

Effective: December 31, 2015

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Permanent Rule Change

Rule Project Number 2015-018-080-LS
SB 709 and SB 1267: Contested Case Hearings and Post Hearings

Chapter 1
Purpose of Rules, General Provisions

Chapter 39
Public Notice
Subchapters H and K

Chapter 50
Action on Applications and Other Authorizations
Subchapters F and G

Chapter 55
Requests for Reconsideration and Contested Case Hearings; Public Comment
Subchapters E and F

Chapter 70
Enforcement
Subchapters A and C

Chapter 80
Contested Case Hearings
Subchapters A, C, and F

1. Purpose. This change transmittal provides the pages that reflect changes and addition to the Texas Commission on Environmental Quality (commission) Volume of Permanent Rules.
2. Explanation of Change. On December 9, 2015, the commission adopted the following:

Section 1.11 was adopted *without change* to the proposed text as published in the August 21, 2015, issue of the *Texas Register* (40 TexReg 5225) and was not republished.

Section 39.405 was adopted *without change* to the proposed text as published in the August 21, 2015, issue at the *Texas Register* (40 TexReg 5228) and was not

republished. Section 39.419 and §39.602 were adopted *with changes* to the proposed text and were republished.

The amendments to §39.405(g)(3) and §39.419(e)(1) are adopted as revisions to the State Implementation Plan (SIP).

Section 50.115 and §50.143 were adopted *with changes* to the proposed text as published in the August 21, 2015, issue of the *Texas Register* (40 TexReg 5235) and were republished. Section 50.119 was adopted *without change* to the proposed text as published and was not republished.

Sections 55.156, 55.201, 55.203, and 55.211 were adopted *with changes* to the proposed text as published in the August 21, 2015, issue of the *Texas Register* (40 TexReg 5240) and were republished. Section 55.205 and §55.210 were adopted *without changes* to the proposed text and were not republished.

Section 55.156(e) was adopted to be withdrawn as part of the SIP and the withdrawal was submitted to the United States Environmental Protection Agency as a revision to the SIP.

Section 70.10 and §70.106 were adopted *without changes* to the proposed text as published in the August 21, 2015, issue of the *Texas Register* (40 TexReg 5250) and were not republished.

Sections 80.4, 80.6, 80.17, 80.25, 80.117, 80.118, 80.127, 80.252, 80.272, 80.274 were adopted *with changes* to the proposed text as published in the August 21, 2015, issue of the *Texas Register* (40 TexReg 5254) and were republished. Sections 80.105, 80.108, 80.267, 80.273, and 80.276 were adopted *without changes* to the proposed text and were not republished.

3. Effects of Change.

For SB 709: The rule amendments in 30 TAC Chapters 39, 50, 55, and 80 primarily apply to applications filed on or after September 1, 2015, and include:

1. Specifying that requests for a contested case hearing (CCH) by individual entities and groups or associations must timely and individually submit comments when requesting a CCH and specifying that groups or associations must timely provide the name and physical address of its member(s) who would be an affected person in their own right when requesting a CCH.
2. Adding discretionary information that the commission may consider in its determinations of affected persons.
3. Requiring the commission to determine that someone is an affected person only if the person timely submitted comments on the application.

4. Requiring that the executive director's response to comments be provided before a preliminary hearing is held.
5. Amending other hearing procedures in Chapter 80, including:
 - a. Requiring two duplicate originals of the application from the applicant for certification as part of the administrative record;
 - b. Specifying that the administrative record will be provided to the State Office of Administrative Hearings when the notice of hearing is issued;
 - c. Limiting the deadline for submittal of the administrative law judge's (ALJ's) Proposal for Decision to 180 days from the first date of the preliminary hearing or an earlier date specified by the commission, with extensions of the deadline only to either address constitutional concerns of the parties, or by agreement of the parties with approval by the ALJ;
 - d. Providing for the prima facie case, including that the ALJ shall admit the administrative record into evidence for all purposes, and limitations for rebuttal cases; and
 - e. Amending the role of the executive director in the hearing.
6. Requiring the executive director to provide written notification of draft permits to state senators and state representatives 30 days prior to issuance of the notice of draft permit, and to also provide web-based notice of administratively complete applications for permits and licenses.
7. Establishing criteria for executive director consideration for determination of "substantially similar" re-filed applications.

For SB 1267: New §80.276 and amended rules in 30 TAC Chapters 1, 55, 70, and 80 update procedures for providing notice of the commission's decisions or orders and the procedures and timelines concerning motions for rehearing to ensure consistency with the Texas Administrative Procedure Act.

The rule amendments also provided that the effective date of an agreed order shall be the date the order is signed by the commission or the executive director, unless stated otherwise in the agreed order.