

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§39.411, 39.419, and 39.420; and new §39.412.

If adopted, the commission will submit §§39.411(e)(11), (15) and (16), (f)(4) and (8), 39.412(a) - (d), 39.419(e)(1), and 39.420(e)(4) to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

In *Massachusetts v. EPA* (549 U.S. 497 (2007)) the Supreme Court of the United States ruled that greenhouse gases (GHGs) fit within the Federal Clean Air Act (FCAA or Act) definition of air pollutant. This ruling gave EPA the authority to regulate GHGs from new motor vehicles and engines if EPA made a finding under FCAA, §202(a) that six key GHGs taken in combination endanger both public health and welfare, and that combined emissions of GHGs from new motor vehicles and engines contribute to pollution that endangers public health and welfare. EPA issued its "Endangerment Finding" for GHGs On December 15, 2009, (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule, as published in the December 15, 2009, issue of the *Federal Register* (74 FR 66496)). Based on the Endangerment Finding, EPA subsequently adopted new emissions standards for motor vehicles (the "Tailpipe Rule" as published in the May 7, 2010, issue of the *Federal Register* (75 FR 25324)). The rule established standards for light-duty motor vehicles to improve fuel

economy thereby reducing emissions of GHGs. The standards were effective January 2, 2011. EPA also reconsidered its interpretation of the timing of applicability of Prevention of Significant Deterioration (PSD) under the FCAA (the "Timing Rule" as published in the April 2, 2010, issue of the *Federal Register* (75 FR 17004)). EPA's interpretation of the FCAA is that PSD requirements for stationary sources of GHGs take effect when the first national rule subjects GHGs to regulation under the Act. EPA determined that once GHGs were actually being controlled under any part of the Act they were subject to regulation under the PSD program. Specifically, EPA took the position that beginning on January 2, 2011, GHG control requirements would be required under the PSD and Title V permitting programs because national standards for GHGs under the Tailpipe Rule were effective on January 2, 2011.

EPA's regulation of GHGs under the FCAA presented substantial difficulties for the EPA and states, particularly with regard to the PSD program. For instance, the most common of the GHGs, carbon dioxide (CO₂), is emitted in quantities that dwarf the Act's major source thresholds for program applicability. As a result, under EPA's Timing Rule, PSD requirements could have expanded from approximately 500 issued permits annually to more than 81,000 nationwide, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514, 31537 and 31538). To avoid this result, EPA excluded much of this new construction activity from the PSD program by altering the Act's statutory emission rate applicability thresholds for GHGs. This "Tailoring Rule," as published in the June 3,

2010, issue of the *Federal Register* (75 FR 31514) newly defined the statutory term "subject to regulation" and established higher GHGs emission thresholds for applicability of PSD and Title V permitting than specified in the FCAA. The Tailoring Rule also phased in permitting requirements in a multi-stepped process.

Before the *Massachusetts* decision in 2007, EPA took the position that GHGs are not regulated under the FCAA, and GHGs unquestionably were not regulated when EPA approved Texas' SIP in 1992. Texas has had an approved SIP since 1972, as published in the May 31, 1972, issue of the *Federal Register* (37 FR 10842). In 1983, Texas was delegated authority to implement the PSD program, as published in the February 9, 1983, issue of the *Federal Register* (48 FR 6023). Following this delegation, Texas submitted several SIP revisions to enable it to administer the PSD program (collectively the "PSD SIP submission"). EPA approved Texas' PSD SIP in 1992, granting the state full authority to implement the PSD program, as published in the June 24, 1992, issue of the *Federal Register* (57 FR 28093).

The Texas PSD SIP submission and approval proceedings produced a well-developed record on how Texas would address the applicability of newly-regulated pollutants under the PSD program. During the SIP submission process, Texas consistently explained to EPA that the PSD provisions in the SIP are not prospective rulemaking, and do not incorporate future EPA interpretations of the Act or its regulations.

EPA's GHGs regulations created practical difficulties about how EPA could apply its Tailoring Rule in states with approved SIPs. In August 2010, Texas advised EPA that it could not retroactively reinterpret its SIP to cover GHGs, which were not regulated at the time Texas' SIP was approved in 1992 and were, in fact, a composite pollutant defined for the first time in the Tailoring Rule. Texas also explained that the PSD program only encompassed National Ambient Air Quality Standard (NAAQS) pollutants, but confirmed as a regulatory matter that the approved PSD program encompasses all federally regulated new source review (NSR) pollutants, including any pollutant that otherwise is subject to regulation under the FCAA, as stated in 30 TAC §116.12(14)(D).

Following promulgation of the Tailoring Rule, EPA issued a proposed "Finding of Substantial Inadequacy and SIP Call," as published in the September 2, 2010, issue of the *Federal Register* (75 FR 53892). This action proposed finding the SIPs of 13 states, including Texas', "substantially inadequate" because these SIPs did not apply PSD requirements to GHGs-emitting sources. EPA proposed to require these states (through their SIP-approved PSD programs) to regulate GHGs as defined in the Tailoring Rule. EPA also proposed a Federal Implementation Plan (FIP) that would apply specifically to states that did not or could not agree to reinterpret their SIPs to impose the Tailoring Rule and did not meet SIP submission deadlines. EPA finalized its GHG SIP Call in the December 12, 2010, issue of the *Federal Register* (75 FR 77698) and required Texas to submit

revisions to its SIP by December 1, 2011.

EPA published an interim final rule partially disapproving Texas' SIP; imposing the GHGs FIP effective as of its date of publication, as published in the December 30, 2010, issue of the *Federal Register* (75 FR 82430). EPA stated that FCAA, §110(k)(6) authorized it to change its previous approval of Texas' PSD SIP into a partial approval and partial disapproval. EPA's basis was that it had erroneously approved Texas' PSD SIP submission because the SIP did not appropriately address the applicability of newly-regulated pollutants to the PSD program in the future. EPA further stated that its action was independent of the GHG SIP Call because that action was aimed at a narrower issue of applicability to GHGs, whereas its decision retroactively disapproving Texas' PSD SIP submission was addressed to Texas' purported failure to address, or assure the legal authority for, application of PSD to all pollutants newly subject to regulation. EPA published the final rule retroactively disapproving Texas' PSD SIP in part and promulgating the FIP as published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178).

The effect of EPA's FIP is that major source preconstruction permitting authority is divided between two authorities - EPA for GHGs and the state of Texas for all other pollutants. Currently, major construction projects and expansions in Texas that require PSD permits must file applications with both EPA Region 6 (for GHGs) and TCEQ (for all non-GHG

pollutants).

House Bill (HB) 788, 83rd Legislature, 2013, added new Texas Health and Safety Code (THSC), §382.05102. The new section grants TCEQ authority to authorize emissions of GHGs consistent with THSC, §382.051, to the extent required under federal law. THSC, §382.05102 directs the commission to adopt implementing rules, including a procedure to transition GHG PSD applications currently under EPA review to the TCEQ. Upon adoption, the rules must be submitted to EPA for review and approval into the Texas SIP. THSC, §382.05102 excludes permitting processes for GHGs from the contested case hearing procedures in THSC, Chapter 382; Texas Water Code, Chapter 5; and Texas Government Code, Chapter 2001. THSC, §382.05102 also requires that the commission repeal the rules adopted under this authority and submit a SIP revision to EPA, if (at a future date) GHG emissions are no longer required to be authorized under federal law.

The commission is initiating this rulemaking to fulfill the directive from the legislature. The legislature found that "in the interest of the continued vitality and economic prosperity of the state, the Texas Commission on Environmental Quality, because of its technical expertise and experience in processing air quality permit applications, is the preferred authority for emissions of {GHGs}."

Texas has challenged in federal court EPA's GHG regulations as well as EPA's SIP Call and

FIP. Implementation of HB 788 through this rulemaking is not adverse to Texas' claims in its ongoing challenges to EPA's actions regarding GHGs generally or relating to the SIP. The commission's action to conduct rulemaking for submittal and approval by EPA is consistent with Texas' position that state law does not give EPA the authority to automatically change state regulations.

Concurrently with this proposal, the commission is proposing new and amended rules to 30 TAC Chapters 55 (Requests for Reconsideration and Contested Case Hearings; Public Comment), 101 (General Air Quality Rules), 106 (Permits by Rule), 116 (Control of Air Pollution by Permits for New Construction or Modification), and 122 (Federal Operating Permits Program) to implement HB 788. Except where specifically noted, all proposed changes to Chapters 39, 55, 101, 106, 116 and 122 are necessary to achieve the goal of implementation of HB 788, obtaining SIP approval of certain rules, and rescission of the FIP.

Specific Changes to Chapters 39 and 55

The proposed rulemaking in Chapters 39 and 55 would make two changes to the commission's rules that are distinguishable from current public participation rules and the Texas SIP. First, PSD GHG permit applications would not be subject to an opportunity to request a contested case hearing or reconsideration of the executive director's decision. Second, based on EPA interpretation of its rules, there may be no requirement for the

commission to prepare an air quality analysis for proposed emissions of GHG, and, if so, there will be no such analysis available for public comment.

HB 788 specifically excludes PSD GHG permit applications from the requirements relating to a contested case hearing. Requests for reconsideration were added by HB 801 (76th Legislature, 1999) as an alternative to the opportunity to request a contested case hearing. However, this remedy is not independent of the right to request a contested case hearing. Absent a right to request a contested case hearing, there is no independent right to request reconsideration of the executive director's decision. The commission interprets HB 788 to require that all other HB 801 requirements, discussed later in this preamble, apply to GHG permit applications.

The majority of the existing public participation and notice requirements in Chapters 39 and 55, which implement both federal and state law, will apply to the PSD GHG applications. Many of these requirements were clarified in or added by HB 801. The Chapter 39 amendments are proposed as revisions to the SIP, but the Chapter 55 amendment is not required for the SIP. The public participation and notice requirements include newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD), each with particular language; sign posting; alternate language newspaper publication and sign posting (where applicable); placement of a copy of the application, the executive director's

preliminary decision (draft permit), preliminary determination summary in a public place for review and copying; providing opportunity for and mandatory attendance at a public meeting (which is mandatory when requested by a member of the public for any PSD permit application or by a legislator who represents the general area where the facility is or is proposed to be located); and notice to certain affected agencies and representatives, including EPA Region 6, local air pollution control agencies with jurisdiction, the chief executives of the city and county where the source would be located, and any State or Federal Land Manager, and Indian Governing Body. In addition, the executive director's draft permit and preliminary decision and preliminary determination summary are available electronically on the commission's Web site at the time of publication of the Notice of Application and Preliminary Decision. Finally, the executive director is required to respond to comments submitted by preparing a Response to Comments (RTC), which is mailed to commenters and posted on the commission's Web site, with the executive director's decision. Some of these requirements and procedures were changed in rulemaking and described in the preamble adopted June 2, 2010. Background information regarding the commission's public participation rules for PSD permits can be found in the preamble adopting new and amended rules as published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198 - 5255, 5274 - 5277, and 5344 - 5348).

Further, based on EPA's interpretation of its rules that no air quality analysis is required for a PSD GHG permit application, there will be no such analysis available for comment for

these applications reviewed by the TCEQ. Even if the air quality analysis is a requirement under FCAA, §110, the exclusion of this analysis does not affect attainment and maintenance of the NAAQS. This is because the permit application review must include an evaluation that the proposed emissions will comply with the NAAQS, and there are no NAAQS established for GHGs. Therefore, the rule amendments will provide that an air quality analysis will be available for public comment, if applicable.

At this time, the commission expects to issue two separate notices, for both NORI and NAPD, for applications filed requesting both a PSD GHG permit and a new permit or a permit amendment for air contaminants that are not GHG.

In addition to the changes discussed earlier, the commission is proposing new §39.412. As discussed earlier, major construction projects and expansions in Texas that require PSD permits must currently file applications with both EPA Region 6 (for GHGs) and TCEQ (for all contaminants that are not GHG). After jurisdiction for issuance of PSD GHG permits is transferred to Texas, applicants who have already filed an application with EPA for a PSD GHG only permit and for which notice of draft permit was published as required by EPA, may wish to have EPA transfer that application or file an application with TCEQ for initial issuance of a PSD GHG permit. Transfer of an application from EPA will be considered filing an application with the commission. In those circumstances, which are expected to

be limited in number, applicants may choose an alternative notice option that is proposed in new §39.412.

As is the case with the commission's existing rules for notice of PSD permits, this proposed new section, together with certain existing rules that are proposed for SIP approval by EPA, also complies with the federal notice requirements. First, 40 Code of Federal Regulations (CFR) §51.161 concerns the public availability of information for review and commenting for permits generally, including: 1) a 30-day public comment period; 2) notice by prominent advertisement in at least one location in the area affected by the source or proposed source; 3) placement of a copy of the application in a location in the area affected and a copy of the TCEQ's air quality analysis; and 4) submittal of a copy of the notice to the EPA Regional Administrator and any other affected agency. These requirements are met in proposed §39.412(b)(2)(B)(vi), (C), (3)(A), and (5), respectively.

Second, 40 CFR §51.166(q) adds additional notice requirements for PSD permit applications. 40 CFR §51.166(q)(1) provides that the TCEQ is required to notify applicants with regard to completeness (or deficiency) of applications; this met by §116.114(a)(1), which is not proposed for amendment in this rulemaking.

Eight additional requirements are enumerated in 40 CFR §51.166(q)(2)(i) - (viii), some of which overlap with 40 CFR §51.161. The commission's rules meet these requirements as

follows. For 40 CFR §51.166(q)(2)(i), §116.114(a)(2), which is not proposed for amendment in this rulemaking, satisfies the requirement for the TCEQ to make a preliminary determination on the application. For 40 CFR §51.166(q)(2)(ii), §39.412(b)(3) satisfies the requirement for a copy of the application and the preliminary determination to be made available in a public place.

For 40 CFR §51.166(q)(2)(iii), §39.412(b)(2), particularly §39.412(b)(2)(B)(iii) - (v), satisfies the requirement for notice by prominent advertisement in a newspaper of general circulation in the area affected by the source or proposed source of the location of the source or proposed source that the application and preliminary decision are available for review and comment, as well as the opportunity to request a public meeting or a notice and comment hearing and to submit written public comment. The discussion regarding the addition of §39.411(f)(3) in 2010, which requires the public place to have internet access, also applies to the commission's basis for including that requirement in §39.412; that discussion can be found in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198). 40 CFR §51.166(q)(2)(iii) also requires the notice to include degree of increment consumption, which is not included in §39.412 because there is no increment established for GHG.

For 40 CFR §51.166(q)(2)(iv), §39.412(b)(5), which references §39.605, meets the requirement to notify EPA and other affected agencies. Additional discussion of the

commission's adoption of §39.605 can be found in the preamble for the rule amendments adopted in June 2010 (See the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198)).

For 40 CFR §51.166(q)(2)(v), §39.412(b)(2)(B)(v), as well as §39.411(g) and §55.154(c)(3), which are not proposed for amendment in this rulemaking, meet the requirement for the executive director to hold a public meeting or notice and comment hearing in response to a request from an interested person regarding a PSD application.

For 40 CFR §51.166(q)(2)(vi), §55.156(b) and (g), which are not proposed for amendment in this rulemaking, satisfy the requirement regarding the executive director's response to timely submitted written comments and at any public hearing. The use of the term "public hearing" in 40 CFR §51.166(q)(2)(vi) is understood to be EPA's notice and comment style hearing, not a contested case hearing which is available for certain applications under the Texas Clean Air Act. The FCAA and EPA's implementing regulations do not provide for a bench trial-type proceeding, which is what a contested case hearing is analogous to. A public meeting is conducted by TCEQ in the same way that a notice and comment hearing is conducted, and is an equivalent opportunity for the public to participate in the permitting process for air quality permit applications. These explanations were provided in the preambles to Chapters 39 and 55, respectively, in the June 2010 rulemaking that amended the public participation requirements for air quality permit applications (See the

June 18, 2010, issue of the *Texas Register* (35 TexReg 5198)). Finally, §55.156(g) and §116.114(c), which are not proposed for amendment in this rulemaking, satisfy the requirement that the commission make all comments available for public inspection.

For 40 CFR §51.166(q)(2)(vii), §55.156(g) satisfies the requirement that the executive director or commission make a final determination on the application.

Finally, for 40 CFR §51.166(q)(2)(viii), §55.156(g) and §116.114(c), which are not proposed for amendment in this rulemaking, satisfy the requirement that the applicant be notified in writing of the final permit application determination and to make that information and the executive director's RTC publicly available. In addition, compliance with 40 CFR §51.166(q)(2)(vi) and (viii) is addressed in §39.420(c), which is not proposed for amendment in this rulemaking; §39.420(c) requires the commission to make available comments and the final determination on the application for public inspection in the same locations where the preconstruction information was made available. As stated in the June 2010 preamble for public participation rule amendments, the commission interprets this as a requirement that the executive director's RTC, which is a summary of the comments submitted on an application and the agency's response to those comments, and the issued permit, be made available in the local area. The commission adopted §39.420(c)(2) which makes available all RTCs on its Web site, and also requires the draft permit preliminary determination summary, and air quality analysis, where available, be electronically

available for PSD permit applications. The posting of RTCs was established by the commission in January 2010. This rule change was in addition to the commission's long-standing practices of maintaining a copy of the final permit at the commission's headquarters in Austin and at the appropriate regional offices, and, as required by rule, by mailing a copy of the RTC to all commenters, as well as any other interested persons who have asked to be included on a mailing list for a particular application. This rule change not only satisfied but exceeds the federal rule, and thus is at least as stringent. The commission concurrently adopted similar rule amendments regarding RTCs in §55.156(g).

Federal Clean Air Act §110(l) Analysis

Removal or reduction of a SIP requirement must be analyzed under FCAA, §110(l). This rulemaking would not be backsliding under the Texas SIP. Although the SIP has long contained the Texas statutory requirement for a contested case hearing for PSD permit applications, no such counterpart exists in EPA's regulations, and the exemption from the requirement for a contested case hearing for PSD GHG permits does not remove any federal public participation requirements that are in the commission's rules. Further, the exclusion of a contested case hearing opportunity does not affect attainment and maintenance of the NAAQS. Public participation through opportunity to comment on the draft permit (as well as the application) and seek judicial review remains. In summary, the amendments to §§39.411, 39.419, and 39.420 and new §39.412 meet the public participation requirements in federal rule and the Texas SIP.

Any PSD GHG permit issued by the executive director will be subject to the Motion to Overturn Process in 30 TAC §50.139, or, if issued by the commission, will be subject to a Motion for Rehearing. Both of these administrative remedies are subject to appeal to Texas District Court for persons who participated in the steps of the administrative process by submitting comments and filing the appropriate challenge with the commission. As discussed in the preamble for the most recent rule amendments regarding public participation for air quality permit applications, as published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198), access to judicial review for air quality permits is governed by THSC, §382.032. Generally, a person must comply with the requirement to exhaust the available administrative remedies prior to filing suit in district court. In addition, EPA has approved the Texas Title V Operating Permit Program, which required the submission of a Texas Attorney General opinion regarding sufficient access to courts, in compliance with Article III of the United States Constitution. The Attorney General Opinion specifically states that "{a}ny provisions of State law that limit access to judicial review do not exceed the corresponding limits on judicial review imposed by the standing requirement of Article III of the United States Constitution. The state statutory authority cited in support of the Texas Title V Operating Permit Program includes THSC, §382.032, which is the underlying authority for the appeal of Texas' air quality permit actions, including the PSD permitting program. Therefore, the Texas Attorney General statement regarding equivalence of judicial review based on THSC, §382.032 in accordance with

Article III of the United States Constitution is also applicable for every action of the commission subject to the Texas Clean Air Act, including PSD permit decisions.

Therefore, there will be no backsliding from any FCAA requirements if the amendments to Chapter 39 are adopted and approved as part of the Texas SIP.

Section by Section Discussion

§39.411, Text of Public Notice

Proposed subsection (e)(15) would be added to provide that notice for an air quality application for a permit under Chapter 116, Subchapter B, Division 6 that would authorize only emissions of GHGs as defined in the proposed amendment to §101.1 must include a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission. The pollutant GHGs are defined as carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. To accommodate this additional type of permit, subsection (e)(11) would be amended to add a reference to subsection (e)(15), and existing subsection (e)(15) would be renumbered as subsection (e)(16).

The proposed amendment to §39.411(f)(4) would add the phrase "if applicable" to indicate that certain items may not be available for public comment. At this time, EPA has indicated that no air quality analysis is required for PSD GHG permits. In "PSD and Title

V Permitting Guidance for Greenhouse Gases," (dated March 2011) prepared by EPA's Office of Air Quality Planning and Standards, EPA stated that monitoring for GHGs is not required because EPA regulations provide an exemption in 40 CFR §52.21(i)(5)(iii) and §51.166(i)(5)(iii) for pollutants that are not listed in the appropriate section of the regulations, and GHGs are not currently included in that list. However, 40 CFR §52.21(m)(1)(ii) and §51.166(m)(1)(ii) of EPA's regulations apply to pollutants for which no NAAQS exists. These provisions call for collection of air quality monitoring data "as the Administrator determines is necessary to assess ambient air quality for that pollutant in any (or the) area that the emissions of that pollutant would affect. "In the case of GHGs, the exemption in 40 CFR §52.21(i)(5)(iii) and §51.166(i)(5)(iii) is controlling since GHGs are not currently listed in the relevant paragraph. Nevertheless, EPA does not consider it necessary for applicants to gather monitoring data to assess ambient air quality for GHGs under 40 CFR §52.21(m)(1)(ii) and §51.166(m)(1)(ii), or similar provisions that may be contained in state rules based on EPA's rules. GHGs do not affect "ambient air quality" in the sense that EPA intended when these parts of EPA's rules were initially drafted. Considering the nature of GHGs emissions and their global impacts, EPA stated that it is not "practical or appropriate to expect permitting authorities to collect monitoring data for the purpose of assessing ambient air impacts of GHGs." The "PSD and Title V Permitting Guidance for Greenhouse Gases," (dated March 2011) guidance is available on the EPA's Web site: <http://www.epa.gov/nsr/ghgdocs/ghgpermittingguidance.pdf>.

Furthermore, consistent with EPA's statement in the Tailoring Rule, EPA stated it is not necessary for applicants or permitting authorities to assess impacts from GHGs in the context of the additional impacts analysis or Class I area provisions of the PSD regulations for the following policy reasons. Although it is EPA's position that GHG emissions contribute to global warming and other climate changes that result in impacts on the environment, including impacts on Class I areas and soils and vegetation due to the global scope of the problem, climate change modeling and evaluations of risks and impacts of GHG emissions is typically conducted for changes in emissions orders of magnitude larger than the emissions from individual projects that might be analyzed in PSD permit reviews. Quantifying the exact impacts attributable to a specific GHG source obtaining a permit in specific places and points would not be possible with current climate change modeling. Given these considerations, GHG emissions would serve as the more appropriate and credible proxy for assessing the impact of a given facility. Thus, EPA believes that the most practical way to address the considerations reflected in the Class I area and additional impacts analysis is to focus on reducing GHG emissions to the maximum extent. In light of these analytical challenges, EPA has stated that compliance with the best available control technology analysis is the best technique that can be employed at present to satisfy the additional impacts analysis and Class I area requirements of the rules related to GHGs. TCEQ intends to implement PSD GHG permitting requirements consistent with EPA's recognition of the unique nature of GHG emissions.

Because both 40 CFR §52.21(i) and (m) are part of the Texas SIP, the commission is proposing implementation of the exemption for preparation of an air quality analysis for GHG by excluding it as a requirement in its internal permit application review and permit issuance procedures. In addition, the commission is proposing to indicate in its procedural rules that the air quality analysis will be prepared and made available for review and comment, where applicable. This requirement will continue to be applicable for PSD permit application reviews for contaminants other than GHG. Among the existing rules regarding availability of an air quality analysis for review and comment, only §39.411(f)(4) and §39.419(e)(1) do not include the "if applicable text" and thus both are proposed to be amended.

Finally, the commission is proposing to correct typographical errors including clarifying the title of a referenced chapter in subsection (b), the spelling of the word "commission's" in subsection (b)(4)(B), and to clarify the title of referenced divisions in subsection (f)(8).

§39.412, Combined Notice for Certain Greenhouse Gases Permit Applications

Proposed new §39.412 would provide the option to publish Notice of Receipt of Application and Intent to Obtain Permit combined with the Notice of Application and Preliminary Decision, instead of publishing these separately as required by §39.418 and §39.419.

Proposed subsection (a) provides that this option would apply only to permit applications transferred from EPA or filed with the commission for initial issuance of a PSD permit to

authorize only GHG which, prior to receipt of the application with the commission, was filed with EPA and for which notice of draft permit was published as required by EPA.

Proposed subsection (b) lists the specific requirements for the combined notice when this option is chosen. Subsection (b)(1) lists the portions of the general notice requirements in §39.405 that apply.

The specific publication requirements are in subsection (b)(2). Subsection (b)(2)(A) specifies that the Combined Notice must meet certain requirements in §39.411(e) for the text of the notice. Proposed subsection (b)(2)(B) includes eight specific notice content requirements. Proposed subsection (b)(2)(B)(i) would require the notice to include a list of the individual GHGs proposed to be emitted. Proposed subsection (b)(2)(B)(ii) requires the notice to include a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit, and a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable, are available electronically on the commission's Web site. Subsection (b)(2)(B)(iii) - (vi) would require the combined notice to include other information that is currently required and will continue to apply to all PSD applications, including that the executive director's documents are available electronically on the commission's Web site; the location of the public place at which a copy of the complete application and other documents are available for review and copying; a brief

description of the public comment procedures, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the Combined Notice; and that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located, there is substantial public interest in the proposed activity or at the request of any interested person. In addition, subsection (b)(2)(B)(vi) - (viii) would require the notice state that the comment period will be for at least 30 days following the last publication of the combined notice, together with the deadline to file comments or request a public meeting; any comments submitted to EPA regarding the application will not be included in the executive director's RTC unless the comments are timely submitted to the commission; and, if executive director prepares an RTC as required by §55.156, the chief clerk will make the executive director's RTC available on the commission's Web site.

Proposed subsection (b)(2)(C) would require the combined notice meet the requirements of newspaper publication in §39.603(c) and (d) and that publication must be within 33 days after the chief clerk has mailed the preliminary decision concurrently with the notice to the applicant.

Proposed subsection (b)(3)(A) and (B) requires the applicant to make a copy of the application and certain other documents, as applicable, available for review and copying at a public place with internet access in the county in which the facility is located or proposed

to be located and that the copy of the application must be updated as changes are made, if any, to the application so that the entire application must be available for review and copying.

Proposed subsection (b)(3)(C) would require the applicant make available on the first day of newspaper publication of the combined notice required by this section a copy of the executive director's preliminary decision, draft permit, preliminary determination summary and air quality analysis, if applicable. These must remain available until the commission has taken action on the application. Finally, proposed subsection (b)(3)(D) provides that if the application is submitted with confidential information the applicant must indicate in the public file that there is additional information in a confidential file marked as confidential by the applicant.

Proposed subsection (b)(4) would require the applicant to comply with the sign posting requirements of §39.604(a) and (c) - (e), except that the sign or signs must be in place on the first day of publication of the combined notice. The signs must remain in place and legible throughout the public comment period. The applicant would be required to provide verification that the sign posting was conducted according to §39.604.

Proposed subsection (b)(5) would require the applicant to comply with §39.605 regarding providing notice to certain other governmental agencies.

Proposed subsection (c) would provide that the chief clerk shall be responsible for mailing the combined notice as required by §39.602, and for transmitting the executive director's RTC as provided for in §39.420(c)(1)(A) - (B), (2), and (d).

Proposed subsection (d) would provide that the public comment period shall automatically be extended to the close of any public meeting or notice and comment hearing.

Proposed subsection (e) would provide that final action on an application may be taken under Chapter 50 after the deadline for submitting public comment. This subsection would not be submitted to EPA as a SIP revision because it is not a requirement of the FCAA.

§39.419, Notice of Application and Preliminary Decision

The proposed amendment to §39.419(e)(1) adds the phrase "if applicable" to indicate that certain items may not be available for public comment, for the same reasons as the changes discussed earlier regarding the proposed amendment to §39.411(f)(4).

§39.420, Transmittal of the Executive Director's Response to Comments and Decision

Proposed §39.420(e)(4) provides that, after the close of the comment period and when required by and subject to §55.156, the chief clerk will not include instructions for

requesting that the commission reconsider the executive director's decision and for requesting a contested case hearing for applications for a PSD permit that would authorize only GHGs as defined in the proposed amendment to §101.1.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules. The proposed rules pertain to the public notice and hearing requirements for GHG emissions permitting requirements under the PSD air permit program.

The proposed rules would amend Chapter 39 to implement the notice requirements of HB 788, 83rd Legislature, 2013 and are part of a larger rulemaking involving Chapters 55, 101, 106, 116, and 122. This fiscal note only addresses the proposed rules for Chapter 39.

HB 788 exempts GHG PSD air permits from the requirements of a contested case hearing. The proposed rules revise the required public notice text to specify that a PSD GHG permit application is subject to a request for a public meeting and a notice and comment hearing but not a contested case hearing. In addition, the proposed rules include a change to reflect that an air quality analysis for GHG emissions is not required for a GHG permit

since no NAAQS have been set for GHGs. The proposed rules also specify the public notice requirements that will apply to a PSD GHG permit application that was initially filed with EPA, but is later transferred to or filed with TCEQ after notice of the draft permit was published. In those cases, permit applicants may publish a combined, one-time NORI and NAPD. Normally, these notices are published separately. The proposed rules also make minor grammatical corrections.

The proposed rules are not expected to have any fiscal impact on state agencies or local government entities that do not participate in the types of activities that require a PSD permit. If a local government or state agency is required to have a PSD permit for GHG emissions, then that governmental entity could experience cost benefits from not having to participate in a contested case hearing in that the lack of a hearing will tend to result in faster permit issuance for permit applicants who otherwise might have had their permit delayed by a contested case hearing. The proposed rules would not have a fiscal impact on current costs for publishing notice for a public hearing, a notice and comment hearing, or on the need for an air quality analysis. For applications originally submitted to the EPA, a combined NORI and NAPD notice will not result in a significant change in costs to the applicant.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rules

are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law.

The proposed rules are not expected to have a direct fiscal impact on individuals but may have cost benefits for large businesses that require a PSD permit for GHG emissions as the proposed rules may result in faster PSD GHG permit issuance times for permit applicants who otherwise might have had their permit delayed by a contested case hearing.

By not specifying that a PSD GHG permit is subject to a contested case hearing, the permitting process is expected to become shorter, less burdensome, and less costly for an applicant. However, determining the significance of any savings from not being subject to a contested case hearing is case-specific and depends upon a variety of factors including the savings generated by not having to pay consultants, attorneys, or experts to defend a permit.

For applications originally submitted to the EPA, a combined NORI and NAPD notice will not result in a significant change in costs to the applicant. For applications submitted directly to the TCEQ, the proposed rules would not impact the cost of notice for a public hearing or a notice and comment hearing. In addition, the proposed rules would not generate savings on air quality analysis costs since GHG analysis has not been required before, nor is it required under the proposed rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses should experience the same types of benefits as a large business (if they become subject to PSD GHG permit requirements) because the proposed rules would eliminate the requirement for a contested case hearing and provide for a shorter permitting process.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rulemaking is to make the necessary procedural rule amendments necessary to implement HB 788 in Chapter 116 which is concurrently proposed to be amended to add six GHGs to the pollutants subject to the commission's PSD permitting program, consistent with federal law, as well establish the emissions thresholds for applicability of the program consistent with federal requirements in the GHG Tailoring Rule.

Additionally, even if the rules met the definition of a major environmental rule, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government

Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rules would implement requirements of the FCAA. Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. One of the requirements of 42 USC, §7410 is for states to include programs for the regulation of the modification and construction of any stationary source within the area covered by the plan as necessary to assure that the NAAQS are achieved, including a permit program as required in FCAA, Parts C and D, or NSR. This rulemaking will amend rules for public participation for PSD GHG permit applications such that those applications are not subject to requests for reconsideration or contested case hearing to implement HB 788 and to ensure that the rules can be a federally approved part of the Texas SIP.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code

was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Since the legislature is presumed to understand the fiscal

impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and thus allow EPA to lift its federal permitting program on GHG sources in Texas. In fact, the proposed rules create no additional impacts because owners and operators of major GHG sources in Texas must currently obtain a PSD permit from EPA and the proposed rules merely supplant EPA as the authority for PSD GHG permitting in Texas. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex.

1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The proposed rules do not exceed an express requirement in federal or state law. This rulemaking implements relevant provisions of THSC, §382.05102, as added by HB 788 83rd Legislature, 2013. The proposed rules implement requirements of the FCAA, specifically to adopt and implement SIPs, including a requirement to adopt and implement permit programs. The specific intent of the proposed rulemaking is to amend rules for public participation for PSD GHG permit applications such that those applications are not subject to requests for reconsideration or contested case hearing to implement HB 788 and

to ensure that the rules can be a federally approved part of the Texas SIP. The proposed rules do not exceed a requirement of a delegation agreement or any contract between the state and a federal agency, because there is no agreement applicable to this rulemaking. The proposed rules were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the

owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to amend rules for public participation for PSD GHG permit applications such that those applications are not subject to requests for reconsideration or contested case hearing to implement HB 788 and to ensure that the rules can be federally approved as part of the Texas SIP.

The proposed rules will not create any additional burden on private real property. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed rules update procedural rules that govern the submittal of air quality PSD GHG permit applications. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rules, if adopted, will not require any revisions to federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 5, 2013, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087,
or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to

comments being submitted via the eComments system. All comments should reference
Rule Project Number 2013-040-116-AI. The comment period closes December 9, 2013.

Copies of the proposed rulemaking can be obtained from the commission's Web site at

http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information,

please contact Tasha Burns, Operational Support, Air Permits Division at (512) 239-5868.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§§39.411, 39.412, 39.419, and 39.420

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC,

§382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which requires an applicant for a permit issued under THSC, §382.0518 to publish notice of intent to obtain a permit. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement House Bill 788 (82nd Legislature, 2013), THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05102, 382.0515, 382.0517,

382.0518, and 382.056; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq.*

§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 of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L 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, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(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) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's [commissions's] decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case

hearing, reconsideration of the executive director's decision, a notice and comment hearing, 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. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) 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;

(8) 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 is available for review and copying;

(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;

(10) 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

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

(12) 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; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by

publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or 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;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

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

(5) 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 complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, 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.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) 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; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and 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.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in 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) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) filed on or after the effective date of this section;

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E 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, filed on or after the effective date of this section; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, 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. Where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located if there is substantial public interest in the proposed activity when requested by any interested person for the following applications that are filed on or after the effective date of this section:

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction;

(6) the application or permit number;

(7) 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;

(8) 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 is available for review and copying;

(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;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are 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, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs [paragraph] (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) 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 contested case hearing from the commission within the following specified time periods;

(i) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits 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 the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit; or

(iv) for all air quality permit applications other than those in clauses (i) - (iii) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

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

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or

activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) if notice is for air quality permit applications described in subparagraph (A)(iv) of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant without enhanced controls under a standard permit adopted by the commission

under Chapter 116, Subchapter F of this title (relating to Standard Permits) is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;"
[and]

(15) if notice is for air quality application for a permit under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions), a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(16) [(15)]any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

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

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

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and, where applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted, or a statement in the notice for any air quality 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) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity. The notice must include a statement that the comment period will be for at least thirty days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's Web site;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after the effective date of this section for permits under Chapter 116, Subchapter B, Divisions 5 of this title (relating to

Nonattainment Review Permits) and 6 of this title [(relating to Prevention of Significant Deterioration Review and Nonattainment Review)]:

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's Web site at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after the effective date of this section for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's Web site at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications filed on or after the effective date of this section, the text of the notice must include the information in this subparagraph. Air quality permit applications filed before the effective date of this section are governed by the rules in Subchapters H and K of this chapter as they existed immediately before the effective date of this section, and those rules are continued in effect for that purpose.

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (15) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, and, as applicable, preliminary determination summary, and air quality analysis may be submitted and a statement in the notice for any air quality 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.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9) and (15) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§39.412. Combined Notice for Certain Greenhouse Gases Permit Applications.

(a) This section applies to a permit application transferred from the United States Environmental Protection Agency (EPA) or filed with the commission for initial issuance of a Prevention of Significant Deterioration (PSD) permit to authorize only emissions of Greenhouses Gases, as defined in §101.1 of this title (relating to Definitions) which, prior to receipt of the application with the commission, was filed with EPA and for which notice of draft permit was published as required by EPA.

(b) In lieu of compliance with all other applicable requirements of this chapter regarding PSD permit applications, an applicant may fulfill the requirements of this chapter by:

(1) Complying with the requirements of §39.405(f)(3), (h)(1) - (4), (6), (8) - (11), (i) and (j) of this title (relating to General Notice Provisions);

(2) Publishing Notice of Receipt of Application and Intent to Obtain Permit combined with Notice of Application and Preliminary Decision (Combined Notice) as follows:

(A) The published Combined Notice must comply with §39.411(e)(1) - (3), (4)(A)(i), (5)(A), (6) - (9), and (16) of this title (relating to Text of Public Notice):

(B) The published Combined Notice must include the following information:

(i) a list of the individual Greenhouse Gases proposed to be emitted;

(ii) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit, and a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable, are available electronically on the commission's Web site;

(iii) the location, at a public place with internet access in the county in which the facility is located or proposed to be located, at which a copy of the

complete application and the executive director's draft permit and preliminary decision are available for review and copying:

(iv) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable may be submitted. 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 Combined Notice:

(v) a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located, there is substantial public interest in the proposed activity or at the request of any interested person:

(vi) a statement that the comment period will be for at least 30 days following the last publication of the Combined Notice together with the deadline to file comments or request a public meeting:

(vii) a statement that any comments submitted to EPA regarding the application will not be included in the executive director's response to comments unless the comments are timely submitted to the commission; and

(viii) a statement if the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's Web site; and

(C) The Combined Notice must meet the requirements of §39.603(c) and (d) of this title (relating to Newspaper Notice) and is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the notice to the applicant;

(3) Making a copy of the application and certain other documents, as applicable, available for review and copying according to the following requirements:

(A) A copy of the application must be available at a public place with internet access in the county in which the facility is located or proposed to be located;

(B) The copy of the application must be updated as changes are made, if any, to the application; and the entire application must be available for review and copying;

(C) A copy of the executive director's preliminary decision, draft permit, preliminary determination summary and air quality analysis, if applicable, must be made available on the first day of newspaper publication of the Combined Notice required by this section and must remain available until the commission has taken action on the application; and

(D) If the application is submitted with confidential information indicate in the public file that there is additional information in a confidential file marked as confidential by the applicant;

(4) Complying with the requirements of §39.604(a) and (c) - (e) of this title (relating to Sign-Posting), except that the sign or signs must be in place on the first day of publication of the Combined Notice. The signs must remain in place and legible throughout the public comment period. The applicant shall provide verification that the sign posting was conducted according to §39.604 of this title; and

(5) Complying with §39.605 of this title (relating to Notice to Affected Agencies).

(c) The chief clerk shall be responsible for the following additional requirements.

(1) Mailing the Combined Notice as required by §39.602 of this title (relating to Mailed Notice).

(2) Transmitting the executive director's response to comments as provided for in §39.420(c)(1)(A) - (B), (2), and (d) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision).

(d) The public comment period shall automatically be extended to the close of any public meeting or notice and comment hearing.

(e) After the deadline for submitting public comment, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

§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 (e) of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper 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. The applicant shall also publish the notice under §39.405(h) of this title (relating to General Notice Provisions), if applicable.

(c) Unless mailed notice is otherwise provided under this section, 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 the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications the following apply.

(1) Air quality permit applications that are filed on or after the effective date of this section, are subject to this paragraph. Applications filed before the effective date of this section are governed by the rules as they existed immediately before the effective date of this section, and those rules [rule] are continued in effect for that purpose. After technical review is complete for applications subject to the requirements of requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the executive director shall file the executive director's draft permit and preliminary decision, the preliminary determination summary and air quality analysis, as applicable, with the chief clerk and the chief clerk shall post these on the commission's Web site. Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications) and, as applicable, under §39.405(h) of this title, unless the application is for any renewal application of an air quality permit 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 the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History).

(2) If notice under this section is required, the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice).

(3) If the applicant is seeking authorization by permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), any application submitted on or before January 1, 2018, shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

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

(a) Except for air quality permit applications, when required by and subject to §55.156 of this title (relating to Public Comment Processing), after the close of the comment period, the chief clerk shall transmit to the people listed in subsection (b) of this section the following information:

(1) the executive director's decision;

(2) the executive director's response to public comments;

(3) instructions for requesting that the commission reconsider the executive director's decision; and

(4) instructions for requesting a contested case hearing.

(b) The following persons shall be sent the information listed in subsection (a) of this section:

(1) the applicant;

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

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

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) Office of Public Assistance.

(c) When required by and subject to §55.156 of this title, for air quality permit applications, after the close of the comment period, the chief clerk shall:

(1) transmit to the people listed in subsection (d) of this section the following information:

(A) the executive director's decision;

(B) the executive director's response to public comments;

(C) instructions for requesting that the commission reconsider the executive director's decision; and

(D) instructions, which include the statements in clause (ii) of this subparagraph, for requesting a contested case hearing for applications:

(i) for the following types of applications:

(I) permit applications which are subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits) as

described in §39.402(a)(2) of this title (relating to Applicability to Air Quality Permits and Permit Amendments);

(II) permit and permit amendment applications which are not subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, and for which hearing requests were received by the end of the 30-day comment period following the final publication of Notice of Receipt of Application and Intent to Obtain Permit, and these requests were not withdrawn as described in:

(-a-) §39.402(a)(1), (3), (11) and (12) of this title;

and

(-b-) §39.402(a)(4) and (5) of this title;

(III) applications described in §39.402(7) of this title;

and

(ii) the following statements must be included:

(I) 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 contested case hearing from the commission;

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

(III) that a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(IV) that only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted; and

(V) that a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment; and

(2) for applications subject to the requirements of requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, make available by electronic means on the commission's Web site the executive director's draft permit and preliminary decision, the executive director's response to public comments, and as applicable, preliminary determination summary and air quality analysis.

(d) The following persons shall be sent the information listed in subsection (c) of this section:

- (1) the applicant;
- (2) any person who requested to be on the mailing list for the permit action;
- (3) any person who submitted comments during the public comment period;
- (4) any person who timely filed a request for a contested case hearing;
- (5) Office of the Public Interest Counsel; and
- (6) Office of Public Assistance.

(e) For air quality permit applications which meet the following conditions, items listed in subsection (c)(1)(C) and (D) of this section are not required to be included in the transmittals:

(1) applications for which no timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain a Permit;

(2) applications for which one or more timely hearing requests are submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and for which this is the only opportunity to request a hearing, and all of the requests are withdrawn before the date the preliminary decision is issued; [or]

(3) the application is for any 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 unless the application involves a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History); or [.]

(4) applications for a Prevention of Significant Deterioration permit that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions);

(f) For applications for which all timely comments and requests have been withdrawn before the filing of the executive director's response to comments, the chief clerk shall transmit only the items listed in subsection (a)(1) and (2) of this section and the executive director may act on the application under §50.133 of this title (relating to Executive Director Action on Application or WQMP Update).

(g) For post-closure order applications under Subchapter N of this chapter (relating to Public Notice of Post-Closure Orders), the chief clerk shall transmit only items listed in subsection (a)(1) and (2) of this section to the people listed in subsection (b)(1) - (3), (5), and (6) of this section.

(h) For applications for air quality permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk will not transmit the item listed in subsection (a)(4) of this section.