

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS
§§39.401 - 403, 39.405, 39.407, 39.409, 39.411 - 39.413,
39.418 - 39.421, 39.423, 39.425
Effective December 31, 2015

§39.401. Purpose.

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

Adopted September 2, 1999

Effective September 23, 1999

§39.402. Applicability to Air Quality Permits and Permit Amendments.

(a) As specified in those subchapters, Subchapters H and K of this chapter (relating to Applicability and General Provisions; and Public Notice of Air Quality Permit Applications, respectively) apply to applications for:

(1) new air quality permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits);

(2) a new major source or a major modification for facilities subject to the requirements of Chapter 116, Subchapter B, Divisions 5 or 6 of this title (relating to New Source Review Permits, Nonattainment Review Permits and Prevention of Significant Deterioration Permits);

(3) air quality permit amendments under Chapter 116, Subchapter B of this title when the amendment involves:

(A) a change in character of emissions or release of an air contaminant not previously authorized under the permit;

(B) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds public notice *de minimis* levels by being greater than any of the following levels:

- (i) 50 tpy of carbon monoxide (CO);
- (ii) ten tpy of sulfur dioxide (SO₂);
- (iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NO_x), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(C) a facility affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NO_x;

(ii) 25 tpy of VOC, SO₂, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions); or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(D) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility 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

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(4) new air quality flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits);

(5) air quality permit amendments to flexible permits under Chapter 116, Subchapter G of this title when the amendment involves:

(A) change in character of emissions or release of an air contaminant not previously authorized under the permit;

(B) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds public notice *de minimis* levels by being greater than any of the following levels:

(i) 50 tpy of carbon monoxide (CO);

(ii) ten tpy of sulfur dioxide (SO₂);

(iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NO_x), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(C) a facility affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NO_x;

(ii) 25 tpy of VOC, SO₂, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title; or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(D) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title; or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(6) renewal of air quality permits under Chapter 116, Subchapter D of this title (relating to Permit Renewals);

(7) 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;

(8) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116, Subchapter C of this title (relating to Plant-Wide Applicability Limits).

(9) applications for multiple plant permits (MPPs) under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits);

(10) applications for permits, registrations, licenses, 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), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

(11) concrete batch plants without enhanced controls authorized by an air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be

temporarily located in or contiguous to the right-of-way of a public works project;
and

(12) change of location or relocation of a portable facility, consistent with the requirements of §116.178 of this title (relating to Relocations and Changes of Location of Portable Facilities).

(b) Unless otherwise stated in this chapter, applications for air quality permits and permit amendments declared administratively complete on or after September 1, 1999 and 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.

(c) Notwithstanding subsections (a) or (b) of this section, Subchapters H and K of this chapter do not apply to the following applications where notice or opportunity for contested case hearings is not otherwise required by law:

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

(2) applications under Chapter 116, Subchapter F of this title, except applications for concrete batch plants authorized by standard permit as referenced in subsection (a)(11) of this section; and

(3) registrations under Chapter 106 of this title (relating to Permits by Rule).

Adopted June 2, 2010

Effective June 24, 2010

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - J, L, and M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - E of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications; Public Notice of Air Quality Applications; and Public Notice of Other Specific Applications). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for

Consolidated Permits). The effective date of the amendment of existing §39.403, specifically with respect to subsection (c)(6) and (7) of this section, is June 3, 2002. Applications for modifications filed before this amended section becomes effective will be subject to this section as it existed prior to June 3, 2002.

(1) Explanation of applicability. Subsection (b) of this section lists all the types of applications to which Subchapters H - J, L, and M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsection (d) of this section specifies that only certain sections apply to applications for radioactive materials licenses.

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - J, L, and M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

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

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

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

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

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (d) of this section;

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

(8) Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.

(c) Notwithstanding subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

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

(2) applications for registrations and notifications under Chapter 312 of this title;

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

(4) applications under §39.15 of this title (relating to Public Notice Not Required for Certain Types of Applications) without regard to the date of administrative completeness;

(5) applications for minor amendments under §305.62(c)(2) of this title (relating to Amendments). Notice for minor amendments shall comply with the requirements of §39.17 of this title (relating to Notice of Minor Amendment) without regard to the date of administrative completeness;

(6) applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall

comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;

(7) applications for modifications of municipal solid waste permits and registrations under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Notice for modifications shall comply with the requirements of §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration), without regard to the date of administrative completeness;

(8) applications for Class 2 modifications of industrial or hazardous waste permits under §305.69(c) of this title. Notice for Class 2 modifications shall comply with the requirements of §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 and §305.69(c) of this title;

(9) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee);

(10) applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title;

(11) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); or

(12) applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-injection Units Registration).

(d) Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title (relating to General Notice Provisions); §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice).

Adopted June 2, 2010

Effective June 24, 2010

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the chief clerk prepares a newspaper notice that is required by Subchapters G - J, L, and M of this chapter (relating to Public Notice for Applications for Consolidated Permits; Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

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

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

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

(e) Notice and affidavit. When Subchapters G - J and L of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When

the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality;

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in any newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county; and

(3) air quality permit applications required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications, respectively) to publish notice shall comply with the requirements of §39.603 of this title (relating to Newspaper Notice).

(g) Copy of application. The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public file that there is additional information in a confidential file. The copy of the application must comply with the following.

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the publications' designated comment period.

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings; and

(3) where applicable, for air quality permit applications filed on or after June 24, 2010, the applicant shall also make available the executive director's draft permit, preliminary determination summary and air quality analysis for review and copying beginning on the first day of newspaper publication required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings.

(h) Alternative language newspaper notice.

(1) Applicability. The following are subject to this subsection:

(A) Air quality permit applications; and

(B) Permit applications other than air quality permit applications that are required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after November 30, 2005.

(2) This subsection applies whenever notice is required to be published under §39.418 or §39.419 of this title, and either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

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

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

(C) the school that otherwise would be required to provide a bilingual education program has been granted an exception from the requirements to provide the program as provided for in 19 TAC §89.1207(a) (relating to Exceptions and Waivers).

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

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

(5) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title.

(6) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.

(A) One notice must be published in the public notice section of the newspaper and must comply with the applicable portions of §39.411 of this title (relating to Text of Public Notice).

(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

- (i) permit application number;
- (ii) company name;
- (iii) type of facility;
- (iv) description of the location of the facility; and
- (v) a note that additional information is in the public notice section of the same issue.

(7) Waste and water quality alternative language must be published in the public notice section of the alternative language newspaper and must comply with §39.411 of this title.

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

(9) Notice under this subsection will only be required to be published within the United States.

(10) Each alternative language publication must follow the requirements of this chapter that are consistent with this subsection.

(11) If a waiver is received under this subsection on an air quality permit application, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies). If a waiver is received under this subsection on a waste or water quality application, the applicant shall complete a verification and submit it to the chief clerk and the executive director.

(i) Failure to publish notice of air quality permit applications. If the chief clerk prepares a newspaper notice that is required by Subchapters H and K of this chapter for air quality permit applications and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or, for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (j) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(j) Notice and affidavit for air quality permit applications. When Subchapters H and K of this chapter require an applicant for an air quality permit action to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (i) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(k) For applications filed on or after September 1, 2015, and subject to providing notice as prescribed by Texas Water Code, §5.115, the commission shall make available on the commission's website notice of administratively complete applications for a permit or license authorized under the Texas Water Code and the Texas Health and Safety Code.

Adopted December 9, 2015

Effective December 31, 2015

§39.407. Mailing Lists.

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

Adopted September 2, 1999

Effective September 23, 1999

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

Notice given under this chapter will specify any applicable deadline to file public comment specified under §55.152 of this title (relating to Public Comment Period) and, if applicable, any deadlines to file requests for reconsideration, contested case hearing, or notice and comment hearing. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

Adopted June 2, 2010

Effective June 24, 2010

§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 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 (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;"

(15) if notice is for an application for an air quality 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 interested person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(16) 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:

(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 (16) 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 (16) 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.

Adopted March 26, 2014

Effective April 17, 2014

§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).

Adopted March 26, 2014

Effective April 17, 2014

§39.413. Mailed Notice.

Unless otherwise specified in Subchapters I-M of this chapter (relating to Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses), when this chapter requires mailed notice, the chief clerk shall mail notice to:

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

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

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

(4) the Texas Department of Health;

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) if applicable, local, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c), as amended and adopted in the CFR through May 2, 1989 at 54 FedReg 18786;

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

(9) the applicant;

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

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

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

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

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

Adopted September 2, 1999

Effective September 23, 1999

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

(a) When the executive director determines that an application is administratively complete, the chief clerk shall mail this determination concurrently with the Notice of Receipt of Application and Intent to Obtain Permit to the applicant.

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

(1) the applicant, other than applicants for air quality permits, shall publish Notice of Receipt of Application and Intent to Obtain Permit once under §39.405(f)(1) of this title (relating to General Notice Provisions) and, for solid waste applications and injection well applications, also under §39.405(f)(2) of this title. The applicant shall also publish the notice under §39.405(h) of this title, if applicable;

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

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

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

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

(c) For air quality permit applications, except applications for plant-wide applicability limit permits under Chapter 116, Subchapter C of this title (relating to Plant-Wide Applicability Limits), the applicant shall provide notice as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications). Specifically, publication in the newspaper must follow the requirements under §39.603 of this title (relating to Newspaper Notice), sign posting must follow the requirements under §39.604 of this title (relating to Sign-Posting), and the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice). The applicant shall also follow the requirements, as applicable, under §39.405(h) of this title.

Adopted June 2, 2010

Effective June 24, 2010

§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. For applications filed on or after September 1, 2015, this mailing will occur no earlier than 30 days after written notification of the draft permit is

provided by the executive director to the state senator and state representative of the area in which the facility which is the subject of the application is or will be located. 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 June 24, 2010, are subject to this paragraph. Applications filed before June 24, 2010 are governed by the rules as they existed immediately before June 24, 2010, and those rules are continued in effect for that purpose. After technical review is complete for applications 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), 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 website. 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).

Adopted December 9, 2015

Effective December 31, 2015

§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;

(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.

Adopted March 26, 2014

Effective April 17, 2014

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

If, under Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment), a request for reconsideration or hearing on an application is set for consideration during a commission meeting, the chief clerk shall mail notice to the applicant, executive director, public interest counsel, all persons who commented (or a representative of a group or association), and the persons making the request, no later than 30 days before the first meeting at which the commission considers the request.

Adopted September 2, 1999

Effective September 23, 1999

§39.423. Notice of Contested Case Hearing.

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

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

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

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§39.425. Notice of Contested Enforcement Case Hearing.

For any contested enforcement case hearing, the chief clerk shall mail notice to the statutory parties, respondents, and persons who have requested to be on a mailing list for the pleadings in the formal enforcement action no less than 13 days before a hearing in accordance with the APA, §2001.052. In addition, public notice and opportunity for comment before the commission regarding a proposed

enforcement action shall be given under Chapter 10 of this title (relating to Commission Meetings).

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