Texas Health and Safety Code that are declared administratively complete on or after September 1, 1999. Subchapter C is not used here; it is reserved for future rulemaking.

Many of the sections of Subchapters D-G are the same or very similar to sections in Subchapters A-B. Nonetheless, since Subchapters D-G are entirely new, it may be difficult to quickly see the differences between those new and existing Subchapters. In the section-by-section analysis in this preamble, the agency has tried to point out any important differences. Additionally, to facilitate review, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy,

Analysis and Assessment, at (512) 239-1932 and on the TNRCC website at:

<http://www.tnrcc.state.tx.us/oprd/forum.html#hb801>

#### EXPLANATION OF PROPOSED RULES

The primary purpose of the proposed new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, and HB 1479, 76th Legislature (1999). HB 801 establishes new procedures for public participation in environmental permitting proceedings. It establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing for certain actions. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy air quality federal program authorization requirements. More specifically, HB 801 revises the public participation in environmental permitting procedures of the commission by adding new statutory provisions to Texas Water Code (TWC), Chapter 5, Subchapter M; revisions to Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §361.088; revisions to Texas Clean Air Act, THSC, §382.056; and revisions to Texas Government Code, §2003.047. Except for the changes required under Texas Government Code, §2003.047, the new and amended statutory provisions apply to applications under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 116, 122, 305 and 321; changes for all of these chapters are published in this edition of the *Texas Register*. Concurrently with this rulemaking the commission is proposing the review of 30 TAC Chapter 50 in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

The amendments to chapter 55 propose to change the name of this chapter to Requests for Reconsideration and Contested Case Hearings; Public Comment to reflect that the new public participation procedures allow for requests for reconsideration, as well as requests for contested case hearings. HB 801 has provided for the opportunity to file requests for reconsideration, as well as requests for hearing.

The amendments to chapter 55 include a proposed revision to §55.1, Applicability, to reflect that subchapters A and B of this chapter apply to applications declared administratively complete before September 1, 1999. This amendment satisfies the requirement of HB 801, §7(b) that applications declared administratively complete before the effective date of the new legislation are subject to the law in effect before the effective date of that legislation. This section has also been revised to more accurately state that it applies to public comments, as well as hearing requests, received on applications. This section proposes that Chapter 55 does not apply to hearing requests for applications under Chapter 122 (Federal Operating Permits) because there is no right to a contested case hearing on such applications.

Proposed new §55.21(a) likewise provides that subchapter B of chapter 55 applies to applications declared administratively complete before September 1, 1999, in accordance with the requirements of HB 801, §7(b).

Proposed new §55.101 incorporates the requirement of HB 801, §7(b) that applications declared administratively complete on or after September 1, 1999 are subject to the requirements of new

subchapters D-G; whereas, applications declared administratively complete before September 1, 1999 are subject to subchapters A and B. Generally, subchapters D-G set forth procedures for commenting and requesting reconsideration or a contested case hearing with respect to an application. Under §55.101(c)(3)-(5), the proposed rule provides that subchapters D-G do not apply to hearing requests related to applications under chapter 122, and applications for initial issuance of voluntary emission reduction permits and permits for electric generating facilities, because there is no right to a contested case hearing on such applications. Proposed §55.101(c)(6) provides that hearing requests on weather modification permits and licenses are not subject to subchapters D-G, because there is no right to a contested case hearing under Chapter 18, Texas Water Code, in keeping with the interpretation of law given in commission orders which have addressed hearing requests on these applications. Because certain air quality permit exemptions and permits by rule are not subject to contested case hearings, proposed §55.101(c)(7)-(8) provide that hearing requests on these applications are not subject to subchapters D-G. Hearing requests on certain utility matters specified in §55.101(d) are not subject to the procedures of subchapters D-F because, under the procedures set forth in subchapter G, the executive director, rather than the commission, determines the sufficiency of hearing requests on these applications.

Proposed new §55.103, concerning Definitions, provides that the terms specified in this section shall have certain meanings and has deleted the qualifying phrase “unless the context clearly indicates otherwise” to eliminate ambiguity. This section has also been revised to reflect that it now applies to subchapters D-G of this chapter, rather than the entire chapter. The section includes the same definition of affected person contained in existing §55.3, relating to definitions.

Proposed new §55.150, concerning Applicability, incorporates the requirement of HB 801, §7(b) by providing that new subchapter E, regarding procedures for processing public comment and requests for reconsideration or hearing, applies only to applications filed under Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code, Chapter 361 or 382 that are declared administratively complete on or after September 1, 1999.

Proposed new §55.152, concerning Public Comment, provides that public comment must be filed within the time period set forth in the Notice of Receipt of Application and Preliminary Decision, which shall be 30 days from the date of last publication unless stated otherwise. Proposed new §55.152(a)(1)-(6) provides the length of the comment period for specific applications, and is revised to reflect that what was formerly a standard exemption for a concrete batch plant is now a concrete batch plant exemption from permitting or permit by rule under chapter 106 of this title. The section reflects that public comment is now made in response to the Notice of Application and Preliminary Decision required by HB 801, rather than in response to a notice of draft permit.

The proposed amendments to Chapter 55 create new §55.154, relating to Public Meetings. This new section will address public meetings with respect to applications subject to Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code, Chapter 361 or 382; whereas proposed §55.253 will address public meetings concerning other applications declared administratively complete on or after September 1, 1999. In accordance with the requirements of HB 801, proposed §55.154(b) provides that during technical review of an application, the applicant, in cooperation with the executive director, may hold a public meeting in the county affected by the application. The language in §55.154(c)(1) has also been

revised to incorporate the provisions of the HB 801, new §5.554, Texas Water Code, that the executive director may hold a public meeting when there is substantial public interest in activity proposed under the application. The proposed section retains the provisions from §55.25 that public meetings are not contested case hearings under the Administrative Procedure Act (APA) and the comment period for any application is automatically extended to the end of the any public meeting.

Proposed new §55.156, concerning Public Comment Processing, provides that the executive director, the applicant, the office of public interest counsel and the office of alternative dispute resolution shall receive copies of all documents submitted on an application. Proposed §55.156(b)(1) requires the executive director to prepare a response to all relevant and material or significant comments received in response to a Notice of Receipt of Application and Intent to Obtain Permit on an air application or received during the comment period in response to a notice of the executive director's preliminary decision. This requirement has been included to satisfy the requirement in HB 801 that the executive director file a response to comments. Requiring a response to relevant and material or significant comments is intended to satisfy not only the requirements for the executive director to respond to comments under HB 801, but also existing requirements for federally delegated programs. Comments received in response to an air Notice of Receipt of Application and Intent to Obtain Permit have been distinguished from comments received during the comment period given in response to a Notice of Application and Preliminary Decision. In accordance with the HB 801 amendments to §382.056(g), Texas Health and Safety Code, for air applications, there will not be a Notice of Application and Preliminary Decision unless a hearing request was filed in response to the Notice of Receipt of

Application and Intent to Obtain a Permit. Accordingly, there may only be an opportunity to submit comments in response to the first notice.

Proposed §55.156(b)(2) provides that the executive director may call a public meeting in response to comments. New language proposed under §55.156(b)(3) requires the executive director's response to comments to be filed with the chief clerk as soon as practical, no later than 60 days after the comment period ends. The executive director needs flexibility for those times the commission has received a voluminous number of applications and comments which need to be processed within a relatively short time, in order to ensure that the responses are thorough. The requirement of §55.25(b)(1)(A)-(B) that the response to comments be "made available to the public" is not included because this requirement is otherwise satisfied by making the comments available in the chief clerk's office under new §55.156(b)(3). Section 55.156(c) also requires the chief clerk to mail the response to comments. The requirement for the commission to adopt the executive director's response to comments or prepare its own response is now contained in §50.117(f) of this title (relating to Commission Action).

Proposed §55.156(c) requires that after the executive director's response to comments has been filed, the chief clerk shall transmit the executive director's decision, the response to comments and instructions for requesting reconsideration or hearing to the applicant, persons who submitted comments, persons who submitted hearing requests in response to the Notice of Receipt of Application and Intent to Obtain Permit for an air application, other persons on the mailing list, the Office of Public Interest Counsel, and the Office of Alternative Dispute Resolution. This requirement is

consistent with current rules and also the requirements of HB 801 concerning the transmittal of the executive director's response to comments.

To conform to the changes proposed to implement HB 801, new §55.200 provides that subchapter F (Requests for Reconsideration or Contested Case Hearing) applies only to applications under Chapter 26 or 27, Texas Water Code or Chapter 361 or 382, Texas Health and Safety Code, which are declared administratively complete on or after September 1, 1999.

Proposed new §55.201, which parallels current §55.21, provides the procedures for filing requests for reconsideration and hearing. Subsection (a) requires that requests for reconsideration or hearing must be filed no later than 20 days after the chief clerk mails the executive director's decision and response to comments. A 20 day period has been proposed and is considered adequate, considering that at this point in the process the public will have been given the opportunity to provide input in the decision making process through the comment period provided for under §55.152. Subsection (b) sets forth who may request a contested case hearing. The proposed rule does not include an equivalent to §55.21(a)(5), which gives legislators from the general area of a proposed facility the ability to request hearings on certain air applications, because such hearing requests are no longer authorized by §382.056(g), Texas Health and Safety Code.

Proposed new §55.201(d)(1) requires that requestors now provide their fax numbers, where possible, in addition to the other information previously required to be provided with a hearing request. Consistent with new statutory requirements for limiting the issues which may be referred to hearing, the new

§55.201(d)(4) requires a hearing request to list the relevant and material issues which form the basis of the request and states that requestors should specify the factual basis for any disagreement with specific statements made or positions taken in the executive director's response to comments.

Proposed subsection (e) provides that any person may file a request for reconsideration within the period allowed under subsection (a). Subsection (e) further sets forth the requirements for a request for reconsideration, including the requirement that the requestor must expressly state that the person is requesting reconsideration of the executive director's decision and the reasons for the request.

Subsection (e) is necessary because HB 801 provides for requests for reconsideration, in addition to requests for contested case hearing.

Under proposed §55.201(f), late filed requests for reconsideration or contested case hearing will be treated as public comment. Proposed §55.201(g) further provides that late filed requests for reconsideration, as well as late filed public comments and requests for hearing, shall be placed in the file, but not processed. Under proposed subsection (h), persons who did not avail themselves of opportunities to comment or request reconsideration or a contested case hearing may file a motion for reconsideration of any executive director action on a permit only to the extent that the final permit differs from the draft permit.

Proposed subsection (i)(1) and (2) states applicable law by providing that there is no right to a contested case hearing on an application for a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title, or a Class 1 or Class 2 modification of a permit under Chapter 305,

Subchapter D of this title. Also, subsection (i)(3) and (4) implements new statutory provisions under HB 801 that there is no right a contested case hearing for an amendment, modification or renewal of an air permit that will not increase emissions or result in the emission of a new contaminant unless specific compliance history issues exist, or hazardous waste permit renewals under §305.631(a)(8).

Furthermore, subsection (i)(5) implements HB 1479 regarding limitations on the availability of contested case hearings on certain permit amendments or renewals under Chapter 26, Texas Water Code.

Proposed new §55.203, concerning Determination of Affected Person, retains the requirements of §55.29 regarding the determination of whether a hearing requestor is determined to be an affected person with a personal justiciable interest concerning an application. Under HB 801, a person requesting a hearing is still required to demonstrate that the person is an affected person with a personal justiciable interest in order for the request to be granted.

Proposed new §55.205, concerning Request by Group or Association, contains the same requirements for evaluating hearing requests by groups or association set forth in existing §55.23.

Proposed new §55.206, concerning Determination of Relevant and Material Issues, provides standards for determining whether a request for reconsideration or contested case hearing raises issues which are relevant and material to the commission's decision on an application. This section has been proposed in response to the requirement of HB 801 that only relevant and material issues shall be referred to

hearing. The commission invites comments on improving these standards for determining the relevance and materiality of the issues.

Proposed new §55.209, concerning Processing Requests for Reconsideration and Contested Case Hearing, includes subsection (a), also in §55.26(a), which provides that §55.209 and §55.211 procedures apply only to timely filed hearing requests. New §55.209 does not require the executive director to file a statement that technical review is complete and to file such a statement before or after notice of the application is issued because, under HB 801, the executive director completes technical review before the issuance of the Notice of Application and Preliminary Decision. New subsection (b), also in §55.26(c), provides that timely filed requests for reconsideration or contested case hearing shall be referred to alternative dispute resolution and also scheduled for a commission meeting approximately 40 days after the final deadline to request reconsideration or hearing. It should be noted that with respect to applications for air permits, there is an initial opportunity to request a hearing in response to the Notice of Receipt of Application and Intent to Obtain Permit; however, if a request for contested case hearing is filed then, triggering the requirement under the HB 801 amendments to §382.056(g), Texas Health and Safety Code that a notice of the executive director's preliminary decision be given following technical review, the final opportunity to request reconsideration or hearing comes after the chief clerk mails notice of the executive director's decision. The subsection reflects that the final request deadline will now always be the last step in the process before processing any timely filed requests. Accordingly, the equivalent of §55.26(c)(2)(B), providing that the request deadline may follow technical review, is not proposed to be included because the final hearing request deadline will

always occur after technical review has been completed and the Notice of Application and Preliminary Decision has been issued.

Subsection (b) further provides that if only requests for reconsideration are filed, the requests will be scheduled for consideration only if the general counsel instructs the chief clerk to do so. This is consistent with current procedures under §50.39 that allow for motions for reconsideration concerning executive director action to be overruled by operation of law. New subsection (c) contains the requirements of §55.26(d) amended to require the chief clerk to mail notice of the commission's agenda at which the request for reconsideration or hearing will be considered to "requestors," including persons who submitted either requests for reconsideration or requests for hearing.

New subsections (d) and (e), containing requirements similar to §55.26(c), allows the opportunity for the filing of responses to both requests for reconsideration and requests for hearing. Under subsection (e), responses to hearing requests must address whether the requestor is an affected person and identify which issues raised in the hearing request involve disputed issues of fact raised during the comment period which are relevant and material to the decision on the application. This requirement is intended to facilitate the commission's ability to determine whether relevant and material issues of fact have been raised which may be referred to hearing pursuant to HB 801 requirements. New subsection (g) differs from §55.26(f) in that the new subsection provides that requestors who requested either reconsideration or hearing may file a reply to responses filed on their request no later than ten days before the commission agenda when their request will be considered, rather than six days before agenda. This time period has been changed because the commission will require additional time to consider all filings

in order to specify the number and scope of issues, if any, to be referred to State Office of Administrative Hearings (SOAH) in accordance with HB 801.

Subsection (f) provides that responses to hearing requests should address the issues raised in the request. Under proposed §55.209(h), an application may be referred directly to SOAH only if the commission has specified or the parties have agreed to the number and scope of the issues subject to hearing and the maximum expected duration of the hearing. This limitation on the commission's ability to refer an application directly to SOAH is because of the HB 801 requirement that the commission limit the number and scope of issues before any referral to SOAH.

Proposed new §55.211, concerning Commission Action on Requests for Reconsideration and Hearing, is named to include requests for reconsideration, as well as requests for hearing. The proposed amended section describes actions the commission may take after evaluating requests for a contested case hearing. Subsection (a) provides that commission consideration of public comment, as well as consideration of requests for reconsideration and contested case hearing, are not proceedings subject to the APA. Because HB 801 now provides for an opportunity to file requests for reconsideration, subsection (b)(1) provides that the commission may grant or deny any request for reconsideration. Section 55.211(b)(2) remains unchanged and provides that if a hearing request does not meet the requirements of this chapter, the commission may act on the application. The equivalent of §55.27(a)(2), which states that the commission may refer an application to public meeting to develop comment before taking action on hearing requests, is not proposed to be included in light of the new

statutory procedures now incorporated into Chapter 55, which provide for increased opportunities for public comment before the time when hearing requests would be set for commission consideration.

Under proposed §55.211(b)(3), if a hearing request does meet the requirements of this chapter, the commission will further determine if the request raises disputed issues of fact. Under proposed §55.211(b)(3)(A), if disputed issues of fact are raised, the commission will limit the scope and number of issues to be referred to hearing, specify the maximum expected duration of the hearing and direct the chief clerk to refer the issue to the SOAH for a hearing. This provision implements new HB 801 requirements for referring applications to SOAH. Proposed §55.211(b)(3)(B) further provides that the commission may take action on the application if the request raises only disputed issues of law.

Proposed §55.211(b)(4) allows commission discretion to refer a hearing request to SOAH on the sole issue of whether the hearing requestor is an affected person; however, SOAH may not proceed with a contested case hearing unless and until the number and scope of the issues subject to hearing and the maximum expected duration of the hearing have been specified by the commission or by the agreement of the parties because of the HB 801 requirement that the commission limit the number and scope of issues.

The proposed amendment eliminates the former §55.27(b)(2)(A) and (B) requirements that a hearing request from an affected person may be granted only when deemed reasonable and supported by competent evidence because these determinations are no longer required by §5.115(a), Texas Water Code. The proposed amendment further eliminates the requirement of existing §55.27(b)(3) to hold a

hearing on air permits when requested by legislators representing the general area because this requirement has been removed from §382.056(g), Texas Health and Safety Code.

As required by HB 801, proposed §55.211(d)(1) retains the commission's ability to refer an application to SOAH where there is no valid hearing request, if the commission determines that a hearing would be in the public interest. New §55.211(d)(2) also allows the commission to refer an application for amendment, modification or renewal of an air permit to hearing based on a determination that the applicant's compliance history constitutes a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process. New §55.211(d)(3) further allows the commission to refer an application for renewal of a hazardous waste permit subject to proposed §305.631(a)(8) to hearing if the applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit. These provisions of §55.211(d) implement the provisions of HB 801 relating to the commission's ability to refer these matters to SOAH based on compliance history concerns, notwithstanding the fact that such renewals or modifications are not otherwise subject to contested case hearings under HB 801.

The existing §55.27(e), concerning a commission determination as to the applicability of the freeze rules of Chapter 80, Subchapter E, is not proposed to be included in this section. The freeze rules allow an administrative law judge to limit the issues and the scope of complex proceedings. In light of the commission's ability to limit the issues referred to hearing under §5.556, Texas Water Code and this proposed Chapter 55, former §55.27(e) is not needed. Under proposed §55.211(d), commission decisions on requests for reconsideration, requests for contested case hearing and the referral of an

issue are interlocutory. If SOAH holds a hearing, a person whose hearing request was denied may attend the hearing and seek to be admitted as a party to the hearing. Likewise, the administrative law judge presiding over a contested case hearing referred from the commission may consider an issue which was not included in the commission's referral, subject to the restrictions of §80.4(c)(16).

Proposed §55.211(f) provides for reconsideration of the executive director's decision, but specifies that a request for reconsideration is denied if the general counsel does not respond in writing within 20 days after the deadline for filing requests. Proposed §55.211(g), which continues to provide that a party has 20 days to file a motion for rehearing after being notified of the denial of a hearing request, now provides that a party or attorney of record is presumed notified on the third day after the date that the decision or order is mailed by first class mail, in conformity with §2001.42(c), Texas Government Code.

There is no need for a section that is equivalent to existing §55.31, concerning Determination of Reasonableness of Hearing Request, because §5.115(a), Texas Water Code, has been amended to no longer require a determination of reasonableness in taking action on hearing requests with respect to applications declared administratively complete on or after September 1, 1999.

Proposed new Subchapter G applies to applications other than applications under Texas Water Code, Chapter 26 or 27 and Texas Health and Safety Code, Chapter 361 or 382. Proposed §55.250 specifies that this subchapter will apply only to such applications declared administratively complete on or after September 1, 1999. The proposed subchapter retains the same comment and hearing request procedures as exist under current rules, with minor modifications.

Proposed §55.251, concerning Requests for Contested Case Hearing, Public Comment, incorporates the requirements of §55.21 except as noted below. The section does not include the provision that legislators from the general area of the proposed facility may request a contested case hearing for applications for certain air permits and authorizations because this provision has been eliminated from §382.056(g), Texas Health and Safety Code. Proposed §55.251(b) has deleted §55.21(b) references to comment periods for applications that will now be processed under subchapters D-F. Proposed §55.251(g) does not contain the §55.21(g) references to the fact that there is no right to a hearing regarding certain applications for amendment or modification of permits subject to Chapter 305, Subchapter D of this title because such applications will now be processed under proposed subchapters D-F, rather than this Subchapter G. Subsection (g) also provides that there is no right to a contested case hearing on an application for a weather modification permit or license to reflect the interpretation of law given in commission orders which have addressed hearing requests on these applications.

Proposed new §55.252, concerning Request by Group or Association, mirrors the requirements of §55.23.

Proposed §55.253, (Public Comment Processing), incorporates the requirements of §55.25, except as noted below. The requirements of §55.25(b) concerning public comment received on applications for hazardous waste permits, underground injection well permits and Texas Pollutant Discharge Elimination System (TPDES) permits are not included because such applications will now be processed under proposed Subchapters D-F, rather than this Subchapter G.

Proposed §55.254, concerning hearing request Processing, mirrors the requirements of §55.26.

Proposed §55.255, concerning Commission Action on Hearing Request, incorporates the requirements of §55.27 except as noted in this paragraph. Under the proposed section, the commission shall determine whether hearing requests have been filed which satisfy the requirements of this subchapter. However, unlike §55.27(a)(2), the proposed section does not provide the commission an option to refer an application to public meeting for development of public comment before taking action on an application because new procedures will allow ample opportunity for public comment before commission consideration of hearing requests. In specifying the circumstances when a hearing request from an affected person shall be granted by the commission, proposed §55.255(b)(2) has deleted the requirements of §55.27(b)(2)(A)-(B) that the request must be reasonable and supported by competent evidence. Under the HB 801 amendments to §5.115, Texas Water Code, determinations of reasonableness and competent evidence will no longer be required in determining the validity of hearing requests on applications declared administratively complete on or after September 1, 1999.

This subsection has also deleted the requirement that the commission grant a hearing request on an air quality permit by a legislator from the general area of the facility because this requirement has been eliminated from §382.056(g), Texas Health and Safety Code. Similar to §55.27(d), proposed §55.255(d) provides that the executive director shall determine the sufficiency of hearing requests on specified utility matters; however, proposed §55.255(d) requires the executive director to provide a list of disputed issues and specify the maximum expected duration of the hearing when making such a referral, in accordance with the requirements of revised §2003.047(e) of the APA .

Proposed new §55.256, concerning Determination of Affected Person, mirrors the language in §55.29.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 55, Request For Contested Case Hearings; Public Comment, would implement certain provisions contained in House Bill 801, 76th Legislature, Regular Session, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC.

The proposed amendments establish comment periods and deadlines for public comment and specify procedures for responding to public comment. The proposed amendments also amend a legislator's ability to request a hearing on certain air applications and require a hearing request to list the relevant and material issues which form the basis of the request. The proposed amendments establish procedures regarding requests for Reconsideration or contested case hearing and establish procedures for cases referred to the State Office of Administrative Hearings. Finally, the proposed amendments reorganize some portions of the rules, and delete certain provisions in the rules that conflict with House Bill 801.

The proposed amendments affect permitting processes for air, water, and waste programs. It is anticipated that all applicants for permits under Chapters 26, Water Quality Control; Chapter 27,

Injection Wells, of the Texas Water Code; applicants for permits under Chapter 361, Solid Waste Disposal Act; and certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations will be affected by the proposed amendments to the rules. Persons involved in the permitting process including members of the general public will also be affected.

#### **PUBLIC BENEFIT**

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 55 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the permitting processes conducted by TNRCC, increased standardization in the application process, and more efficient contested case hearings.

The purpose of the proposed amendments is to establish procedures regarding public comment on permit applications and requests for contested case hearings which will enhance public participation in the permitting processes of the TNRCC. No significant additional costs are anticipated to any person associated with the proposed amendments because the amendments do not create new regulatory burdens but only modify or clarify procedures currently in existence.

#### **SMALL BUSINESS ANALYSIS**

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 55 of the rules because the amendments modify or

clarify requirements currently in existence. Specifically, the proposed changes will not impose any additional requirements not already required by state or federal law and the proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement.

#### REGULATORY IMPACT EVALUATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures associated with public comment on permit applications and requests for contested case hearing, the rulemaking does not meet the definition of a “major environmental rule.”

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a

rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not 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 because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Water Code, Chapter 5, Subchapter M and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the procedures for requesting a contested case hearing. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these

rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Coastal Management Program. The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC, §§281.40, et seq.).

#### PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808.

All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

#### STATUTORY AUTHORITY

The new and amended sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's

authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641 which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the

requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new and amended sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

**CHAPTER 55 - REQUESTS [REQUEST] FOR RECONSIDERATION AND CONTESTED**

**CASE HEARINGS; PUBLIC COMMENT**

**SUBCHAPTER A : APPLICABILITY AND DEFINITIONS**

**§55.1**

**§55.1. Applicability.**

(a) Hearing [This chapter applies to hearing] requests and comments regarding any application to issue, amend, modify, renew, or transfer a permit, license, registration, or other authorization or approval that are declared administratively complete before September 1, 1999 are subject to Subchapters A - B of this chapter (relating to Applicability and Definitions and Hearing Requests, Public Comment). Requests for public meetings, requests for reconsideration and contested case hearing, and public comments regarding any application that is declared administratively complete on or after September 1, 1999 are subject to Subchapters D - G of this chapter (relating to Applicability and Definitions, Public Comment and Public Meetings, Requests for Reconsideration or Contested Case Hearing, and Requests for Contested Case Hearing and Public Comment on Certain Applications).

(b) This chapter does not apply to hearing requests related to:

(1) (No change.)

(2) applications for temporary or term permits for water rights[.]; and

(3) applications under Chapter 122 of this title (relating to Federal Operating Permits).

## **SUBCHAPTER B : HEARING REQUESTS, PUBLIC COMMENT**

### **§55.21**

#### **STATUTORY AUTHORITY**

The amended section is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641 which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191,

which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new and sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

**§55.21. Requests for Contested Case Hearings, Public Comment.**

(a) This subchapter applies to hearing requests and public comments regarding any application to issue, amend, modify, renew, or transfer a permit, license, registration, or other authorization or approval that is declared administratively complete before September 1, 1999. Requests for public meetings, requests for reconsideration and contested case hearing, and public comments regarding any application that is declared administratively complete on or after September 1, 1999 are subject to Subchapters D - G of this chapter (relating to Public Comment and Public Meetings, Requests for Reconsideration or Contested Case Hearing, and Requests for Contested Case Hearing and Public Comment on Certain Applications).

(b) [(a)] The following may request a contested case hearing under this chapter:

- (1) the commission;

(2) the executive director;

(3) the applicant;

(4) affected persons, when authorized by law; and

(5) for applications for air quality permits, or standard exemptions required to provide public notice, a legislator from the general area of the proposed facility.

(c) [(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 with the chief clerk within the time provided by subsection (d) of this section.

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

(1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(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) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

(e) [(d)] Deadline for hearing requests; public comment period. A hearing request must be filed with the chief clerk within the time period specified in the notice. The public comment period shall also end at the end of this time period. The time period shall end 30 days after the last publication of the notice of application, except that the time period shall end:

(1) 60 days after the last publication of the notice of a Class 3 modification of a solid waste permit under the TSWDA;

(2) 30 days after last publication for a new permit or permit amendment under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(3) 15 days after the last publication for a permit renewal or standard exemption for a concrete plant under Chapter 116 of this title;

(4) ten days after the mailing of notice of the application for the transfer of a permit;

(5) no less than 30 days after the last publication of the notice of draft permit for an application for a municipal solid waste permit or to amend, extend, or renew such a permit;

(6) no less than 30 days after the last publication of the notice of draft permit for an application for an industrial waste facility permit or to amend, extend, or renew such a permit;

(7) no less than 45 days after the last publication of the notice of draft permit for an application for a hazardous waste facility permit or to amend, extend, or renew such a permit;

(8) no less than 30 days after the last publication of the notice of draft permit for an application for a wastewater discharge permit except as provided in paragraph (9) of this subsection;

(9) no less than ten days after the mailing of the notice of draft permit for an application to amend a wastewater discharge permit where the application is to improve the quality of waste authorized to be discharged and does not seek to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge;

(10) no less than 30 days after the last publication of the notice of draft permit for an application for an injection well permit or to amend, extend, or renew such a permit;

(11) no less than 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control); or

(12) the time specified in commission rules for other specific types of application.

(f) [(e)] Documents that are filed with the chief clerk that comment on an application but that do not request a hearing will be treated as public comment.

(g) [(f)] Late filed hearing requests and public comment, extensions.

(1) A hearing request or public comment shall be processed under §55.26 of this title (relating to Hearing Request Processing) or under §55.25 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline for hearing requests and public comment. The chief clerk shall accept a hearing request or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.

(2) The commission may extend the time allowed for filing a hearing request.

(h) [(g)] There is no right to a hearing on an application for a minor amendment of a permit or a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits).

**SUBCHAPTER D : APPLICABILITY AND DEFINITIONS**

**§55.101, §55.103**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641 which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191,

which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new and sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

**§55.101. Applicability.**

(a) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapters D - G of this chapter (relating to Applicability and Definitions, Public Comment and Public Meetings, Requests for Reconsideration or Contested Case Hearing, and Requests for Contested Case Hearing and Public Comment on Certain Applications).

(b) Subchapters D - G of this chapter apply to hearing requests regarding any application to issue, amend, modify, renew, or transfer a permit, license, registration, or other authorization or approval.

(c) Subchapters D - G of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) applications under Chapter 122 of this title (relating to Federal Operating Permits);

(4) applications for initial issuance of voluntary emissions reduction permits under §382.0519 of the Texas Health and Safety Code;

(5) applications for initial issuance of permits for electric generating facility permits under §39.264 of the Utilities Code;

(6) applications for weather modification licenses or permits under Chapter 18 of the Texas Water Code;

(7) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(8) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Exemptions from Permitting) except for concrete batch plants which are not contiguous or adjacent to a public works project.

(d) Subchapters D - F of this chapter do not apply to applications filed under Texas Water Code Chapters 11 and 13, and Texas Water Code, §12.013. Subchapter G of this chapter applies to

those applications. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of hearing requests under standards specified by law and may refer the application to the chief clerk for hearing processing.

**§55.103. Definitions.**

The following words and terms, when used in Subchapters D - G of this chapter (relating to Applicability and Definitions, Public Comment and Public Meetings, Requests for Reconsideration or Contested Case Hearing, and Requests for Contested Case Hearing and Public Comment on Certain Applications) shall have the following meanings.

**Affected person** - A person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. The determination of whether a person is affected shall be governed by §55.203 of this title (relating to Determination of Affected Person).

**SUBCHAPTER E : PUBLIC COMMENT AND PUBLIC MEETINGS**

**§§55.150, 55.152, 55.154, 55.156**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641 which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191,

which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

**§55.150. Applicability.**

This subchapter applies only to applications filed under Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code, Chapter 361 or 382. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

**§55.152. Public Comment.**

Public comment period. Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to

Obtain Permit) for a new permit or permit amendment under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit) for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or a concrete batch plant exemption from permitting or permit by rule under Chapter 106 of this title (relating to Exemptions from Permitting);

(3) ten days after the mailing of notice of the application for the transfer of a permit;

(4) no less than 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit;

(5) no less than 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control); or

(6) the time specified in commission rules for other specific types of application.

**§55.154. Public Meetings.**

(a) A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act.

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or Office of Public Assistance may hold public meetings. The executive director or Office of Public Assistance shall hold a public meeting when:

(1) there is a substantial or significant degree of public interest in an application;

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

(3) when required by law.

(d) The public comment period shall automatically be extended to the close of any public meeting. The applicant shall attend any public meeting held by the executive director or Office of

Public Assistance. A tape recording or written transcript of the public meeting shall be made available to the public.

(e) Public notice of the meeting shall be given as required by commission rule.

**§55.156. Public Comment 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) If comments are received, the following procedures apply to the executive director:

(1) Before an application is approved, the executive director shall prepare a response to all timely, relevant and material, or significant public comment on:

(A) an air Notice of Receipt of Application and Intent to Obtain Permit if no hearing requests have been received; and

(B) the executive director's preliminary decision and draft permit. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes.

(2) The executive director may call and conduct public meetings in response to public comment under §55.154 of this title (relating to Public Meetings).

(3) The executive director shall file the response to comments with the chief clerk within the shortest practical time after the comment period ends, not to exceed 60 days.

(c) After the executive director files the response to comments, the chief clerk shall mail (or otherwise transmit) the executive director's decision, the response to comments and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action;

(4) any person who timely filed a request for a public hearing in response to the Notice of Receipt of Application and Intent to Obtain a Permit for an air application;

(5) Office of Public Interest Counsel; and

(6) Office of Public Assistance.

**SUBCHAPTER F : REQUESTS FOR RECONSIDERATION OR CONTESTED CASE**

**HEARING**

**§§55.200, 55.201, 55.203, 55.205, 55.206, 55.209, 55.211**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641 which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191,

which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

**§55.200. Applicability**

This subchapter applies only to applications filed under Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code Chapter, 361 or 382. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

**§55.201. Requests for Reconsideration or Contested Case Hearing.**

(a) The deadline for requesting reconsideration or contested case hearing shall be 20 days after the chief clerk mails the executive director's decision, the response to comments and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) 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 with the chief clerk within the time provided by subsection (a) of this section.

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

(1) give the name, address, daytime telephone number, and where possible, fax number, of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(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) request a contested case hearing;

(4) except for hearing requests filed in response to Notice of Receipt of Application and Intent to Obtain Permit for air applications, list all issues of fact that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute; and

(5) provide any other information specified in the public notice of application.

(e) Any person may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and where possible, fax number, of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Late filed public comments, requests for reconsideration or contested case hearing.

(1) A request for reconsideration or contested case hearing or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.

(2) The commission may extend the time allowed to file a request for reconsideration and contested case hearing.

(h) Any person who did not timely file public comment, request for reconsideration or contested case hearing, did not participate in public meeting, and did not participate in the public hearing held under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing) or §55.211 of this title (relating to Commission Action on Requests for Reconsideration and Contested Case Hearing) or §80.272 of this title (relating to Motion for Rehearing) or may file a motion for

reconsideration under §50.139 of this title (relating to Motion for Reconsideration of Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this chapter (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this chapter;

(3) any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.631(a)(8) of this title (relating to Renewals).

(5) an application, under Chapter 26, Texas Water Code, to renew or amend a permit

if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be

discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will

maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public

comment has been received; and

(E) the applicant's compliance history for the previous five years raises no

issues regarding the applicant's ability to comply with a material term of the permit.

**§55.203. Determination of Affected Person.**

(a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

(b) Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.

(c) All factors shall be considered, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(4) likely impact of the regulated activity on the health, safety, and use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

**§55.205. Request by Group or Association.**

(a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

(2) the interests the group or association seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

(b) The executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of

subsection (a) of this section. The request and reply shall be filed according to the procedure in §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing).

**§55.206. Determination of Relevant and Material Issues.**

For any application, a relevant issue shall be one which is, at a minimum, within the commission's jurisdiction and within the scope of the application being considered. A material issue is one that relates to an ultimate statutory finding required to be considered for the commission to grant an application and shall be one which, at a minimum, is encompassed within the draft permit terms or would require a change to the draft permit.

**§55.209. Processing Requests for Reconsideration and Contested Case Hearing.**

(a) This section and §55.211 of this title (relating to Commission Action on Request for Reconsideration or Contested Case Hearing) apply only to requests for reconsideration and contested case hearing that are timely filed.

(b) After the final deadline to submit requests for reconsideration or contested case hearing, the chief clerk shall process any requests for reconsideration or hearing by both:

(1) referring the application and requests for reconsideration or contested case hearing to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the requestors; and

(2) scheduling the hearing request for a commission meeting or, if only a request for reconsideration is submitted, scheduling the request for reconsideration only if the general counsel directs the chief clerk to do so. The chief clerk should try to schedule the requests for a commission meeting that will be held approximately 40 days after the final deadline for timely filed requests for reconsideration or contested case hearing.

(c) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the requestors at least 30 days before the first meeting at which the commission considers the requests. The chief clerk shall explain how to participate in the commission decision, describe alternative dispute resolution under commission rules, and explain the requirements of this chapter.

(d) The executive director, the public interest counsel, and the applicant may submit written responses to the requests no later than 20 days before the commission meeting at which the commission will evaluate the requests. 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 requestors.

(e) Responses to hearing requests must specifically address:

(1) whether the requestor is an affected person;

(2) which issues raised in the hearing request are disputed;

(3) whether the dispute involves questions of fact or of law;

(4) whether the issues were raised during the public comment period;

(5) whether the issues are relevant and material to the decision on the application; and

(6) a maximum expected duration for the contested case hearing.

(f) Responses to requests for reconsideration should address the issues raised in the request.

(g) The requestors may submit written replies to a response no later than ten days before the commission meeting at which the commission will evaluate the request for reconsideration and contested case hearing. 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.

(h) The executive director or the applicant may file a request with the chief clerk that the application be sent to SOAH for a hearing on the application if either the commission has specified or

the parties have agreed to the number and scope of the issues and maximum expected duration of the hearing.

**§55.211. Commission Action on Requests for Reconsideration and Contested Case Hearing.**

(a) Commission consideration of public comment, executive director's response to comment, or request for reconsideration or contested case hearing is not itself a contested case subject to the APA.

(b) The commission will evaluate public comment, executive director's response to comment, requests for reconsideration, and requests for contested case hearing and may:

(1) grant or deny the request for reconsideration;

(2) determine that a hearing request does not meet the requirements of this subchapter, and act on the application; or

(3) determine that a hearing request meets the requirements of this subchapter and:

(A) if the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the decision on the application:

(i) specify the number and scope of the issues;

(ii) specify the maximum expected duration of the hearing; and

(iii) direct the chief clerk to refer the issues to SOAH for a hearing; or

(B) if the request raises only disputed issues of law, make a decision on the issues and act on the application; or

(4) the commission may 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 requestor is an affected person. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the APA. If the commission determines that a requestor is an affected person, SOAH may proceed with a contested case hearing on the application if either the commission has specified, or the parties have agreed to, the number and scope of the issues and maximum expected duration of the hearing.

(c) A request for a contested case hearing shall be granted if the request is:

(1) made by the applicant or the executive director;

(2) made by an affected person if the request:

(A) raises disputed issues of fact that were raised during the comment period and that are relevant and material to the decision on the application;

(B) is timely filed with the chief clerk; and

(C) is pursuant to a right to hearing authorized by law.

(d) Notwithstanding subsections (a) and (b), the commission may refer an application to SOAH if the commission determines that:

(1) a hearing would be in the public interest; or

(2) for an application for an amendment, modification or renewal under Texas Health and Safety Code, §382.0518 or §382.055 that involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(3) for an application for renewal of a hazardous waste permit, subject to §305.631(a)(8) of this title (relating to Renewal), an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit.

(e) If a hearing is granted, a decision on a request for reconsideration or contested case hearing or referral of an issue is an interlocutory decision on the validity of the request or issue and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties) or the issues referred to SOAH under this section. A judge may consider additional issues beyond the list referred by the commission as provided by §80.4(c)(16) of this title (relating to Judges). A person whose request for reconsideration or contested case hearing or whose request for referral of an issue for hearing is denied may still seek to be admitted as a party under §80.109 of this title (relating to Designation of Parties) if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(f) the commission may consider a request for reconsideration at a commission meeting. If the general counsel does not respond in writing to a request for reconsideration of the executive director's decision within 20 days after the deadline for submitting a request for reconsideration, the request is denied.

(g) If a request for reconsideration or contested case hearing is denied, §80.271 of this title (relating to Motion for Rehearing) applies. 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 is notified of the commission's final decision or order on the application. A person is presumed to have been notified on the third day after the date that the decision or order is mailed by first class mail. 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, or §382.032.

**SUBCHAPTER G : REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC**

**COMMENT ON CERTAIN APPLICATIONS**

**§§55.250, 55.251, 55.252, 55.253, 55.254, 55.255, 55.256**

**STATUTORY AUTHORITY**

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641 which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191,

which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

**§55.250. Applicability.**

This subchapter applies to applications filed with the commission except applications filed under Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code, Chapter 361 or 382. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

**§55.251. Requests for Contested Case Hearing, Public Comment.**

(a) The following may request a contested case hearing under this section:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(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 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) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.

(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) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

(d) Deadline for hearing requests; public comment period. A hearing request must be filed with the chief clerk within the time period specified in the notice. The public comment period shall also end at the end of this time period. The time period shall end 30 days after the last publication of the notice of application, except that the time period shall end:

(1) ten days after the mailing of notice of the application for the transfer of a permit;

and

(2) the time specified in commission rules for other specific types of application.

(e) Documents that are filed with the chief clerk that comment on an application but that do not request a hearing will be treated as public comment.

(f) Late filed hearing requests and public comment, extensions.

(1) A hearing request or public comment shall be processed under §55.254 of this title (relating to Hearing Request Processing) or under §55.253 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline for hearing requests and public comment. The chief clerk shall accept a hearing request or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.

(2) The commission may extend the time allowed for filing a hearing request.

(g) There is no right to a hearing on an application for a weather modification license or permit under Chapter 18 of the Texas Water Code.

**§55.252. Request by Group or Association.**

(a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

(2) the interests the group or association seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

(b) The executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of

subsection (a) of this section. The request and response shall be filed according to the procedure in §55.254 of this title (relating to Hearing Request Processing).

**§55.253. Public Comment Processing.**

(a) The chief clerk shall deliver or mail to the applicant, the executive director, the public interest counsel, Office of Public Assistance, and Alternative Dispute Resolution Office, copies of all documents timely filed with the chief clerk in response to public notice of an application.

(b) The commission may designate an agency office to process public comment under this subsection.

(1) The Office of Public Assistance may evaluate and respond to public comment, other than timely hearing requests, when appropriate.

(A) If the application and timely hearing requests are considered by the commission, the designated office should prepare any response to public comment no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk

(B) If the application is approved by the executive director under Chapter 50, Subchapter G 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.

(2) The Office of Public Assistance shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The applicant shall attend any such public meeting held by the designated office. When the designated office holds a public meeting it shall respond to public comment either by giving an immediate oral response or by preparing a written response. The response shall be made available to the public.

**§55.254. Hearing Request Processing.**

(a) The requirements in this section and §55.255 of this title (relating to Commission Action on Hearing Request) apply only to hearing requests that are filed within the time period specified in §55.251(d) of this title (relating to Requests for Public Hearing, 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 chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making a timely hearing request at least 30 days before the first meeting at which the commission considers the request. The chief clerk shall explain how the person may submit public comment to the executive director, describe alternative dispute resolution under commission rules, explain that the agency may hold a public meeting, and explain the requirements of this chapter.

(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 applicant, the executive director, the public interest counsel, the Office of Public Assistance, 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 may also contain additional information responding to the letter by the chief clerk required by subsection (d) of this section. 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 or the applicant may file a request with the chief clerk that the application be sent directly to SOAH for a hearing on the application. If a request is filed under this subsection, the commission's scheduled consideration of the hearing request will be canceled.

**§55.255. 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) determine that a hearing request does not meet the requirements of this subchapter,  
and act on the application;

(2) determine that a hearing request meets the requirements of this subchapter, and  
direct the chief clerk to refer the application to SOAH for a hearing; or

(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 it shall be processed as a contested case under the  
Administrative Procedure Act, Government Code, Chapter 2001.

(b) A request for a contested case hearing shall be granted if the request is:

(1) made by the applicant or the executive director;

(2) made by an affected person if the request:

(A) complies with the requirements of §55.251 of this title (relating to  
Requests for Contested Case Hearing, Public Comment);

(B) is timely filed with the chief clerk; and

(C) is pursuant to a right to hearing authorized by law;

(c) The commission may refer an application to SOAH if there is no hearing request complying with this subchapter, if the commission determines that a hearing would be in the public interest.

(d) The executive director shall determine the sufficiency of hearing requests on utility matters listed in this subsection. If a hearing request meets the requirements in this subsection, the executive director shall refer the hearing request and a list of disputed issues to the chief clerk. The executive director shall review hearing requests concerning the following matters and shall use the specified standards for reviewing the requests, shall provide a list of disputed issues and shall specify the date by which the administrative law judge is expected to complete the proceeding and provide a proposal for decision to the commission. The term utility matters does not include air permit applications for electric generating facility permits under §39.264 of the Texas Utilities Code.

(1) If a utility files a statement of intent to change rates under Texas Water Code, §13.187, the executive director shall evaluate any complaints or hearing requests received and determine if a hearing is required.

(2) If a person files an application or petition concerning a certificate of convenience and necessity under Texas Water Code, Chapter 13, Subchapter G, the executive director shall evaluate any complaints or hearing requests and determine if a hearing is required.

(3) If a person files an appeal under Texas Water Code, §13.043, invoking the commission's appellate jurisdiction over water, sewer, or drainage rates, the executive director shall evaluate the appeal and determine if a hearing is required.

(e) A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party under §80.109 of this title (relating to Designation of Parties) if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(f) If a hearing request is denied, the procedures contained in §80.272 of this title (relating to Motion for Rehearing) 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 §80.272 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, §401.341.

**§55.256. Determination of Affected Person**

(a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest

(b) Governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons.

(c) All relevant factors shall be considered, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(4) likely impact of the regulated activity on the health, safety, and use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§80.1, 80.3, 80.5, 80.105, 80.109, 80.137, 80.251, and 80.271 and new §§80.4, 80.6, 80.152, 80.252, and 80.272, concerning contested case hearings. The commission also proposes the repeal of §80.7, §80.111, and all of Subchapter E, including §§80.201, 80.203, 80.205, 80.207, 80.209, 80.213, 80.215.

## BACKGROUND

The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, and SB 1308, 76th Legislature (1999). The proposed amendments and new sections are intended to establish and clarify the applicability of notice provisions and to provide avenues for public participation in the permitting process for water, waste, and air applications. These changes also update notice rules for air quality permit amendments. The revised public comment and contested case hearing process set out in HB 801 is also incorporated. This proposal represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Also, certain rules in a portion of the proposal will constitute a revision to the state implementation plan (SIP) for air quality permitting actions. Specifically, §§116.111, 116.114, 116.116, 116.183, 116.312, 116.740 as revised are proposed to be added to the SIP. In addition, existing §§116.124 and 116.130-116.137 are proposed to be deleted from the SIP. Concurrently with this rulemaking, the commission is proposing the review of Chapter 80, concerning Contested Case Hearings, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

## OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to the Texas Clean Air Act (TCAA), THSC, §382.056; and revisions to Texas Government Code, §2003.047. Except for the changes required under Texas Government Code, §2003.047, the new and amended statutory provisions expressly apply to the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided for under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is required to prepare responses to relevant and material public comment. This legislation also allows the commission by rule to provide

any additional notice, opportunity for public comment, or opportunity for hearing necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULE

The purpose of the proposed changes to Chapter 80 is to modify commission procedures governing contested case hearings to conform with new requirements in HB 801. The most substantive changes in this chapter occur in Subchapter A, General Rules, and in Subchapter D, Discovery.

The commission proposes to maintain most of the current procedures for applications that are declared administratively complete before September 1, 1999, but to change some procedures for applications declared administratively complete on or after September 1, 1999. In order to improve readability and consistency in its rules, the commission has proposed the following new sections, which parallel existing rule sections and incorporate HB 801 requirements: §§80.4, 80.6, 80.152, 80.252, and 80.272.

Proposed amendments to §80.105 and §80.109 and the proposed repeal of §80.111 are made to separate the public comment process from the contested case hearing process.

Some changes to Chapter 80 are not directly related to SB 801 implementation. Proposed language in §80.4(c)(5) prohibits the alignment of the executive director and public interest counsel with any other party in contested case hearings. The proposed repeal of §80.7 regarding the substitution of judges is based on existing overlap between commission and State Office of Administrative Hearings (SOAH) rules. The commission's proposed repeal of Subchapter E is not directly related to HB 801 implementation, but the lack of use of Subchapter E, in addition to equivalent coverage in other HB 801 changes made the subchapter unnecessary. In addition, the change to the notification requirements under proposed rule §80.272(b) incorporate provisions in SB 211.

#### SECTION BY SECTION ANALYSIS

The commission proposes to amend §80.1 to reflect the proposed changes in applicability to existing rules and new proposed sections of Chapter 80. The proposed amendment to §80.3 specifies that the section applies to applications declared administratively complete before September 1, 1999, in new §80.3(a)(1). The section has been renumbered to allow for this amendment.

Proposed new §80.4, relating to SOAH judges and their authority, mirrors existing §80.3, except that it specifies that it applies to applications declared administratively complete on or after September 1, 1999, in §80.4(a)(1). Additionally, §80.4(c)(5) prohibits the judge from aligning the executive director and the public interest counsel with any other party. This provision is not required by HB 801, but is

being incorporated because the executive director and public interest counsel are statutory parties and need to maintain independent judgment in contested case hearings. Proposed §80.4(c)(16) allows a judge to consider issues in addition to those provided on the commission's list of disputed issues referred to SOAH under Chapter 55. However, any additional issue considered by a judge must be material and supported by evidence. Moreover, before considering an additional issue, §80.4(c)(16)(C) requires a judicial finding that there is a good reason for the failure of an interested person to supply available information regarding that issue during the public comment period. New §80.4(c)(17)(A) and (B) give judges the authority to extend the proceeding if they determine that not doing so would deprive a party of due process or some other constitutional right, or if the parties to the proceeding agree to the extension. Sections 80.4(c)(16) and 80.4(c)(17) are based on requirements in HB 801.

The commission proposes to amend §80.5 to specify that this section applies to any permit applications declared administratively complete before September 1, 1999. Proposed §80.6 mirrors existing §80.5, except that it includes language in §80.6(a) that specifies the section applies to all permit applications declared administratively complete on or after September 1, 1999, and it makes other changes based on HB 801. New §80.6(b)(5) would expand the responsibilities of the Chief Clerk in referring cases to SOAH to include sending the commission's list of disputed issues and its determination on the maximum expected duration of the hearing, as required under Chapter 55. Section 80.6(b) does not include language requiring that the commission provide a list of issues or areas that must be addressed by the judge because those requirements are included in proposed Chapter 55. New §80.6(c) maintains the provision, from §80.5(b), that the EDPR shall serve as the list of issues for an enforcement case.

The commission proposes the repeal of §80.7 regarding the substitution of judges. This section is no longer necessary because SOAH has existing authority to substitute judges under its rules in 1 TAC §155.17(c).

Section 80.17 is proposed to be amended by making grammatical changes to §80.17(a) and by adding a phrase allowing the commission to dictate the burden of proof.

The commission has not proposed to significantly amend §80.17 (Burden of Proof) or §80.137 (Summary Disposition) even though the new procedures created by HB 801 may have made changes in an applicant's burden of proof. Apparently, most issues surrounding the application's and draft permit's compliance with commission rules and standards of protectiveness are uncontested at the contested case hearing, because the commission will have limited the number and scope of issues. However, HB 801 did not explicitly amend the Administrative Procedure Act regarding the content of the administrative record on appeal or the application of the substantial evidence test to the appeal of the permit issuance. The relationship is not clear between the record in the contested case as defined by Texas Government Code, §2001.060, the public comments and the executive director's response to comments, and the final commission order which may incorporate findings both on the issues not submitted to SOAH for hearing and also issues decided in the contested case hearing. The commission invites comments on the following questions and issues:

1. When the commission certifies only a limited number of issues to SOAH after reviewing the public comments, executive director response to comments, and the hearing requests, HB 801 appears to

relieve the applicant of any burden of presenting evidence on any other issues arising out of the application. Should §80.17 or §80.137 be amended to reflect this new procedure? Is there a way to use the Summary Disposition procedure to generate a ruling by the judge on the non-contested portion of the application and draft permit? If parties do not object to the absence of issues during the contested case hearing, can there be a presumption that the applicant has met his burden of proof on all uncontested issues and that adequate evidence exists to support findings to that effect?

2. Is the possible absence of evidence in the record on those issues attackable on appeal under the substantial evidence standard of review? Are the application, technical review documents, the public comments and executive director's response to those comments part of the agency administrative record on appeal?

3. Can only those issues litigated at SOAH be the subject of a motion for rehearing or may parties raise issues that the commission either refused to certify or that parties neglected to request to be certified? At what point in the process is or should the commission's refusal to certify an issue become appealable? Should the commission's order certifying a matter to SOAH contain findings of fact and conclusions of law on those matters that will not be part of the contested case hearing or should that occur only after the PFD is considered by the commission?

4. Are there provisions that could be added to the commission rules that might provide certainty to parties and guidance to the judiciary on these questions concerning judicial review of orders issued under the new HB 801 procedures?

In order to incorporate changes to public comment procedures required by HB 801 and to maintain consistency with proposed changes to Chapter 55, the commission is proposing the amendment or repeal of certain sections of Chapter 80. The commission proposes to amend §80.105, to change how SOAH conducts preliminary hearings, by repealing the requirement that judges accept public commentary at the preliminary hearing. In addition, the proposed amendment to §80.109 would remove language in subsection (a) which allows a judge to take written or oral comments from persons who are not parties to the proceeding. Finally, the commission proposes to repeal current §80.111 to clarify the separation between the public comment and contested case hearing processes. Section 80.111 allows persons not designated as parties to register protests or make comments orally or in writing. Under the proposed public comment procedures in Chapter 55, the commission anticipates that all public comment should be received during the designated public comment period so that it will be properly considered by the commissioners when making determinations on permit actions and hearing requests. Once the commission refers the matter to SOAH for a contested case hearing, the public comment period is over and there is no further opportunity to providing comment on the record.

The commission also seeks comments on whether to repeal §80.127(f), which specifically applies to contested case hearings on permits under the Resource Conservation and Recovery Act, the Texas Injection Well Act, and the Texas Pollutant Discharge Elimination System. Subsection (f) requires that all public comment on permit applications received by the commission during the comment period and the executive director's responses to comments be admitted into the evidentiary record. This subsection is proposed for repeal given the approach followed in these rules to clarify the separation between public comment and the contested case hearing process.

The commission proposes to amend §80.137(c), by allowing the record of the commission's consideration of public comment, requests for reconsideration, and hearing requests to be used to support summary disposition on uncontested matters. This may allow parties to use the Summary Disposition procedure to generate a ruling by the judge on the non-contested portion of the application and draft permit. The discussion above provides the reasons for this change.

Proposed new §80.152 defines the scope and level of discovery for applications declared administratively complete on or after September 1, 1999. Proposed §80.152(a) and (b) reflect the commission's determination that HB 801 amendments to Texas Government Code, §2003.047 apply to all contested case hearings, not just those hearings for permits issued under Texas Water Code, Chapters 26 and 27; and to permits under Texas Health and Safety Code, Chapters 361 and 382.

Proposed §80.152(a) specifies that discovery may be conducted on any matter reasonably calculated to lead to admissible evidence regarding an issue on the commission's list of disputed issues referred to SOAH or any issue the judge agrees to consider under §80.4(c)(16). Discovery would include the production of documents reviewed or relied on in the preparation of application materials or in the selection of the site and documents related to the ownership of the applicant or the owner or operator of the facility or proposed facility. Section 6 of HB 801, which amends Texas Government Code, §2003.047, could be read to limit the production of documents only to those specifically listed in §2003.047(g)(2). This would mean the applicant could not request documents from the protestants and the protestants could not obtain documents relating to the applicant's compliance history. The

commission believes that the better interpretation of §2003.047(g) is that the listed documents are unquestionably discoverable, but that production of other documents may also be required.

Proposed §80.152(b) defines the level of discovery for contested case hearings. The commission proposes that all contested case hearings shall be Level 3 cases, as that term is defined in Texas Rules of Civil Procedure (TRCP) §190.4, with the exception that oral depositions and interrogatories should be limited as set out in TRCP §190.3. The commission believes that this level of discovery satisfies the rule regarding maximum expected duration of the hearing in proposed new §50.115, while maintaining a certain amount of flexibility necessary for the diversity of commission proceedings. Using Level 3 allows the judge to limit discovery to Level 1 or Level 2 if it is appropriate.

The commission proposes the repeal of Subchapter E which relates to freezing the process. This proposed change is not directly related to HB 801. However, these rules have not been used and the commission has determined that they will not be needed for future proceedings, since many of the concerns the rules were designed to deal with are addressed by HB 801.

Section 80.251 is proposed to be amended to specify that any application declared administratively complete before September 1, 1999 is subject to this section, while an application declared administratively complete on or after September 1, 1999 is subject to §80.252. The existing subsections in §80.251 have been reordered to accommodate proposed subsection (a). Proposed new §80.252 generally mirrors the provisions in §80.251, except that it applies to applications declared administratively complete on or after September 1, 1999. Section 80.252(c) does not include language

in existing §80.251(b) which refers to a judge's recommended proposed changes to the draft permit in response to public comment for certain permitting contested case hearings. This language is not included in §80.252(c), because of the changes to public comment procedures required by HB 801 and incorporated in proposed changes to Chapter 55.

The commission proposes to amend §80.271 to specify that any applications declared administratively complete before September 1, 1999 are subject to §80.271. The existing subsections in §80.271 have been reordered to accommodate proposed subsection (a).

The commission proposes new §80.272 to implement SB 211, which adds 3 days to the date on which a party is presumed to have received mailed notice of a decision or order. New §80.272 applies to any applications declared administratively complete on or after September 1, 1999. The rule retains the requirement that a Motion for Rehearing (MFR) be filed within 20 days of notification of the commission decision or order. Under proposed §80.272(b), the commission presumes a party or attorney of record has received notice on the third day after the date the decision or order is mailed.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 80, Contested Case Hearings, would implement certain provisions contained in HB 801, 76th Legislature, Regular Session, 1999, an act

relating to public participation in certain environmental permit proceedings of the TNRCC. The proposed amendments would also implement portions of SB 211, an act relating to the notice of a decision in an administrative hearing.

The proposed amendments to Chapter 80 modify commission procedures governing contested case hearings to conform with new requirements in HB 801 and SB 211. Specifically, the substantive changes occur in the General Rules for contested case hearings (Subchapter A), Hearing Procedures (Subchapter C), Discovery (Subchapter D), and Post Hearing Procedures (Subchapter F). The commission proposes to repeal the current Subchapter E, Freezing the Process.

The proposed amendments affect contested case hearing procedures for air, water, and waste programs. It is anticipated that all applicants for permits under Chapters 26, Water Quality Control; Chapter 27, Injection Wells, of the Texas Water Code; applicants for permits under Chapter 361, Solid Waste Disposal Act; and certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations may be affected by the proposed amendments to the rules. Persons involved in the permitting process including members of the general public may also be affected.

#### **PUBLIC BENEFIT**

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 80 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the permitting processes

conducted by TNRCC, increased standardization in the application process, and more efficient contested case hearings.

The purpose of the proposed amendments is to establish procedures for contested case hearings associated with permit applications. The proposed amendments are intended to comply with HB 801 to enhance public participation in the permitting processes of the TNRCC. No significant additional costs are anticipated to any person associated with the proposed amendments because the amendments do not create new regulatory burdens but only modify or clarify procedures currently in existence or establish procedures required by state law.

#### SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 80 of the rules. The proposed amendments modify or clarify requirements currently in existence and new procedures established by HB 801 are not anticipated to add a significant economic burden to existing procedures. Specifically, the proposed changes will not impose any significant additional requirements not already required by state or federal law and the proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement.

#### REGULATORY IMPACT EVALUATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to

§2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures associated with contested case hearings, the rulemaking does not meet the definition of a “major environmental rule.”

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not 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 because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any

authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Water Code, Chapter 5, Subchapter M and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting contested case hearings as well as specific procedures for hearings. The rule would also consolidate already existing notice procedures for some of the air quality permitting programs, correct, clarify, and/or update the air quality permit amendment process, requirements relating to sign posting for concrete batch plants, and clarification of requirements relating to bilingual education notices; and consolidate commission procedural rules. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules rather than substantive requirements.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

#### PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of TNRCC Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any

final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis, and Assessment, at (512) 239-1932 and on the TNRCC website at: <http://www.tnrcc.state.tx.us/oprd/forum.html#hb801>.

#### STATUTORY AUTHORITY

The amendments and new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the

commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the

commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and

adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendments and new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the HSC, and §§2001.42 and 2003.0437 of the TGC.

## CHAPTER 80 : CONTESTED CASE HEARINGS

### SUBCHAPTER A : GENERAL RULES

#### §§80.1, 80.3, 80.4, 80.5, 80.6, 80.17

#### §80.1. Applicability and Purpose.

Except as provided in this chapter, this [This] chapter applies to and provides procedures for all contested case hearings and other hearings held by SOAH.

#### §80.3. Judges.

(a) Applicability and delegation.

(1) Any permit application that is declared administratively complete before September 1, 1999 is subject to this section.

(2) The commission delegates to SOAH the authority to conduct hearings designated by the commission.

(b) - (c) (No change.)

**§80.4. Judges.**

(a) Applicability and delegation.

(1) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(2) The commission delegates to SOAH the authority to conduct hearings designated by the commission.

(b) The chief administrative law judge will assign judges to hearings. When more than one judge is assigned to a hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

(c) Judges shall have authority to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice for the hearing;

(3) establish the jurisdiction of the commission;

(4) rule on motions and on the admissibility of evidence and amendments to pleadings;

(5) designate and align parties and establish the order for presentation of evidence,

except that the executive director and the public interest counsel shall not be aligned with any other party;

(6) examine and administer oaths to witnesses;

(7) issue subpoenas to compel the attendance of witnesses, or the production of papers

and documents;

(8) authorize the taking of depositions and compel other forms of discovery;

(9) set prehearing conferences and issue prehearing orders;

(10) ensure that information and testimony are introduced as conveniently and

expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;

(11) limit testimony to matters under the commission's jurisdiction;

(12) continue any hearing from time to time and from place to place;

(13) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(14) impose appropriate sanctions;

(15) issue interim rate orders under Texas Water Code, Chapter 13;

(16) consider additional issues beyond the list referred by the commission when:

(A) the issues are material;

(B) the issues are supported by evidence; and

(C) there are good reasons for the failure to supply available information regarding the issues during the public comment period;

(17) extend the proceeding beyond the expected completion date if:

(A) the judge determines that failure to grant an extension would deprive a party of due process or another constitutional right; and

(B) by agreement of the parties;

(18) exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

**§80.5. Referral to SOAH.**

(a) Any permit application that is declared administratively complete before September 1, 1999 is subject to this section. [When a case is referred to SOAH, the chief clerk shall:]

(1)-(4) (No change.)

(b) (No change.)

**§80.6. Referral to SOAH.**

(a) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(b) When a case is referred to SOAH, the chief clerk shall:

(1) file with SOAH a Request for Setting of Hearing form, or Request for Assignment of Administrative Law Judge form, whichever is appropriate;

(2) coordinate with SOAH to determine a time and place for hearing;

(3) issue public notice of the hearing as required by law and commission rules;

(4) send a copy of the chief clerk's case file; and

(5) send the commission's list of disputed issues and maximum expected duration of the hearing to SOAH.

(c) In an enforcement case, the executive director's petition or Executive Director Preliminary Report shall serve as the list of issues or areas that must be addressed.

**§80.17. Burden of Proof.**

(a) The burden of proof is on the moving party by a preponderance of the evidence, except [Except] as provided in subsections (b) - (d) of this section, or otherwise provided by the commission [the burden of proof is on the moving party by a preponderance of the evidence].

(b) - (d) (No change.)

## **SUBCHAPTER A : GENERAL RULES**

### **§80.7**

#### **STATUTORY AUTHORITY**

The repeal is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which

establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed repeal implements TWC, §5.102, 5.103, and 5.105, and §2001.004 of the TGC.

**§80.7. Substitution of Judges.**

## **SUBCHAPTER C : HEARING PROCEDURES**

### **§§80.105, 80.109, 80.137**

#### **STATUTORY AUTHORITY**

The amendments are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which

establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendments implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the HSC, and §§2001.42 and 2003.0437 of the TGC.

**§80.105. Preliminary Hearings.**

(a) (No change.)

(b) If jurisdiction is established, the judge shall:

(1) [accept public commentary and] name the parties;

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

(c) - (d) (No change.)

**§80.109. Designation of Parties.**

(a) Determination by judge. All parties to a proceeding shall be determined at the preliminary hearing or when the judge otherwise designates. To be admitted as a party, a person must have a justiciable interest in the matter being considered and must, unless the person is specifically named in the matter being considered, appear at the preliminary hearing in person or by representative and seek

to be admitted as a party. After parties are designated, no other person will be admitted as a party except upon a finding that good cause and extenuating circumstances exist and that the hearing in progress will not be unreasonably delayed. [At the discretion of the judge, persons who are not parties may be permitted to make or file statements.]

(b) - (d) (No change.)

**§80.137. Summary Disposition.**

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

(c) Summary disposition. Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response. The record of the commission's consideration and disposition of public comment, requests for reconsideration, and request for contested case hearing may be used to support summary disposition on uncontested matters.

(d) - (j) (No change.)

## **SUBCHAPTER C : HEARING PROCEDURES**

### **§80.111**

#### **STATUTORY AUTHORITY**

The repeal is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which

establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed repeal implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 5.102, 5.103, and 5.105, and §2001.004 of TGC.

**§80.111. Persons Not Parties.**

**SUBCHAPTER D : DISCOVERY**

**§80.152**

**STATUTORY AUTHORITY**

The new section is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which

establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new section implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the HSC, and §§2001.42 and 2003.0437 of the TGC.

**§80.152. Scope and Level of Discovery.**

(a) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(b) The scope of permissible discovery in contested case hearings is limited to any matter reasonably calculated to lead to the discovery of admissible evidence regarding any issue referred to the administrative law judge by the commission or that the administrative law judge has agreed to consider; including, but not limited to, the production of documents:

(1) reviewed or relied on in preparing application materials or selecting the site of the proposed facility; or

(2) relating to the ownership of the applicant or the owner or operator of the facility or proposed facility.

(c) The level of discovery for all contested case hearings shall be Level 3 under Texas Rules of Civil Procedure (TRCP) 190.4, except that the administrative law judge shall limit oral depositions and interrogatories as set out in TRCP 190.3.

## **SUBCHAPTER E : FREEZING THE PROCESS**

**§§80.201, 80.203, 80.205, 80.207, 80.209, 80.213, 80.215**

### STATUTORY AUTHORITY

The repeals are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which

establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed repeals implement TWC, §§5.102, 5.103, and 5.105, and §2001.004 of TGC.

**§80.201. Applicability.**

**§80.203. Procedures for Executive Director and Public Interest Counsel.**

**§80.205. First Preliminary Hearing.**

**§80.207. Discovery.**

**§80.209. Freezing the Process.**

**§80.213. Limiting the Number of Witnesses.**

**§80.215. Additional Testimony.**

## **SUBCHAPTER F : POST HEARING PROCEDURES**

### **§§80.251, 80.252, 80.271, 80.272**

#### **STATUTORY AUTHORITY**

The amendments and new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve

certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which

establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendments and new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the HSC, and §§2001.42 and 2003.0437 of the TGC.

**§80.251. Judge's Proposal for Decision.**

(a) Any application that is declared administratively complete before September 1, 1999 is subject to this section. Any application that is declared administratively complete on or after September 1, 1999 is subject to §80.252 of this title (relating to Judge's Proposal for Decision).

(b) [(a)] Judge's proposal for decision. After closing the hearing record, the judge will file a written proposal for decision with the chief clerk within 30 working days and will send a copy by certified mail to each party. If the judge is unable to file the proposal within the 30 days, the judge shall request an extension from the commission by filing a request with the chief clerk. Neither the judge's failure to request an extension, the commission's failure to grant the requested extension, nor the judge's failure to file the proposal within the 30 day or extended period shall in any way affect the validity of the judge's proposal for decision or the commission's jurisdiction, consideration, or action relative to the proposal for decision.

(c) [(b)] Proposal for decision: adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the

proposal and, in underground injection control, Texas Pollutant Discharge Elimination System, and Resource Conservation and Recovery Act permitting cases for which the commission's permitting authority is authorized by the federal government, proposed changes to the draft permit recommended by the judge in response to public comment, as well as findings of fact and conclusions of law which support the proposal. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(d) [(c)] Proposal for decision: not adverse to any party. If the proposal for decision is not adverse to any party to the proceeding, the judge may informally dispose of the matter by proposing to the commission an order which need not contain findings of fact, conclusions of law, or reasons for the proposal. If the proposal for decision is not adverse to any party and a permit is to be issued, the judge need not propose an order to the commission.

**§80.252. Judge's Proposal for Decision.**

(a) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(b) Judge's proposal for decision. After closing the hearing record, the judge will file a written proposal for decision with the chief clerk within 30 working days and will send a copy by

certified mail to each party. If the judge is unable to file the proposal within the 30 days, the judge shall request an extension from the commission by filing a request with the chief clerk. Neither the judge's failure to request an extension, the commission's failure to grant the requested extension, nor the judge's failure to file the proposal within the 30-day or extended period shall in any way affect the validity of the judge's proposal for decision or the commission's jurisdiction, consideration, or action relative to the proposal for decision.

(c) Proposal for decision: adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal as well as findings of fact and conclusions of law which support the proposal. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(d) Proposal for decision: not adverse to any party. If the proposal for decision is not adverse to any party to the proceeding, the judge may informally dispose of the matter by proposing to the commission an order which need not contain findings of fact, conclusions of law, or reasons for the proposal. If the proposal for decision is not adverse to any party and a permit is to be issued, the judge need not propose an order to the commission.

**§80.271. Motion for Rehearing.**

(a) Any decision in an administrative hearing before the commission that occurs before September 1, 1999 is subject to this section.

(b) [(a)] Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

- (1) the name and representative capacity of the person filing the motion;
- (2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;
- (3) the date of the decision or order; and
- (4) a concise statement of each allegation of error.

(c) [(b)] Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail.

(d) [(c)] Ruling on motion for rehearing.

(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.

(e) [(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.

(f) [(e)] Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the decision or order.

**§80.272. Motion for Rehearing.**

(a) Any decision in an administrative hearing before the commission that occurs on or after September 1, 1999 is subject to this section.

(b) Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the third day after the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

(1) the name and representative capacity of the person filing the motion;

(2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.

(c) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail.

(d) Ruling on motion for rehearing.

(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.

(e) 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.

(f) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the decision or order.

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §106.5, concerning Public Notice; and new §106.13, concerning Permits by Rule.

## BACKGROUND

The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and Senate Bill (SB) 766 76th Legislature (1999). Certain portions of the proposed amendments and new sections are proposed to clarify the applicability of existing notice provisions, to correct, clarify, and update certain public notice rules with regard to notices for air quality applications. Certain actions concerning a portion of the proposal will constitute a revision to the state implementation plan (SIP). The proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Notices relating to certain air quality permit and permit exemption public notification and public participation requirements currently under Chapters 116 and 106 are proposed to be incorporated into Chapter 39 as part of this consolidation.

## OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; and made revisions to TCAA, THSC §382.056; and revisions to Texas Government Code, §2003.047. Except for the changes required under Texas Government Code, §2003.047, the new and amended statutory provisions apply to applications under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382.

The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment. It requires the commission to prescribe alternative cost-effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55 and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305 and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and

changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

#### OVERVIEW OF SB 766 AND IMPLEMENTATION

SB 766, enacted by the 76th Legislature, also amends TCAA, §382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of new facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission reduction permit for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to permit applications under SB 766 are included in these chapters. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

#### EXPLANATION OF PROPOSED RULES

The primary purpose of the proposed amendments and new section is to implement House Bill (HB) 801 and Senate Bill (SB) 766, 76th Legislature (1999).

Proposed §106.5 includes new subsection (a) which states that registrations which are declared administratively complete on or after September 1, 1999 are subject to the current version of this

chapter. Registrations which are declared administratively complete before September 1, 1999 are subject to the preceding version of Chapter 106 (i.e., the December 24, 1998 version). This provision is required by HB 801, §7(b).

Proposed §106.5 (b) includes existing wording of §106.5. New language is proposed to reference the public notice requirements under Chapter 39. Correspondingly, §106.5(b)(1)-(2) have been deleted, because they are included in the commission's proposal to amend Chapter 39.

Proposed new §106.13, concerning permits by rule, states that exemptions from permitting in Chapter 106 are also permits by rule. This new section implements the statutory changes of SB 766, TCAA, §382.05196 and new requirements for authorization under Texas Clean Air Act (TCAA), §382.057 and §382.058. These changes include authorization mechanisms for the construction of facilities using permits by rule and changes to existing facilities using exemptions from permitting under the proposed revised Chapter 106.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 106, Exemptions From Permitting, would implement certain provisions contained in:

HB 801, 76th Legislature, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC.

SB 766, 76th Legislature, 1999, an act relating to the issuance of certain permits for the emission of air contaminants.

The proposed amendments include new requirements from SB 801 for registration and public notification which are consistent with requirements in the proposed amendments to Chapter 39, Public Notice, Chapter 50, Actions On Applications, and Chapter 55, Request for Contested Case Hearings; Public Comment. Provisions that previously existed in Chapter 106 that have been incorporated in the proposed amendments to Chapters 39, 50, and 55. The proposed amendments also include a new section regarding permits by rule as required by SB 766.

The proposed amendments affect the existing exemption process and adds permits by rule. It is anticipated that some applicants for authorization under Chapter 106 will be affected by the proposed amendments to the rules. Persons involved in the permitting process, including members of the general public, will also be affected. It is anticipated that units of local government and other facilities choosing to provide storage and copying facilities for the proposed permits applications will charge and collect fees to offset the costs of storage and copy services. These fees are not considered to be a significant additional cost to individual applicants.

#### PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 106 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the permitting processes conducted by TNRCC and increased standardization in the application process.

The purpose of the proposed amendments is to establish procedures regarding exemptions from permitting and permits by rule. The amendments are proposed to comply with certain provisions of HB 801 and SB 766 which are intended to enhance public participation in the permitting processes of the TNRCC. An additional requirement will require the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The additional cost of a copy of the permit application and possible storage fees from the public facility are not anticipated to be significant.

#### SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 106 of the rules because the amendments modify, clarify, or simplify requirements currently in existence. The additional of §106.13 will facilitate registration of authorizations to construct facilities with insignificant emissions. If a small business is an applicant for a concrete batch plant, the costs associated with providing a copy of the application for review and copying are not expected to be significant.

## REGULATORY IMPACT EVALUATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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 rulemaking is not a major environmental rule because it is not proposed with the specific intent of protecting the environment or reducing risks to human health or the environment. The specific primary intent of the rule is procedural in nature and establishes procedures associated with exemptions from permitting and permits by rule. The proposal relates to procedures for providing public notice, in regard to exemptions from permitting. The rule does not concern an existing or new regulatory program that would 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. Rather, it merely prescribes public notice procedures to be followed for exemptions from permitting and permits by rule. The rule does not prescribe control requirements or any other requirements that would normally be associated with a commission environmental rulemaking.

In addition, this proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because there are no federal public notice rules in regard to exemptions from permitting of permits by rule. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; TCAA, §§382.057 and 382.058 and 382.05196, as well as the other authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not 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 because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., TCAA §382.056). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public notice in regard to exemptions from permitting and permits by rule. The

proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Coastal Management Program. The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC, §§281.40, et seq.).

#### PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808.

All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and Assessment, at (512)239-1932 and on the TNRCC website at: <http://www.tnrcc.state.tx.us/oprd/forum.html#hb801>

#### STATUTORY AUTHORITY

The new and amended sections are proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include:

§5.103, which establishes the commission's general authority to adopt rules, and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.05196, which establishes the commission's authority to adopt rules relating to permits by rule; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants and §382.062, which establishes the commission's authority to adopt rules for certain air authorizations.

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

The proposed new and amended sections implement §§382.051, 382.05196, 382.056, 382.057, 382.058 and 382.062 of the THSC.

## CHAPTER 106 - EXEMPTIONS FROM PERMITTING

### SUBCHAPTER A : GENERAL REQUIREMENTS

#### §106.5

##### §106.5. Public Notice.

(a) Any registration subject to this Chapter that is declared administratively complete on or after September 1, 1999 is subject to the current version of this chapter. Any registration that is declared administratively complete before September 1, 1999 is subject to the December 24, 1998 version of this Chapter, and that version of this Chapter is continued in effect for this purpose.

(b) Facilities constructed under this chapter that consist of permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, or specialty wet batch, concrete, mortar, grout mixing, or pre-cast concrete products, shall conduct public notice of the proposed construction unless exempted from public notice requirements by TCAA, §382.058(b). In all cases, public notice shall comply with the requirements under Chapter 39 of this title (relating to Public Notice) [include the information specified in paragraph (1)(A) and (B) of this section].

[ (1) Public notification procedures.]

[ (A) Publication in public notices section of a newspaper. At the applicant's expense, notice of intent to construct shall be published in the public notice section of two successive

issues of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility.

The notice shall contain the following information:]

[(i) application number;]

[(ii) company name;]

[(iii) type of facility;]

[(iv) description of the location of facility or proposed location of the facility;]

[(v) contaminants to be emitted;]

[(vi) location and availability of copies of the completed application;]

[(vii) public comment period;]

[(viii) procedure for submission of public comments concerning the proposed construction;]

[(ix) notification that a person residing within 1/4 mile of the proposed plant is an affected person who is entitled to request a hearing in accordance with commission rules; and]

[(x) name, address, and phone number of the regional commission office to be contacted for further information.]

[(B) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issues of the newspaper and shall contain the information specified in paragraph (1)(A)(I)-(iv) of this section and note that additional information is contained in the notice published under paragraph (1)(A) of this section in the public notice section of the same issue.]

[(2) Comment procedures.]

[(A) Comment period. Interested persons may submit written comments to the executive director, including requests for public hearings under TCAA, §382.056, on the executive director's preliminary decision to issue or not to issue the standard exemption. All such comments and hearing requests must be received in writing within 15 days of the last publication date of the notices specified in paragraph (1)(A) and (B) of this section. 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) Consideration of comments. All written comments received by the executive director during the period specified in subparagraph (A) of this paragraph shall be considered in determining whether to issue or not to issue the standard exemption. The executive director shall make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin office of the commission and appropriate regional office].

**§106.13. Permits By Rule.**

Exemptions from permitting in this chapter are also permits by rule.

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§116.111, 116.114, 116.116, 116.183, 116.312, and 116.740; and the repeal of §§116.124, 116.130, 116.131, 116.132, 116.133, 116.134, 116.136, and 116.137.

## BACKGROUND

The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7 and SB 766 76th Legislature (1999). The proposed amendments and new sections are intended to establish and clarify the applicability of notice provision and provide avenues for public participation in the permitting process for water, waste, and air applications. These changes also update notice rules for air quality permit amendments. This proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Certain rules will constitute a revision to the state implementation plan (SIP). Specifically, §§116.111, 116.114, 116.116, 116.183, 116.312, 116.740 as revised are proposed to be added to the SIP. In addition, existing §§116.124 and 116.130-116.137 are proposed to be deleted from the SIP. Specific rules from Chapters 39 and 55 are also being proposed as SIP revisions.

## OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to TCAA, THSC §382.056; and revisions to Texas Government Code, §2003.047. The new and amended

statutory provisions apply to applications under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment. It requires the commission to prescribe alternative cost-effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55 and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305 and 321. Most of these chapters also

contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

#### OVERVIEW OF SB 7 AND IMPLEMENTATION

Senate Bill (SB 7), enacted by the 76th Legislature, restructures electric utility service in Texas. Also, owners grandfathered utilities that generate electric energy for compensation are required to apply for electric generating facility permits from the commission by September 1, 2000. These permits are subject to notice under §382.056 of the THSC. SB 7 provides that initial issuance of these permits requires notice and comment proceedings. However, amendment and renewal of these permits requires notice, comment and opportunity for contested case hearing. The notice provisions for electric generating facility permits are implemented through changes to Chapter 39. Chapters 50, 55 and 80 as amended also apply to these permits. Additional implementation of the requirements of SB 7 is expected to occur in future rulemaking proposals by the commission.

#### OVERVIEW OF SB 766 AND IMPLEMENTATION

SB 766, enacted by the 76th Legislature, also amends TCAA, §382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of new facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission

reduction permit for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to permit applications under SB 766 are included in these chapters. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

#### COMMENTS REQUESTED

The commission solicits comments regarding the requirements in §39.603(a)(2) (Air Quality Permit applications) on the size of newspaper notice. The commission recognizes that the measurements in the rules do not necessarily reflect the measurements that newspapers use for advertisements.

Recommendations on more appropriate terminology would be appreciated.

#### EXPLANATION OF PROPOSED RULES

The primary purpose of the proposed amendments and repeals is to implement House Bill (HB) 801, 76th Legislature (1999).

The proposed amendment to §116.111 includes the addition of subsection (b), containing a new requirement that applications for which notice is required comply with the provisions of Chapter 39, relating to public notice. In addition, the notice waiver for previously permitted facilities is proposed to be moved to §116.111(b) from §116.130(b), which is part of the proposed repeal discussed later in this preamble. No substantive changes have been made by the change in this section.

To accommodate the dual notification requirements of HB 801 and Texas Clean Air Act (TCAA), §382.056(f), §116.114(a)(2) is proposed to be modified. This section refers to the executive director's preliminary determination to approve or disapprove applications after completing the technical review. This requirement, under current rules, is exclusive only to applications subject to Federal Clean Air Act (FCAA), Title I, Part C or D (Nonattainment Permits) and 40 CFR Part 51.165(b) (relating to Prevention of Significant Deterioration permits) under §116.131(a), which is proposed to be repealed. TCAA, §382.056(f) requires a preliminary determination for all applications subject to notification. The proposed revised section outlines the circumstances under which applicants must to publish notice of the executive director's preliminary decision and seek additional public comment. This section is proposed to be reformatted to account for the notification triggers but maintains the existing review deadlines for the executive director to complete the technical review and forward his preliminary determination to the company and the chief clerk.

The proposed amendment to §116.114(c)(1)-(3) incorporates the applicant notification requirements previously in §116.137. These provisions streamline the format and match the requirements listed under §116.114(2), §116.160(b)(3), and §116.314 to establish the time lines when the executive director should notify applicants of the final decision on an application. No substantive changes have been made by the creation of this subsection.

Section 116.116(b)(4) is proposed to be added in accordance with proposed §39.403(15) requirements for notice for certain permit amendments, including applications for construction of any new facility under TCAA §382.0518 and the clarification of the existing practice of requiring public notification for

modifications to existing facilities with significant emission increases authorized under Chapter 116. Under these new requirements, any new facility construction will be required to comply with notice requirements in Chapter 39. The previous reference to public notification requirements for actions under Chapter 116, Subchapter C, has been incorporated in new §39.403(10), under this proposal.

Proposed modifications to §116.116(d), (d)(1), and (d)(2) include authorization mechanisms for the construction of facilities using a permit by rule, and changes to existing facilities using exemptions from permitting, both under the proposed revised Chapter 106. This change references the implementation of the statutory changes from SB 766 and new requirements for authorization of insignificant facilities under TCAA, §§382.05196, 382.057 and 382.058.

The public notification text requirement for availability of compliance history information is proposed to be moved to §39.411(15)(D) and §116.124 is being repealed. No substantive changes have been made to this rule.

Subchapter B, Division 3 (relating to Notification and Comment Procedures) §§116.130-116.137 are proposed to be repealed. As required by the Business Process Review, a new §116.111(3) requires applications with public notification to comply with the requirements of Chapter 39 (relating to Public Notice). Similar changes have been proposed under §116.114(b)(1) (relating to Voiding of Deficient Applications); Subchapter C, §116.183 (relating to Public Notification for Hazardous Air Pollutants) §116.312 (relating to public notification requirements for Permit Renewals); and Subchapter G, §116.740 (a) and (c) (relating to public notification requirements for Flexible Permits).

The requirements of §116.130(a) and (c) (relating to Applicability) are proposed to be moved to §39.403(9), (10), and (14). The requirements of §116.130(b) (relating to notification for change of location of previously permitted facilities) are proposed to be included in new §116.111(b). No substantive changes have been made to these rules.

The preliminary determination and notification requirements of §116.131(a) are proposed to be incorporated in the revisions to §116.114(2). The application availability requirements under §116.131(b) are proposed to be incorporated into §39.411(14) and revised to reflect the new requirements under TCAA §382.056(d) which requires the applicant to make a copy of the application available for review by the public in the county where the facility is or will be located.

The public notice format requirements previously under §116.132(a) (relating to Publication in public notice section of newspaper) are proposed to be moved to §39.603(a) (relating to Newspaper Notice) and §39.411 (relating to Text) and include requirements as specified in HB 801 and §382.056. Instead, due to the procedural changes required by HB 801 the previous requirement to publish notice in two consecutive issues of a newspaper are proposed to be reduced to one issue of a newspaper for each set of required notices. The requirements of §116.132(b) (relating to Publication Elsewhere in the Newspaper) are proposed to be moved to §39.603(a)(2) and have no substantive changes. The requirements under §116.132(c) and (d) (relating to Additional Alternate Language Public Notice) are proposed to be moved to §39.603(b). Changes are proposed to be made to streamline and reformat the existing requirements as well as clarifying that alternate language notice is required even if the applicable schools do not have students in resident programs at the time of public notice applicability

under new §39.603(b)(1). In accordance with existing TNRCC practice, new §39.603(b)(7) requires applicants to complete a certification and submit this certification under §39.605(c) if they waive out of alternate language public notice.

The sign posting requirements previously under §116.133 and §116.312(b) are proposed to be moved to §39.604. There is one substantive change to these requirements under the new section. The posting of signs along property lines at the existing or proposed facility are limited to only those areas which parallel a public street, road, or highway. Previous references to “thoroughfare” are proposed to be deleted in accordance to Air Rule Interpretation Memo Number R6-133.001. The requirement under §116.312(b) which is proposed to be moved to §39.604 is the requirement for the sign heading to read “PROPOSED RENEWAL OF AIR QUALITY PERMIT.”

Notification of Affected Agencies previously under §116.134 is proposed to be moved to §39.605(a) and (b). No substantive changes have been made to these rules. Section 39.605 refers to general notification requirements of §39.405(f) which requires all public notifications, regardless of commission program, to submit copies of notices and affidavits to the chief clerk of the agency.

Public comment procedures previously under §116.136 are proposed to be included in §39.409 (relating to Deadline for Public Comment and Requests for Reconsideration and Contested Case Hearing), §55.21 (relating to Requests for Contested Case Hearings, Public Comment), and §55.25 (relating to Public Comment Processing) in accordance with the new requirements under HB 801.

Notification of Final Action previously under §116.137 has been moved to §116.114(c)(1)-(3). No substantive changes are proposed to be made to these rules.

Finally, certain rules in Chapters 39, 55 and 116 will constitute a revision to the state implementation plan (SIP). Specifically, §§116.111, 116.114, 116.116, 116.183, 116.312, 116.740 as revised are proposed to be added to the SIP. In addition, existing §§116.124 and 116.130-116.137 are proposed to be deleted from the SIP.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 116, Control Of Air Pollution By Permits For New Construction Or Modification, would implement or reference certain provisions contained in:

HB 801, 76th Legislature, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC.

SB 766, 76th Legislature, 1999, an act relating to the issuance of certain permits for the emission of air contaminants.

The proposed amendments include new requirements from HB 801 for registration and public notification which are consistent with requirements in the proposed amendments to Chapter 39, Public

Notice; Chapter 50, Actions On Applications; and Chapter 55, Request for Contested Case Hearings; Public Comment. Provisions that previously existed in Chapter 116 and that have been incorporated in the proposed amendments to Chapters 39, 50, and 55 are proposed for repeal in the proposed amendments. The proposed amendments also reference the implementation of the statutory changes in SB 766 regarding exemptions and permits by rule.

It is anticipated that applicants for certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations will be affected by the proposed amendments to the rules. Persons involved in the air permitting process, including interested members of the general public, will also be affected.

#### **PUBLIC BENEFIT**

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 116 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the air permitting processes conducted by TNRCC and increased standardization in the air permit application process.

The purpose of the proposed amendments is to establish new notification and public comment procedures for new construction or modification permits. Specifically, the proposed modifications outline circumstances in which permit applicants for new construction or modifications of facilities must publish notice and seek public comment. The proposed amendments also establish authorization

mechanisms for the construction of facilities using permits by rule and changes to existing facilities using exemptions from permitting under the Texas Clean Air Act.

The proposed amendments will require an applicant for an amendment to an existing permit due to construction of a new facility, or for modifications to existing facilities which have significant emissions increases, to publish notice and provide the opportunity for a hearing. It is anticipated that an additional 420 facilities will be required to publish notice. In accordance with proposed amendments to Chapter 39, Public Notice, air permit applicants will be required to publish notice in one issue of the newspaper of general circulation in the municipality in which the facility is located or proposed to be located. The public notice consists of a Legal Notice and a larger Display Notice regarding their intent to apply for an air quality permit. In addition, there is a requirement for applicants to publish notice once in each language for which bilingual education programs are required by the Texas Education Code in the elementary or middle school nearest to the facility or proposed facility.

The cost for public notice may vary significantly depending on the location of the permitted facility and its proximity to large metropolitan areas. Small town/city newspapers generally charge much less for publication of a public notice. A recent survey indicated that a large city newspaper would charge approximately \$3,000 for the Display Notice and approximately \$450 for the Legal Notice. A smaller city newspaper would charge approximately \$210 for the Display Notice and \$20 for the Legal Notice. The cost for alternative language publication is estimated to be approximately \$150 for each notice. It is estimated that total current costs for public notice for each application are in the range of \$380 to \$3,600 for medium to large sized business requiring one Legal Notice, one Display Notice, and one

alternative language notice. An additional requirement will require the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The additional cost of a copy of the permit application and possible storage fees from the public facility are not anticipated to be significant.

#### SMALL BUSINESS ANALYSIS

The following cost analysis is included in this fiscal note for informational purposes. The requirement and the fiscal impact are contained in the proposed amendments to Chapter 39, Public Notice, which is proposed in a concurrent publication in the *Texas Register*. The inclusion of the costs here does not imply that the costs are related to the proposed amendments to Chapter 116 or in addition to the costs related to the proposed amendments to Chapter 39.

If small businesses require air permits for new construction or modification, some economic effects are anticipated as a result of implementing the provisions of the proposed amendments to Chapter 116 of the rules. The costs are anticipated to be within the same range as those estimated for medium to large businesses previously mentioned. It is also anticipated that some small businesses whose emissions do not have a significant effect on air quality will only be required to publish the Legal Notice and the alternate language notice when applicable. The costs are anticipated to be in the range of \$170 to \$600 for one Legal Notice and one alternative language notice. Although these are additional requirements, their effects have been mitigated by reducing the current requirement to publish notice of intent to obtain an air permit in two successive issues of a newspaper. If a small business is an applicant the

costs associated with providing a copy of the application for review and copying are not expected to be significant.

#### REGULATORY IMPACT EVALUATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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 rulemaking is not a major environmental rule because it is procedural in nature and establishes procedures associated with air permits for new construction or modification, public notice, and public comment on permit applications, and it is not proposed with the specific intent of protecting the environment or reducing risks to human health or the environment. The specific primary intent of the rule is to establish procedures for public participation in certain permitting proceedings. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting public hearing. The rule would also consolidate already existing notice procedures for the air quality permitting program. In addition, the rule incorporates the reference to new permits by rule authorized by SB 766. The rule does not concern an existing or new regulatory program that would 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. Rather, it merely prescribes public participation procedures to be followed by the commission and applicants for certain commission authorizations. The rule does not prescribe control requirements or any other requirements that would normally be associated with a commission environmental rulemaking.

In addition, this proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not impose any significant additional requirements not already required by federal law, because the main purpose of this proposal is to adopt state rules to provide for additional notice, opportunity for public comment, or opportunity for hearing which also satisfies federal program authorization requirements. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, and Texas Clean Air Act (TCAA), §382.05196 and §382.056; as well as the other authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not 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 because the rule is consistent with, and does not significantly exceed, federal requirements, and is in accordance with Texas Water Code, §5.551 and TCAA, §382.017, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., TCAA, §382.05196 and §382.056 and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or

adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting public hearing. The rule would also consolidate already existing notice procedures for the air quality permitting program; correct, clarify, and update the air quality permit amendment process; clarify requirements relating to bilingual education notices; and consolidate commission procedural rules. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or

authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

#### PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in

the Office of Environmental Policy, Analysis and Assessment, at (512) 239-1932 and on the TNRCC website at: <http://www.tnrcc.state.tx.us/oprd/forum.html#hb801>

#### STATUTORY AUTHORITY

The repealed and amended sections are proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's

authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

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

The proposed repealed and amended sections implement §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

**CHAPTER 116 - CONTROL OF AIR POLLUTION BY PERMITS FOR NEW**

**CONSTRUCTION OR MODIFICATION**

**SUBCHAPTER B : NEW SOURCE REVIEW PERMITS**

**DIVISION 1 : PERMIT APPLICATION**

**§§116.111, 116.114, 116.116**

**§116.111. General Application.**

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that all of the following are met.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the “Texas Natural Resource Conservation Commission (TNRCC) Sampling Procedures Manual.”

(C) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review. If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(b) and the owner or operator must comply with the provisions in Chapter 39 of this title (relating to Public Notice). Upon written request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director, or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title (relating to Public Notice) if there is no indication that operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

**§116.114. Application Review Schedule.**

(a) Review schedule. The executive director shall review permit applications in accordance with the following.

(1) (No change.)

(2) Preliminary decision [Decision] to approve or disapprove the application. The executive director shall conduct a technical review and send [mail] written notice to the applicant of the preliminary [his] decision to approve or not approve the application within 180 days of receipt of a completed permit application or 150 days of receipt of a permit amendment. If the applicant has provided Notice of Receipt of Application and Intent to Obtain Permit public notification as required by the executive director as required under Chapter 39 of this title (relating to Public Notice), one of the following shall apply:

(A) [and] if no requests for public hearing or public meeting on the proposed facility have been received or the application is otherwise exempt under §39.19(d)(1 ) of this title (relating to Notice of Application and Preliminary Decision), the executive director shall send a copy of the Preliminary Decision to the applicant; or

(B) if Notice of Application and Preliminary Decision is required under §39.419(d) of this title (relating to Notice of Application and Preliminary Decision), the executive

director shall authorize this notice and send copies to the applicant and all other persons are required under §39.602 of this title (relating to Mailed Notice). [notice within:]

[(A) 180 days of receipt of a completed permit application; or]

[(B) 150 days of receipt of a permit amendment or special permit amendment.]

(3) (No change.)

(b) Voiding of deficient application.

(1) An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the executive director under the provisions of this section, or Chapter 39 [§116.131] of this title (relating to Public Notice [Notification Requirements]).

(2) If an applicant fails to make such good faith effort, the executive director shall void the application and notify the applicant. If the application is resubmitted within six months of the voidance, it shall be exempt from the requirements of §116.140 of this title (relating to Applicability).

(c) Notification of executive director's decision.

(1) Notification to Applicant. The executive director or the chief clerk shall send to the applicant the decision to approve or not approve the application if:

(A) no timely requests for reconsideration, contested case hearing, or public meeting on the proposed facility have been received; or

(B) if hearing requests have been received and withdrawn before the executive director's Preliminary Decision; or

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted; and

(D) the applicant has satisfied all public notification requirements of Chapter 39 of this title (relating to Public Notice).

(2) Notification to commenters. Persons submitting written comments under Chapter 39 of this title shall be sent the executive director's final action and given an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion for Reconsideration of Executive Director's Decision) at the same time that the applicant is notified. If the number of interested parties who have requested notification makes it impracticable for the commission to notify

those parties by mail, the commission shall notify those parties by publication using the method prescribed by §382.031(a) of the Texas Health and Safety Code.

(3) Time Limits. The executive director shall send notification of final action within:

(A) one year after receipt of a complete PSD or nonattainment permit application, or a complete permit application for an action under Subchapter C of this chapter;

(B) 180 days of receipt of a completed permit or permit renewal application; or

(C) 150 days of receipt of a permit amendment or special permit amendment application.

**§116.116. Changes to Facilities.**

(a) (No change.)

(b) Permit amendments.

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

(3) Any person who applies for an amendment to a permit to construct or reconstruct an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) under Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in Chapter 39 [§§116.130-116.134, 116.136, and 116.137] of this title (relating to Public Notice [Notification and Comment Procedures]).

(4) Any person who applies for an amendment to a permit to construct a new facility or modify an existing facility shall comply with the provisions in Chapter 39 of this title.

(c) (No change.)

(d) Permits by rule and exemptions from permitting [Exemption] under Chapter 106 of this title (relating to Exemptions from Permitting) in lieu of permit amendment or alteration.

(1) A permit amendment or alteration is not required if the changes to the permitted facility qualify for an exemption from permitting or permit by rule under Chapter 106 of this title unless prohibited by permit condition as provided in §116.115 of this title (relating to General and Special Conditions).

(2) All exempted changes to, and permits by rule associated with, a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed.

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

**SUBCHAPTER B : NEW SOURCE REVIEW PERMITS**

**DIVISION 2 : COMPLIANCE HISTORY**

**§116.124**

**STATUTORY AUTHORITY**

The repealed section is proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's

authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

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

The proposed repealed section implements §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

**§116.124. Public Notice of Compliance History.**

**SUBCHAPTER B : NEW SOURCE REVIEW PERMITS**

**DIVISION 3 : PUBLIC NOTIFICATION AND COMMENT PROCEDURES**

**§§116.130-116.134, 116.136, 116.137**

**STATUTORY AUTHORITY**

The repealed sections are proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's

authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

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

The proposed repealed sections implement §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

**§116.130. Applicability.**

**§116.131. Public Notice Requirements.**

**§116.132. Public Notice Format.**

**§116.133. Sign Posting Requirements.**

**§116.134. Notification of Affected Agencies.**

**§116.136. Public Comment Procedures.**

**§116.137. Notification of Final Action by the Texas Natural Resource Conservation Commission.**

**SUBCHAPTER C : HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING**

**CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES**

**(FCAA, §112(g), 40 CFR PART 63)**

**§116.183**

**STATUTORY AUTHORITY**

The amended section is proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and

representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

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

The proposed amended section implements §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

**§116.183. Public Notice Requirements.**

Proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with the public notice requirements contained in Chapter 39 of this title (relating to Public Notice) [§116.130 of this title (relating to Applicability)].

## **SUBCHAPTER D : PERMIT RENEWALS**

### **§116.312**

#### **STATUTORY AUTHORITY**

The amended section is proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's

authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

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

The proposed amended section implements §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

**§116.312. Public Notification and Comment Procedures.**

[(a)] The executive director shall mail a written notice to the permit holder within 30 days after receipt of a complete application. The notice will confirm receipt of the application and shall require the applicant to provide public notice of the application for permit renewal in accordance with Chapter 39 of this title (relating to Public Notice) [Subchapter B of this title (relating to New Source Review Permits)].

[(b) The sign heading required under §116.133(a)(2) of this title (relating to Sign Posting Requirements) shall read "PROPOSED RENEWAL OF AIR QUALITY PERMIT."]

## **SUBCHAPTER G : FLEXIBLE PERMITS**

### **§116.740**

#### **STATUTORY AUTHORITY**

The amended section is proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's

authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

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

The proposed amended section implements §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

**§116.740. Public Notice and Comment.**

(a) Any person who applies for a flexible permit or an amendment to a flexible permit shall comply with the provisions in Chapter 39 of this title (relating to Public Notice) [§§116.130-116.134, 116.136, 116.137 of this title (relating to Public Notification and Comment Procedures)].

(b) Any person who applies for an amendment to a flexible permit regarding an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed

Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in Chapter 39 of this title (relating to Public Notice) [§§116.130-116.134, 116.136, and 116.137 of this title].

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §122.320, concerning Public Notice.

## BACKGROUND

The primary purpose of the proposed amendments is to implement House Bill (HB) 801. The proposed amendments are intended to update notice rules for federal operating permits. This proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

## OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to Texas Clean Air Act (TCAA), THSC, §382.056; and revisions to Texas Government Code, §2003.047. Except for the changes required under Texas Government Code, §2003.047, the new and amended statutory provisions expressly apply to applications under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment. It requires the commission to prescribe alternative cost-effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULES

The primary purpose of the proposed amendments is to implement HB 801, 76th Legislature (1999).

HB 801 revised the federal operating permit requirements contained in THSC, §382.056. Therefore, the commission proposes revisions to §122.320, relating to public notice requirements for the federal operating permit program, to incorporate the revised statutory requirements.

The requirements in §122.320(b) are proposed to be revised by adding a new requirement specifying that the applicant shall make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located.

The requirements in §122.320(b)(2) are proposed to be revised by specifying that the newspaper notice shall include an applicant telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information.

The requirements in §122.320(b)(7) and (8) are proposed to be revised to specify that certain statements in the newspaper notice shall be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice.

The requirements in the original §122.320(b)(9) are proposed to be moved to §122.320(b)(11). Section 122.320(b)(9) is proposed to be amended to add a new requirement that the newspaper notice include a statement describing the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit.

Section 122.320(b)(10) contains new proposed language to add a newspaper notice statement for the time and location of any public meeting to be held, if applicable.

Section 122.320(m) contains new proposed language to specify that the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the site is located or proposed to be located. This new subsection also proposes that any such meeting shall be provided in the notice required by subsection (b) of this section.

Section 5 of HB 801 specifies that the executive director shall conduct a technical review of and issue a preliminary decision on the application. All applications under Chapter 122 of this title (relating to Federal Operating Permits) undergo a technical review. The requirements in §122.320(b) fulfill the requirement to issue a preliminary decision.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 122, Federal Operating Permits, would implement certain provisions contained in HB 801, 76th Legislature, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC. Like a similar provision in Chapter 39, Public Notice, a proposed amendment to Chapter 122 requires the applicant for a federal operating permit to make a copy of the application and draft permit available for review and copying at

a public place in the county in which the site is located or proposed to be located. It is anticipated that the number of permit applications received will vary greatly depending on the number of total permit applications generated by applicants in the county. The TNRCC anticipates reviewing over 9,600 permit applications state-wide in fiscal year 1999, of which approximately 400 will be federal air quality operating permits. It is anticipated that units of local government and other facilities choosing to provide storage and copying facilities for the proposed permits applications will charge and collect fees to offset the costs of storage and copy services. These fees are not considered to be a significant additional cost to individual applicants.

The proposed amendments to Chapter 122 revise federal operating permit requirements to incorporate public notice and public meeting requirements in HB 801. The proposed amendments to Chapter 39, Public Notice, of the rules exempt applications under Chapter 122, from the requirements of Chapter 39. Hearings for federal operating permits are notice and comment hearings, and are not contested case hearings subject to procedures specified in Chapter 55, Request for Contested Case Hearings; Public Comment.

The proposed amendments affect permitting processes for federal air programs. It is anticipated that federal operating permit applicants under TCAA of the THSC, Chapter 382, will be affected by the proposed amendments to the rules. Persons involved in the federal operating permitting process including interested members of the general public will also be affected.

#### PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 122 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the federal operating permitting processes conducted by TNRCC and enhanced conformance of state and federal public notice requirements.

The purpose of the proposed amendments is to revise procedures regarding federal operating permits. Specifically, the proposed amendments revise federal operating permit requirements to incorporate public notice and public meeting requirements for federal operating permits in HB 801.

The proposed amendments are not anticipated to have significant fiscal impacts on members of the regulated community. The proposed amendments make only minor changes to current public notice requirements. An additional requirement will require the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The additional cost of a copy of the permit application and possible storage fees from the public facility are not anticipated to be significant.

#### SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 122 because the proposed public notice requirements have only made minor changes to existing requirements. If a small business is an applicant for a

federal operating permit, the costs associated with providing a copy of the application for review and copying are not anticipated to be significant.

#### DRAFT REGULATORY IMPACT EVALUATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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 rulemaking is not a major environmental rule because it is procedural in nature, establishes procedures associated with federal operating permits, public notice, public comment on permit applications, and is not proposed with the specific intent of protecting the environment or reducing risks to human health or the environment. The specific primary intent of the rule is to establish procedures for public participation in certain permitting proceedings. The proposal relates to procedures for providing public notice and providing opportunity for public comment. The rule does not concern an existing or new regulatory program that would 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. Rather, it merely prescribes public participation procedures to be followed by the commission and applicants for certain commission authorizations.

In addition, this proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because the main purpose of this proposal is to adopt state rules equivalent to federal requirements for public participation, and to provide for additional notice, opportunity for public comment, or opportunity for hearing to the extent necessary to satisfy federal program authorization requirements. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, Section 2001.004, which requires state agencies to adopt rules of practice; and TCAA, §382.056, as well as the other authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not 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 because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with TWC, Section 5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., TCAA, §382.056). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary

purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting public hearing. The rule would clarify, and update the federal operating permit public notice process to be consistent with statutory requirements. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

#### PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals

may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and Assessment, at (512) 239-1932 and on the TNRC website at: <http://www.tnrcc.state.tx.us/oprd/forum.html#hb801>

#### STATUTORY AUTHORITY

The amendments are proposed under THSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules, and §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases.

Additionally, relevant sections of the THSC include: §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; and §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits.

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

The proposed amendments implement the THSC, §382.056, and the Texas Government Code, §2003.047 and §2003.04.

**CHAPTER 122 - FEDERAL OPERATING PERMITS**

**SUBCHAPTER D : PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE  
REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION,  
EPA REVIEW, AND PUBLIC PETITION**

**DIVISION 2 : PUBLIC NOTICE**

**§122.320**

**§122.320. Public Notice.**

(a) (No change.)

(b) The executive director shall direct the applicant to publish a notice of a draft permit, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The executive director shall direct the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The notice shall contain the following information:

(1) (No change.)

(2) the applicant's or permit holder's name, [and] address, and telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information;

(3) - (6) (No change.)

(7) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(8) a statement [the notification] that a person who may be affected by the emission of air pollutants from the site is entitled to request a notice and comment hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit;

(10) if applicable, the time and location of any public meeting; and

(11) the name, address, and phone number of the commission office to be contacted for further information.

(c) - (l) (No change.)

(m) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the site is located or proposed to be located. Notice of this public meeting shall be provided in the notice required by subsection (b) of this section.

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendments to §305.63 and new §305.65, concerning Renewal. The primary purpose of the proposed amendment and new section is to implement House Bill (HB) 801, 76th Legislature (1999).

#### OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (HSC), Solid Waste Disposal Act, §361.088; revisions to Texas Clean Air Act (TCAA), HSC, §382.056; and revisions to Texas Government Code, §2003.047. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. Rule changes are proposed to implement this legislation in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. The rule changes in Chapter 305 implement the provisions of HB 801 relevant to the permitting procedures or renewal of certain hazardous waste management facilities. These chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and

update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

## EXPLANATION OF PROPOSED RULES

### SECTION BY SECTION ANALYSIS

The primary purpose of the proposed amendments and new section is to implement HB 801, 76th Legislature (1999).

Proposed amended §305.63 contains new language relating to applicability, stating that this section is applicable to any permit renewal application that is declared administratively complete before September 1, 1999. The proposed amended section also is reformatted to account for the addition of the applicability statement. This amendment leaves existing procedures in place for hazardous waste management facilities not affected by HB 801 changes.

Generally, proposed new §305.65, with some renumbering, mirrors existing §305.63 with certain significant exceptions. First, proposed new §305.65(a) includes a provision reflecting applicability of this section to applications filed on or after September 1, 1999. Second, proposed new §305.65(a)(8) would authorize the commission to renew permits without providing an opportunity for a contested case hearing if certain conditions are met, which are as follows: after complying with all applicable rules in Chapters 39, 50, and 55 of this title, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for storage of hazardous waste in containers,

tanks, or other closed vessels if the waste was generated on-site and does not include waste generated from other waste transported to the site. Similarly, the commission may act on an application, without providing an opportunity for a contested case hearing, to renew a permit for the processing of hazardous waste if the waste was generated on-site; the waste does not include waste generated from other waste transported to the site; and the processing does not include thermal processing. Third, under proposed new §305.65(a)(9), if the commission determines that an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing. These changes are consistent with and implement requirements in HB 801 relating to permit processing requirements for certain hazardous waste management facilities.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 305, Consolidated Permits would implement certain provisions contained in House Bill 801, 76th Legislature, Regular Session, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC.

The proposed amendments to Chapter 305 of the rules would authorize the commission to renew certain hazardous waste permits without providing an opportunity for a contested case hearing in two types of situations. In the first situation, a contested case hearing would not be required for a renewal of a

permit to store hazardous waste in containers, tanks, or other closed vessels if the waste was generated on-site and was not commingled with waste transported from off-site. In the second situation, the opportunity for a contested case hearing would not be required if the waste was generated on-site and had not been commingled with waste transported from off-site and thermal processing is not involved. However, the proposed amendments allow the commission to hold a contested case hearing based solely on concerns regarding the applicant's compliance history during the preceding five years.

The proposed amendments affect permitting processes for hazardous waste activities under the Health and Safety Code, Chapter 361, Texas Solid Waste Disposal Act. It is anticipated that permit applicants under the Texas Solid Waste Disposal Act will be affected by the proposed amendments to the rules. Persons involved in these permitting processes, including interested members of the general public, might also be affected.

#### PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 305 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be more efficient permitting process for certain waste permits.

The purpose of the proposed amendments is to authorize the commission to renew certain hazardous waste permits without a contested case hearing in two situations. First, an opportunity for a contested case hearing would not be required for a renewal of a permit to store hazardous waste in containers, tanks, or other closed vessels when the waste will be generated solely on-site and will not be

commingled with waste transported from off-site. In the second situation, a contested case hearing would not be required for a renewal of a permit to process hazardous waste generated on-site so long as that waste is not commingled with waste transported from off-site and thermal processing is not involved. The proposed amendments require that the commission provide an opportunity for a contested case hearing if the commission determines that an applicant's compliance record over the preceding five years presents an issue as to the applicant's ability to comply with a material condition of the permit.

The proposed amendments are not anticipated to have any adverse fiscal impacts on members of the regulated community because the amendments do not substantially alter existing procedures. While the proposed amendments allow the commission to renew hazardous waste storage and processing permits in two situations without opportunity for a contested case hearing, the amendments also require the commission to provide an opportunity for a contested case hearing if the applicant's compliance record over the preceding five years indicates concern about the applicant's ability to comply with a material condition of the permit. The proposed amendments may be viewed as having positive fiscal impacts to applicants in situations where contested case hearings are no longer available.

#### SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 305 because the proposed amendments have eliminated the opportunity for requesting a contested case hearing in two types of hazardous waste permit renewal cases. If an application for a renewal of a hazardous waste permit meets the criteria in

the proposed exemption, the applicant may benefit from the granting of the renewal without the possibility of a contested case hearing. If the commission uses its discretion to grant a contested case hearing, no additional costs are anticipated over those the applicant would be subject to under existing rules.

#### REGULATORY IMPACT EVALUATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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 rulemaking is not a major environmental rule because it is not proposed with the specific intent of protecting the environment or reducing risks to human health or the environment. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures associated with certain hazardous waste permit applications and associated requests for contested case hearings, the rulemaking does not meet the definition of a "major environmental rule." The rule does not concern an existing or new regulatory program that would 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. Rather, it

merely prescribes procedures for hearings on renewals of permits. The rule does not prescribe standards of operation for the management and control of solid waste activities.

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Health and Safety Code, §361.024 and §361.088, and Texas Water Code, §5.103, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not 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 because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Health and Safety Code, §361.024 and §361.088, and Texas Water Code, §5.103). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments is to establish procedures that implement legislation for hearings on renewals of permits. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matter. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

#### PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of TNRCC Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency

staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808.

All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis, and Assessment, at (512) 239-1932 and on the TNRCC website at: <http://www.tnrcc.state.tx.us/oprd/forum.html#hb801>.

#### STATUTORY AUTHORITY

The amendment and new section are proposed under HSC, §361.024 and §361.088, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103,

which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §5.013, which establishes the commission's authority over various statutory programs.

Additionally, relevant sections of the HSC include: §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste.

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

The proposed amendment and new section implement HB 801.

**CHAPTER 305 - CONSOLIDATED PERMITS**

**SUBCHAPTER D : AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS,  
REVOCATION, AND SUSPENSION OF PERMITS**

**§305.63, §305.65**

**§305.63. Renewal.**

(a) Any permit renewal application that is declared administratively complete before September 1, 1999 is subject to this section. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) - (7) (No change.)

(b) (No change.)

**§305.65. Renewal.**

(a) Any permit renewal application that is declared administratively complete on or after September 1, 1999 is subject to this section. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) An application for renewal may be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment or modification shall also be filed before further action is taken. For applications filed under the Texas Water Code, Chapter 26, if an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for renewal.

(4) If renewal procedures have been initiated before the permit expiration date, the existing permit will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Revocation and Suspension).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by §50.145 of this title (relating to Corrections of Permits), or §305.62(d) of this title (relating to Amendment) provided the requirements of §305.62(f) of this title and §305.96 of this title (relating to Action on Application for Amendment) are satisfied.

(7) The executive director may grant permission for permittees of non-publicly owned treatment works to submit the information required by 40 Code of Federal Regulations §122.21(g)(10) after the permit expiration date.

(8) After complying with all applicable rules in Chapters 39, 50 and 55 of this title, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(A) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(i) was generated on-site; and

(ii) does not include waste generated from other waste transported to  
the site; or

(B) processing of hazardous waste if:

(i) the waste was generated on-site;

(ii) the waste does not include waste generated from other waste  
transported to the site; and

(iii) the processing does not include thermal processing.

(9) If the commission determines that an applicant's compliance history for the  
preceding five years raises an issue regarding the applicant's ability to comply with a material term of  
its permit, the commission shall provide an opportunity to request a contested case hearing.

(b) This section does not apply to applications for renewal of radioactive material licenses  
under Chapter 336 of this title (relating to Radioactive Substance Rules).

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §321.48, concerning Additional Requirements for Certain Concentrated Animal Feeding Operations.

The primary purpose of the proposed new section is to implement House Bill (HB) 801, 76th Legislature (1999).

#### OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health & Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to Texas Clean Air Act (TCAA), THSC §382.056; and revisions to Texas Government Code, §2003.047.

Except for the changes required under Texas Government Code, §2003.047, the new and amended statutory provisions expressly apply to the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided for under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an

applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is required to prepare responses to relevant and material public comment. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULES

The primary purpose of the proposed amendments and new sections is to implement HB 801, 76th Legislature (1999).

Proposed new §321.48, relating to Additional Requirements for certain Concentrated Animal Feeding Operations (CAFO), incorporates the requirements of new TWC, §26.0286, relating to Procedures Applicable to Permits for Certain Concentrated Animal Feeding Operations, as added by HB 801. This new proposed section would require an applicant for an authorization to construct or operate a CAFO to

include information on whether the facility is located within the watershed of a sole-source surface drinking water supply and the distance to intakes of a public water supply system in the sole-source surface drinking water supply. If the facility is located in such watershed, the applicant is required to submit the distance to an intake of a public water supply system in the sole-source surface drinking water supply. Under this proposal, the executive director shall review the application to determine whether contaminants discharged from the CAFO could potentially affect the sole-source public drinking water supply based upon factors listed in the rule. If the executive director determines that contaminants discharged from the concentrated animal feeding operation could potentially affect the sole-source public drinking water supply, the application for the authorization to construct or operate the CAFO shall be processed as an application for an individual permit under §321.34, relating to Procedures for Making Application for an Individual Permit.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 321, Control of Certain Activities by Rule, would implement certain provisions contained in House Bill 801, 76th Legislature, Regular Session, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC.

The proposed new section of Chapter 321 of the rules would require an applicant for an authorization to construct or operate a CAFO to include information on whether the facility is located within the watershed of a sole-source surface drinking water supply. If the facility is located within the watershed, the applicant is required to submit the distance from the facility to all intakes of a public water supply system in the sole-source surface drinking water supply. If the executive director determines that contaminants discharged from the CAFO could potentially affect the sole-source public drinking water supply, the applicant must prepare and submit an application for an individual permit.

The proposed new section of Chapter 321 affect CAFO permitting processes under the TWC, Chapter 26; THSC, Chapter 382, Air Quality, and Chapter 341, Minimum Standards of Sanitation and Health Protection Measures. It is anticipated that CAFO permit applicants will be affected by the proposed new section the rules. Persons involved in CAFO permitting processes, including interested members of the general public, will also be affected.

#### PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed new section of Chapter 321 are in effect the public benefit anticipated from enforcement of and compliance with the proposed new section will be increased protection of the public drinking water supply and increased opportunity for public participation in the CAFO permitting processes conducted by TNRCC.

The purpose of the proposed new section is to incorporate the requirements of HB 801 regarding CAFO's. Specifically, an applicant for an authorization to construct or operate a CAFO would be

required to submit information on whether the facility is located within the watershed of a sole-source surface drinking water supply. If the facility is located within the watershed, the applicant is required to submit the distance from the facility to all intakes of a public water supply system in the sole-source surface drinking water supply. If the executive director determines that contaminants discharged from the CAFO could potentially affect the sole-source public drinking water supply, the applicant must prepare and submit an application for an individual permit. HB 801 and the proposed new section enhance the ability of the commission to prevent potential pollution of drinking water supplies through the review and approval of individual permits for CAFO facilities that are adjacent to or within a watershed of a sole-source surface drinking water supply. An individual permit application would require the applicant to document compliance with agency rules and potentially subject the applicant to additional or different site-specific permit conditions, as well as a public meeting or a contested case hearing. The new requirements aid the commission in ensuring that water quality standards are maintained. The commission, under Chapter 321, Subchapter B, §321.33(b) currently allows the executive director to require an CAFO to seek an individual permit if the operation is located near surface water resources. This new section, however, enhances the executive director's authority to protect water in the state by requiring CAFOs to provide information that will enable the executive director to determine whether a particular CAFO is close enough to a sole-source surface drinking water supply that an individual permit should be required.

The proposed new section is not anticipated to have a significant fiscal impact on most applicants required to seek an individual permit. CAFOs located near surface water resources are already required to prevent the likelihood of inadvertent discharges, and to ensure that permitted discharges do

not degrade water quality. In some instances, additional site-specific requirements in an individual permit could result in expense to the facility; however, these costs are not specifically a result of these amendments. As mentioned above, the executive director is already authorized to require CAFOs close to surface water resources to obtain individual permits. Further, it is anticipated that the cost of documenting existing data in the forms required for an individual permit will vary depending on the detail and data entry work required to document compliance with permit requirements. These costs are not anticipated to be significant compared to the existing costs required to comply with existing permit requirements. Likewise, the additional costs associated with HB 801 requirements to measure the distance from the CAFO facility to the intakes of a public water supply system are not anticipated to be significant. The likelihood of additional expense being incurred for public meetings and contested case hearings are not anticipated to be significant.

#### SMALL BUSINESS ANALYSIS

It is anticipated that small businesses engaged in CAFOs with facilities located in the watershed of a sole-source surface drinking water supply will have the same or similar economic effects, as a result of implementing the provisions of the proposed new section of Chapter 321, as medium to large businesses with similar operating and environmental characteristics. These costs are not anticipated to be significant compared to the engineering work required to comply with existing permit requirements. Likewise, the additional costs associated with HB 801 requirements to measure the distance from the CAFO facility to the intakes of a public water supply system are not anticipated to be significant.

## REGULATORY IMPACT EVALUATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures for enhanced oversight over the potential pollution of sole-source surface drinking water supplies, the rulemaking does not meet the definition of a “major environmental rule.”

The intent of this new section is to enhance the oversight of CAFO permitting procedures in a manner which enhances the protection of the environment or reduces risks to human health from environmental exposure and protects the watershed of a sole-source surface drinking water supply. This proposed rulemaking does not meet the applicability criteria of a “major environmental rule” because the proposed new section does not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. In addition, the proposed changes are not proposed solely under the general rulemaking authority of the commission but are proposed to comply with the requirements of HB 801 enacted by the 76th Legislature.

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and TWC, §26.0286, as well as the other statutory authorities cited in the Statutory Authority section of this preamble. This proposal does not 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 because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with TWC, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Water Code, §26.0286 and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed rule is to revise the procedure for applying for an authorization to construct or operate a CAFO. The proposed rule will substantially advance these stated purposes by providing

specific provisions relating to requirements for such authorizations. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of a new section relating to the commission's procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and general agency operations. Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

#### PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808.

All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and Assessment, at (512) 239-1932 and on the TNRCC website at: <http://www.tnrcc.state.tx.us/oprd/forum.html#hb801>

#### STATUTORY AUTHORITY

The new section is proposed under TWC, §26.0286 which require the commission to use certain procedures for processing applications for certain concentrated animal feeding operations.

Other relevant sections of the TWC under which the commission takes this action include: §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.013, which establishes the commission's authority over various statutory programs; §26.011, which establishes the commission's authority over water quality in

the state; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §26.0286, which establishes the commission's authority to process certain permits for certain concentrated animal feeding operations.

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

The proposed new section implements TWC, §26.0286.

**CHAPTER 321 - CONTROL OF CERTAIN ACTIVITIES BY RULE**

**SUBCHAPTER B : CONCENTRATED ANIMAL FEEDING OPERATIONS**

**§321.48**

**§321.48. Additional Requirements for Certain Concentrated Feeding Animal Operations.**

(a) An application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(b) Each application for authorization to construct or operate a CAFO, including amendments and renewals, shall include information on whether the facility is located within the watershed of a sole-source surface drinking water supply listed in Appendix A of this section. The application shall contain an original or legible copy of a current United States Geological Survey 7.5 minute topographic quadrangle map showing the location of the facility; and

(c) If the facility is located in the watershed of a sole-source surface drinking water supply, the applicant shall submit the distance to all intakes of public water supply systems in the sole-source surface drinking water supply.

(d) The executive director shall review the application to determine whether contaminants discharged from the CAFO could potentially affect the sole-source public drinking water supply based upon all relevant factors, including, but not limited to the following:

(1) the amount of waste and wastewater expected to be managed;

(2) the stream flow characteristics of the receiving waters; and

(3) the distance from the facility to all intakes of public water supply systems in the sole-source surface drinking water supply.

(e) If, based upon the review in subsection (d) of this section, the executive director determines that contaminants discharged from the CAFO could potentially affect a sole-source public drinking water supply, the application for authorization to construct or operate a CAFO shall be processed as an application for an individual permit under §321.34 of this title (relating to Procedures for Making Application for an Individual Permit).

**APPENDIX A - LIST OF SOLE SOURCE SURFACE WATER SUPPLIES**

<b>PWS ID</b>	<b>PWS NAME</b>	<b>SOURCE NAME</b>	<b>PWS TYPE</b>	<b>OWNER TYPE</b>
0010001	PALESTINE CITY OF	LK PALESTINE	C	4
0140005	TEMPLE CITY OF	LEON RIVER	C	4
0140161	CENTRAL TEXAS WSC	LAKE STILLHOUSE	C	5
0140162	BLUEBONNET WATER SUPPLY CORP	LAKE BELTON	C	5
0160002	BLANCO CITY OF	BLANCO RIVER	C	4
0160004	TPWD PEDERNALES FALLS STATE PARK	PEDENALES RVR	N	3
0200049	SOLUTIA INC-CHOCOLATE BAYOU PLANT	BRAZOS RIVER	P	2
0200497	BRAZOSPORT WATER AUTHORITY	BRAZOS RIVER	C	4
0220018	LAJITAS ON THE RIO GRANDE	RIO GRANDE	C	2
0230003	TPWD CAPROCK CANYON STATE PARK	LAKE THEO	N	3
0230004	MACKENZIE MUNICIPAL WATER AUTH	LAKE MACKENZIE	C	4
0250003	TPWD LAKE BROWNWOOD STATE PARK	LAKE BROWNWOOD	N	3
0250014	BROWN COUNTY WID NO 1	LAKE BROWNWOOD	C	4
0250015	EARLY CITY OF	LAKE BROWNWOOD	C	4
0250020	BROOKESMITH WATER TREATMENT PLANT	LK BROWNWOOD	C	5
0250031	THUNDERBIRD BAY SUBDIVISION	LAKE BROWNWOOD	C	2
0270001	BURNET CITY OF	INKS LAKE	C	4
0270008	BUENA VISTA SUBDIVISION	INKS LAKE	C	2
0270009	WILLOWS WATER SYSTEM	INKS LAKE	C	2
0270013	COTTONWOOD SHORES CITY OF	LAKE LBJ	C	4
0270026	MARBLE FALLS CITY OF	LK MARBLE FALL	C	4
0270028	SOUTH ROAD WSC	LK MARBLE FALLS	C	5
0270029	LAKESIDE BEACH CIVIC ASSOCIATION	LAKE TRAVIS	C	5
0270035	WINDERMERE OAKS SUBDIVISION	LAKE TRAVIS	C	2
0270036	MEADOWLAKES MUD	LK MARBLE FALLS	C	4
0270049	GRANITE SHOALS CITY OF	LAKE LBJ	C	4
0270081	RIDGE HARBOR	LK TRAVIS	C	2

PWS ID	PWS NAME	SOURCE NAME	PWS TYPE	OWNER TYPE
0280018	GBRA - LULING PLANT	SAN MARCOS RIVE	C	4
0290001	POINT COMFORT CITY OF	LAKE TEXANA	C	4
0290003	UNION CARBIDE - SEADRIFT PLANT	GUADALUPE RIVER	P	2
0290005	GBRA - PORT LAVACA	GUADALUPE RIVER	C	4
0290051	BP CHEMICALS INCORP - GREENLAKE	GUADALUPE RVR	P	2
0290054	SEADRIFT COKE LP	GUADALUPE RIVER	P	2
0300001	BAIRD CITY OF	BAIRD LAKE	C	4
0300002	CLYDE CITY OF	LAKE CLYDE	C	4
0310003	LA FERIA CITY OF	RIO GRANDE	C	4
0310004	LOS FRESNOS CITY OF	RIO GRANDE	C	4
0310006	RIO HONDO CITY OF	RIO GRANDE	C	4
0310007	SAN BENITO CITY OF	RIO GRANDE	C	4
0310009	SANTA ROSA CITY OF	RIO GRANDE	C	4
0310026	OLMITO WATER SUPPLY CORPORATION	RIO GRANDE	C	5
0310031	ARROYO WATER SUPPLY CORPORATION	RIO GRANDE	C	5
0310096	EAST RIO HONDO WATER SUPPLY CORP	RIO GRANDE	C	5
0320019	NORTHEAST TEXAS MWD-PITTSBURG PLT	BOB SANDLIN	C	4
0340005	INTERNATIONAL PAPER COMPANY	LK WRIGHT PATMA	P	2
0360001	ANAHUAC CITY OF	CLCNC	C	4
0360002	TBCD - WINNIE-STOWELL	TRINITY RIVER	C	4
0360018	TBCD - OAK ISLAND & DOUBLE BAYOU	TRINITY RIVER	C	4
0360030	TBCD - H E W	TRINITY RIVER	C	4
0360040	JINDAL STEEL CORP	TRINITY RIVER	P	2
0390001	HENRIETTA CITY OF	LITTLE WICHITA	C	4
0390017	TPWD LAKE ARROWHEAD STATE PARK	LK ARROWHEAD	N	3
0390021	ARROWHEAD LAKE LOTS WTR SYS - RRA	LAKE ARROWHEAD	C	4
0410001	BRONTE CITY OF	OAK CREEK RES	C	4
0410011	C & L PROCESSORS - JAMESON GAS PLT	LAKE SPENCE	P	2
0470015	UPPER LEON R MUNICIPAL WATER DIST	LAKE PROCTOR	C	4

PWS ID	PWS NAME	SOURCE NAME	PWS TYPE	OWNER TYPE
0500002	GATESVILLE CITY OF	LAKE BELTON	C	4
0540015	WHITE RIVER MUNICIPAL WATER DIST	WHITE RIVER LK	C	4
0570078	DALLAS COUNTY PARK CITIES MUD	TRINITY RIVER	C	4
0600001	COOPER CITY OF	BIG CREEK LAKE	C	4
0610213	UPPER TRINITY REGIONAL WATER DIST	LK LEWISVILLE	C	4
0650013	GREENBELT MIWA	LK GREENBELT	C	4
0670001	CISCO CITY OF	LAKE CISCO	C	4
0670019	EASTLAND CO WATER SUPPLY DIST NO 1	LAKE LEON	C	4
0670035	EBAA IRON - INC WATER SYSTEM	LAKE OLDEN	P	2
0700001	ENNIS CITY OF	LK BARDWELL	C	4
0700008	WAXAHACHIE CITY OF	LK WAXAHACHIE	C	4
0730002	MARLIN CITY OF	MARLIN CITY LK	C	4
0740001	BONHAM CITY OF	LAKE BONHAM	C	4
0750028	FAYETTE POWER PROJECT - LCRA	CEDAR CREEK RES	P	4
0800001	MOUNT VERNON CITY OF	LK CYPRESS SPGS	C	4
0810003	WORTHAM CITY OF	WORTHAM LAKE	C	4
0810035	TARRANT REGIONAL WATER DISTRICT	RICHLD/CMBRS RS	P	4
0840019	STERLING CHEMICALS INC-TX CITY PLA	BRAZOS RIVER	P	2
0840153	GULF COAST WTR AUTHORITY- TX CITY	BRAZOS RIVER	C	2
0910037	PRESTON SHORES WATER SYSTEM	LK TEXOMA	C	4
0920001	GLADEWATER CITY OF	LK GLADEWATER	C	4
0920006	WHITE OAK CITY OF	BIG SANDY CRK	C	4
0930040	TMPA - GIBBONS CREEK SES	GIBBONS CREEK	P	2
0940002	SEGUIN CITY OF	GUADALUPE RIVER	C	4
0940091	CANYON REGIONAL WATER AUTHORITY	LAKE DUNLAP	C	4
0970001	HAMILTON CITY OF	LEON RIVER	C	4
1011099	CHEVRON CHEMICAL COMPANY	SAN JACINTO RIV	P	2
1011116	ZENECA AG-PRODUCTS	TRINITY RVR	P	2
1011525	LUBRIZOL CORPORATION - BAYPORT	TRINITY RIVER	P	2

PWS ID	PWS NAME	SOURCE NAME	PWS TYPE	OWNER TYPE
1011568	MONTELL POLYOLEFINS-BAYPORT PLANT	TRINITY RIVER	P	2
1011742	BAYTOWN AREA WATER AUTHORITY	TRINITY RIVER	C	4
1012008	BAYTANK HOUSTON INCORPORATED	TRINITY RIVER	P	2
1020002	MARSHALL CITY OF	BIG CYPRESS BAY	C	4
1020025	LONGHORN ARMY AMMUNITION PLANT	CYPRESS BAYOU	P	1
1020059	PIRKEY POWER PLANT - SWEPCO	BRANDY BRANCH R	P	2
1040019	LAKESHORE SITES WATER CO	LAKE STAMFORD	C	2
1070004	TRINIDAD CITY OF	CEDAR CRK LAKE	C	4
1070019	EAST CEDAR CREEK FWSD - B A MCKAY	CEDAR CRK LAKE	C	4
1070069	BEACHWOOD ESTATES	CEDAR CRK LAKE	C	2
1070106	CAROLYNN ESTATES	CEDAR CREEK LK	C	5
1070150	STAR HARBOR CITY OF	CEDAR CRK LAKE	C	4
1070167	EAST CEDAR CRK FWSD-BROOKSHIRE	CEDAR CRK RSVR	C	4
1070206	CHEROKEE SHORES WATER SUPPLY	CEDAR CRK LK	C	2
1080001	ALAMO CITY OF	RIO GRANDE	C	4
1080002	DONNA CITY OF	RIO GRANDE	C	4
1080003	EDCOUCH CITY OF	RIO GRANDE	C	4
1080005	ELSA CITY OF	RIO GRANDE	C	4
1080006	MCALLEN CITY OF	RIO GRANDE	C	4
1080011	WESLACO CITY OF	RIO GRANDE	C	4
1080075	USDA-APHIS-PPQ-RMSS	RIO GRANDE	P	1
1090068	AQUILLA WATER SUPPLY DISTRICT	AQUILLA LAKE	C	4
1110100	LAKE GRANBURY SWTS	LAKE GRANBURY	C	4
1120002	SULPHUR SPRINGS CITY OF	LAKE COOPER	C	4
1130010	HOUSTON COUNTY WCID NO 1	HOUSTON CO LAKE	C	4
1160005	WOLFE CITY CITY OF	CITY LAKES	C	4
1160012	WEST TAWAKONI CITY OF	LAKE TAWAKONI	C	4
1160052	COMBINED WATER SUPPLY CORP	LAKE TAWAKONI	C	2
1190001	BRYSON CITY OF	LAKE BRYSON	C	4

PWS ID	PWS NAME	SOURCE NAME	PWS TYPE	OWNER TYPE
1190002	JACKSBORO CITY OF	LOST CREEK RESE	C	4
1230003	JEFFERSON COUNTY WCID NO 10	NECHES RIVER	C	4
1230006	NEDERLAND CITY OF	LNVA CANAL	C	4
1230009	PORT ARTHUR CITY OF	NECHES RIVER	C	4
1230010	PORT NECHES CITY OF	LNVA CANAL	C	4
1230012	GROVES CITY OF	LNVA CANAL	C	4
1230039	NOME CITY OF	NECHEC RIVER	C	4
1230066	E I DUPONT DE NEMOURS & CO INC	NECHES RIVER	P	2
1230082	CHEMICAL WASTE MANAGEMENT INC	RESERVOIRS	P	2
1250001	ALICE CITY OF	LK CORPUS CHRIS	C	4
1270001	ANSON CITY OF	WCTMWD/HUBBARD	C	4
1270002	HAMLIN CITY OF	LAKE STAMFORD	C	4
1270003	STAMFORD CITY OF	LAKE STAMFORD	C	4
1290004	KEMP CITY OF	CEDAR CREEK LK	C	4
1290005	MABANK CITY OF	CEDAR CRK LK	C	4
1330058	CAMP MYSTIC	CYPRESS CREEK	N	2
1340001	JUNCTION CITY OF	SOUTH LLANO RIV	C	4
1380009	NORTH CENTRAL TX MUNICIPAL WTR AUT	MILLER CRK RES	C	4
1470002	GROESBECK CITY OF	NAVASOTA RIVER	C	4
1470031	S L C WATER SUPPLY CORP	LK LIMESTONE	C	5
1490002	THREE RIVERS CITY OF	FRIO RIVER	C	4
1500001	LLANO CITY OF	LLANO RIVER	C	4
1500002	LLANO COUNTY MUD NO 1	LAKE LBJ	C	4
1500008	PARADISE POINT WATER SUPPLY CORP	LK BUCHANAN	C	5
1500009	SANDY HARBOR SUBDIVISION	LAKE LBJ	C	2
1500010	SANDY MOUNTAIN DEVELOPMENT COMPANY	LAKE LBJ	C	2
1500012	KINGSLAND WATER SUPPLY CORPORATION	LLANO RIVER	C	5
1500015	LAKE LBJ MUNICIPAL UTILITY DIST	LAKE LBJ	C	4
1500037	LCRA-BUCHANAN DAM	LAKE BUCHANAN	C	4

PWS ID	PWS NAME	SOURCE NAME	PWS TYPE	OWNER TYPE
1500045	CAMP LONGHORN - MAIN CAMP	INKS LAKE	N	2
1560005	TPWD CHOKE CANYON SP-CALLIHAM	CHOKE CANYON LK	N	3
1580001	JEFFERSON CITY OF	BIG CYPRESS CRK	C	4
1580065	NORTHEAST TEXAS MUNICIPAL WTR DIST	LK O THE PINES	C	4
1620001	EAGLE PASS CITY OF	RIO GRANDE	C	4
1620003	MAVERICK COUNTY AIRPORT WATER WKS	RIO GRANDE RIV	C	4
1620004	EL INDIO WATER SUPPLY CORPORATION	RIO GRANDE RVR	C	5
1660001	CAMERON CITY OF	LITTLE RIVER	C	4
1670009	NEW HORIZONS RANCH & CENTER	MEADOWS LK	C	2
1690001	BOWIE CITY OF	LK AMON CARTER	C	4
1690002	NOCONA CITY OF	LAKE NOCONA	C	4
1770003	NOLAN COUNTY FWSD NO 1	OAK CREEK LAKE	C	4
1780003	CORPUS CHRISTI CITY OF	NUECES RIVER	C	4
1780005	NUECES COUNTY WCID NO 3	NUECES RIVER	C	4
1810050	NORTH STAR STEEL TEXAS INCORP	SRA CANAL	P	2
1810114	E I DUPONT-SABINE RIVER WORKS	SABINE RIVER	P	2
1810139	ROSE CITY CITY OF	SABINE RIVER	C	4
1820001	MINERAL WELLS CITY OF	PALO PINTO LAKE	C	4
1820003	GRAFORD CITY OF	KEECHI CREEK	C	4
1820005	STRAWN CITY OF	LAKE TUCKER	C	4
1820007	GORDON CITY OF	GORDON LAKE	C	4
1820015	TPWD POSSUM KINGDOM STATE PARK	POSSUM KINGDOM	N	3
1820016	SCENIC POINT NORTHVIEW LODGE	POSSUM KINGDOM	N	2
1820017	YMCA-CAMP GRADY SPRUCE-FRONTIER	POSSUM KINGDOM	N	2
1820021	P-K LODGE	P. K. RESERVOIR	N	2
1820025	SCENIC POINT LODGE	P K LAKE	N	2
1820029	VILLA CONDOMINIUMS ASSN	POSSUM KINGD LK	C	5
1820030	BRAZOS RVR A-POSSUM KINGDOM DAM	POSSUM KINGDOM	C	3
1820036	CAMP CONSTANTIN	POSSUM KINGDOM	N	2

PWS ID	PWS NAME	SOURCE NAME	PWS TYPE	OWNER TYPE
1820039	YMCA-CAMP GRADY SPRUCE-MAIN CAMP	POSSUM KINGDOM	N	2
1820048	LANDING CONDOMINIUMS	P. K. LAKE	N	2
1820050	SPORTSMANS WORLD MUD	POSSUM KINGDOM	C	4
1820054	ONE MOUNTAIN PLACE INC	POSSUM KINGDOM	N	2
1820061	CLIFF'S THE	POSSUM KINGDOM	C	2
1820062	FOUR S SERVICE INC	POSSUM KINGDOM	C	2
1820065	PICKWICK HOME OWNERS ASSOCIATION	POSSUM KGDM LK	C	2
1820067	CAMP SKY	POSSUM KDGM LK	N	2
1820069	LAKE PALO PINTO AREA WSC	LAKE PALO PINTO	C	5
1820071	BEND CONDOOMINIUMS THE	POSSUM KINGDOM	C	2
1840005	WEATHERFORD CITY OF	LK WEATHERFORD	C	4
1870129	LIVINGSTON REGIONAL WATER SUPPLY	LAKE LIVINGSTON	C	4
1900001	EMORY CITY OF	LK TAWAKONI	C	4
1900004	POINT CITY OF	LAKE TAWAKONI	C	4
1910002	TPWD PALO DURO CANYON STATE PARK	LK MEREDITH	N	3
1950004	TOYAH CITY OF	T & P LAKE	C	4
2000001	BALLINGER CITY OF	VALLEY CREEK LK	C	4
2000003	WINTERS CITY OF	ELM CREEK LAKE	C	4
2010026	NEW SALEM WATER SUPPLY CORP	SPRING	C	4
2020001	HEMPHILL CITY OF	TOLEDO BEND RES	C	4
2020013	EL CAMINO BAY WATER SYSTEM	TOLEDO BEND	C	5
2020014	BEECHWOOD WATER SUPPLY CORPORATION	TOLEDO BEND	C	5
2020020	PENDLETON UTIL CORP-PENDLETON HARB	TOLEDO BEND RES	C	2
2050003	MATHIS CITY OF	LK CORPUS CHRIS	C	4
2090001	ALBANY CITY OF	HUBBARD CRK LK	C	4
2100019	HUXLEY CITY OF	TOLEDO BEND	C	4
2120064	LAKEWAY HARBOR	LK PALESTINE	C	2
2140002	IBWC-FALCON VILLAGE	FALCON LAKE	P	1
2140003	FALCON RURAL WATER SUPPLY CORP	RIO GRANDE	C	5

PWS ID	PWS NAME	SOURCE NAME	PWS TYPE	OWNER TYPE
2140004	UNION WATER SUPPLY CORPORATION	RIO GRANDE	C	4
2140006	LA GRULLA CITY OF	RIO GRANDE RVR	C	4
2140007	ROMA CITY OF	RIO GRANDE	C	4
2140018	CITY OF RIO GRANDE RIVER CITY	RIO GRANDE	C	4
2150008	BAILEY'S CAMP INCORPORATED	POSSUMKINGDOM	N	2
2200002	AZLE CITY OF	EGL MOUNTAIN LK	C	4
2200044	COMMUNITY WATER SUPPLY CORPORATION	EAGLE MTN LAKE	C	5
2200069	RIVER OAKS CITY OF	LK WORTH	C	4
2200199	TRA-TARRANT CO WATER PROJECT	LAKE ARLINGTON	C	4
2210005	LAWN CITY OF	LAKE COLEMAN	C	4
2240001	THROCKMORTON CITY OF	LK THROCKMORTON	C	4
2270007	BRIARCLIFF VILLAGE OF	LAKE TRAVIS	C	4
2270027	TRAVIS CO WCID NO 17	LK TRAVIS	C	4
2270038	TRAVIS CO WCID-POINT VENTURE	LAKE TRAVIS	C	4
2270083	TRAVIS CO WCID NO 18	LAKE AUSTIN	C	4
2270102	INVERNESS POINT WATER SYSTEM	LAKE TRAVIS	C	2
2270144	SAIL HAVEN	LAKE TRAVIS	C	2
2270167	GLENLAKE WATER SUPPLY CORPORATION	LAKE AUSTIN	C	5
2270171	EMMA LONG METRO PARK	LAKE AUSTIN	N	4
2270172	HURST CREEK MUNICIPAL UTIL DIST	LK TRAVIS	C	5
2270189	DAVENPORT RANCH MUD NO 1	LAKE AUSTIN	C	4
2270231	TRAVIS CO WCID NO 20	LAKE AUSTIN	C	4
2270235	WEST TRAVIS COUNTY REGIONAL W S	LAKE AUSTIN	C	2
2270243	RESORT RANCH OF LAKE TRAVIS INC	LAKE TRAVIS	N	2
2270252	RIVER PLACE ON LAKE AUSTIN	LAKE AUSTIN	C	2
2270325	TRAVIS CO MUD NO 4	LAKE AUSTIN	C	4
2300009	AMBASSADOR UNIVERSITY	LAKE LOMA	C	2
2340002	EDGEWOOD CITY OF	CITY LAKE	C	4
2340012	MAC BEE WATER SUPPLY CORP	LAKE TAWAKONI	C	5

PWS ID	PWS NAME	SOURCE NAME	PWS TYPE	OWNER TYPE
2340019	SOUTH TAWAKONI WATER SUPPLY CORP	LAKE TAWAKONI	C	5
2360058	TRA-HRWSS	TRINITY RIVER	C	4
2400001	LAREDO CITY OF	RIO GRANDE	C	4
2400022	WEBB COUNTY WATER UTILITIES	RIO GRANDE	C	4
2450003	LYFORD CITY OF	RIO GRANDE RIVE	C	4
2450006	SEBASTIAN MUD	RIO GRANDE	C	5
2460004	TAYLOR CITY OF	LAKE GRANGER	C	4
2460009	CEDAR PARK CITY OF	LAKE TRAVIS	C	4
2490003	BRIDGEPORT CITY OF	LK BRIDGEPORT	C	4
2490005	DECATUR CITY OF	LAKE BRIDGEPORT	C	4
2490016	WEST WISE RURAL WATER SUPPLY CORP	LK BRIDGEPORT	C	5
2490017	RUNAWAY BAY CITY OF	LK BRIDGEPORT	C	4
2490021	SID RICHARDSON SCOUT RANCH	LAKE BRIDGEPORT	N	5
2500003	QUITMAN CITY OF	LAKE FORK	C	4
2500004	WINNSBORO CITY OF	CYPRESS SPRINGS	C	4
2520001	GRAHAM CITY OF	LAKE EDDLEMAN	C	4
2520003	OLNEY CITY OF	LAKE COOPER	C	4
2530002	ZAPATA COUNTY WATERWORKS	FALCON LAKE	C	4
2530003	SAN YGNACIO MUNICIPAL UTILITY DIST	RIO GRANDE RVR	C	4
2530004	SIESTA SHORES WCID	FALCON LAKE	C	2
2530017	COX CAMP	FALCON LAKE	N	2