

The Texas Commission on Environmental Quality (commission) adopts an amendment to §39.420 and new §§39.801 - 39.810. Sections 39.420 and 39.801 - 39.810 are adopted *without changes* to the proposed text as published in the September 27, 2002 issue of the *Texas Register* (27 TexReg 9089) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules implement House Bill (HB) 2912, Article 5, §5.06 and Article 9, §9.07, 77th Texas Legislature, 2001. HB 2912 amended Texas Health and Safety Code (THSC), §361.082 and Texas Water Code (TWC), §7.031. The commission now has the authority, consistent with federal law, to issue orders for “the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.” Until the change made by the 77th Legislature, owners and operators of hazardous waste management units and facilities could only apply for, and the commission could only issue, post-closure permits. HB 2912 became effective on September 1, 2001.

The commission amended Chapter 39 by adding a new Subchapter N for post-closure orders.

Subchapter N will assure the opportunity for meaningful public involvement, including public notice and an opportunity to comment, at three key stages: 1) when the agency declares an application for a post-closure order administratively complete; 2) prior to final approval of the preferred response action and order; and 3) at the time of an adopted decision that remedial action is complete. Public involvement is also provided for if the order is amended. General requirements and procedures for public notice outlined in Subchapter H are again specified in Subchapter N for post-closure orders. The

notice requirements for a post-closure contested case hearing, similar to §39.425, are also provided. An opportunity for a hearing will also be provided upon request by the executive director, applicant, and the Public Interest Counsel; however, like enforcement orders issued by the commission, affected persons will not be able to request a hearing. The ability to pursue an order can begin with the applicant; however, if the applicant fails to pursue the application for a post-closure order in good faith, the commission may issue an enforcement order, as with any violation of a rule or statute, to enforce closure and/or corrective action requirements.

The commission also adopts an amendment §39.420 to reflect the requirements for response to comments under new Subchapter N.

Corresponding amendments are also adopted for 30 TAC Chapter 37, Financial Assurance; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 80, Contested Case Hearings; 30 TAC Chapter 305, Consolidated Permits; and 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, in this issue of the *Texas Register*. The amendment to Chapter 37 will entail the minor addition of a post-closure order definition. Chapter 55 will detail how the agency processes public comments. An opportunity for a hearing will be provided upon request by the executive director, applicant, and the Public Interest Counsel, in accordance with the amendment adopted in Chapter 80. The financial assurance requirements for post-closure orders will be the same as for post-closure permits. The adopted amendments to Chapter 305 are intended to streamline the application process for post-closure orders

and post-closure permits. Post-closure applications will be limited to that information pertinent to post-closure care.

The adopted amendments to Chapter 335 will allow greater flexibility for the agency and the regulated community in two areas. First, the adopted rulemaking will allow the agency to issue an order in lieu of a permit for post-closure care at interim status units or facilities. Second, the adopted rulemaking gives the agency the discretion to approve corrective action requirements as an alternative to the Resource Conservation Recovery Act (RCRA) closure requirements when certain environmental conditions are met.

Finally, the adopted rulemaking will be consistent with federal regulations promulgated by the United States Environmental Protection Agency (EPA) in the October 22, 1998 issue of the *Federal Register* (63 FR 56509).

#### SECTION BY SECTION DISCUSSION

##### *Subchapter H - Applicability and General Provisions*

Adopted amended §39.420, Transmittal of the Executive Director's Response to Comments and Decision, adds new subsection (e) which lists the procedures for the chief clerk to transmit the executive director's response to comments to the appropriate parties for a post-closure order.

*Subchapter N - Public Notice of Post-Closure Orders*

Adopted new §39.801, Applicability, specifies that new Subchapter N applies to applications for a post-closure order, as defined in §335.2, Permit Required.

Adopted new §39.802, Public Comment and Notice, subsection (a) states when public notice and opportunity to comment are required by this subchapter. Consistent with EPA's amendments to federal post-closure permit requirements promulgated in the October 22, 1998 issue of the *Federal Register* (63 FR 56509), the commission proposes public notice and comment for post-closure orders at three key stages: 1) when the authorized agency first becomes involved in the cleanup process as a regulatory or enforcement matter; 2) when the agency is ready to approve a remedy for the site; and 3) when the agency is ready to decide that remedial action is complete at a facility.

Adopted new §39.802(a)(1) states that the first stage when public notice and the opportunity to comment will be provided is when the agency declares an application for a post-closure order administratively complete. The agency recognizes that the timing of the first and second notice may be simultaneous if no time periods are waived and believes sufficient opportunity for public notice and comment is still provided. As with other opportunities for notice and comment, the agency will prepare a response that will be transmitted by the chief clerk to the applicant, any person who submitted comments during the public comment period, any person who requested to be on the mailing list for the order action, the Office of Public Interest Counsel, and the Office of Public Assistance.

Adopted new §39.802(a)(2) identifies the second stage when public notice and the opportunity to comment will be provided before final approval of the adopted post-closure order.

Adopted new §39.802(a)(3) states the third stage for public notice and comment. When the agency is ready to determine that remedial action is complete, notice and an opportunity to comment will be provided at that time. Remedial action will be complete when all monitoring is complete, at the end of the post-closure period. The agency recognizes that the notice of final decision required under 40 Code of Federal Regulations Part 124 could be combined with this third notice (remedial action complete). This will still allow for comment before termination of agency regulation while not requiring a fourth notice.

Adopted new §39.802(b) states that the comment periods for subsection (a) close 30 days after the last publication of the appropriate notice.

Adopted new §39.803, General Notice Provisions, generally mirrors the notice provisions for permits outlined in existing §39.405 with additions and deletions to reflect the unique requirements applicable to post-closure orders.

Adopted new §39.803(a) states the executive director's options if the applicant fails to publish notice in the specified time frame or fails to provide copies of notices or affidavits. The first option will allow the chief clerk to publish the notice and have the applicant reimburse the agency for the cost of publication. The second option will allow the executive director to suspend further processing or return

the application. These options are intended to avoid undue delay in order application processing and will be consistent with §39.405(a).

Adopted new §39.803(b) - (f) includes instructions for post-closure order applicants for electronic mailing lists, delivery of the notice by hand or mail, filing copies of the published notice and publisher's affidavit with the chief clerk, publication of the notice, and making copies of the application and adopted order available for public review.

Adopted new §39.804, Text of Public Notice, states the required text needed in a public notice for all three stages of notice and comment for a post-closure order. These requirements will parallel §39.411(a) and (b) with slight modifications.

Adopted new §39.805, Mailed Notice, lists the requirements for mailed notice when required by this subchapter. This adopted language will be consistent with the requirements for permits found in §39.413 and §39.418(b)(1) and (2).

Adopted new §39.806, Notice of Receipt of an Application and Intent to Obtain a Post-Closure Order, describes the requirements and procedures for an applicant to publish the notice of receipt of application and intent to obtain a post-closure order. More specifically, the applicant's notice will have to be published within 30 days after the executive director declares it administratively complete with the required text outlined in adopted new §39.804. These requirements and procedures match those prescribed for permits in §39.418.

Adopted new §39.807, Notice of Adopted Post-Closure Order and Preliminary Decision, describes the requirements for the notice of adopted post-closure order. Again, the requirements will be the same as those listed in adopted new §39.806.

Adopted new §39.808, Notice of a Adopted Decision that Remedial Action is Complete, describes the requirements for the notice of adopted decision that remedial action is complete and also parallels those found in adopted new §39.806.

Adopted new §39.809, Notice for Amendments to Post-Closure Orders, describes the notice requirements for when post-closure orders are amended. The requirements will mirror those adopted in new §39.806.

Adopted new §39.810, Notice of Post-Closure Order Contested Case Hearing, identifies the notice requirements for a post-closure order contested case hearing. The requirements match those outlined for contested enforcement case hearings in §39.425.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules do not meet the definition of a “major environmental rule” as defined in that statute. 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 adopted amendments to Chapter 39 are intended to protect the environment or reduce risks to human health from facilities that are required to obtain a post-closure permit, but have failed to do so, by bringing them into compliance through an alternative regulatory mechanism. However, they are not expected to 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 adopted rules will protect public health and safety by bringing into compliance those facilities that have not obtained a post-closure permit by providing an equally protective alternative. The adopted rules also allow the agency the discretion to use corrective action requirements, rather than closure requirements, to address regulated units that have released hazardous constituents.

Even if the rules were considered to be a major environmental rule, Texas Government Code, §2001.0225, only applies 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. These adopted rules do not meet any of these four applicability requirements. These adopted rules do not exceed any standard set by federal law for interim status units or facilities, or regulated units with releases of hazardous constituents, and in fact, implement a federal regulation authorized by federal law. These adopted rules do not exceed

the requirements of state law under THSC, Chapter 361 or TWC, Chapter 7; those chapters specifically allow the type of orders adopted in this rulemaking. There is no delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program specifically on post-closure orders; Texas' authorization, by the EPA, of the RCRA program does relate to post-closure activities, but the activities that will be authorized in accordance with these rules are authorized by EPA RCRA regulations. These rules are not adopted solely under the general powers of the agency, but specifically under THSC, §361.082 and TWC, §7.031, as well as the other general powers of the agency.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these adopted rules in accordance with Texas Government Code, §2007.043. The specific purpose of the adopted rules is to implement applicable requirements of HB 2912, which amended THSC, §361.082 and TWC, §7.031. The purpose of these adopted rules is to allow the commission to issue orders in lieu of permits for post-closure care at interim status facilities and to give the commission the discretion to approve corrective action requirements as an alternative to closure requirements when certain environmental conditions are met. The adopted rules substantially advance the stated purpose by incorporating the applicable requirements of HB 2912 and by amending the applicable provisions relating to corrective action requirements.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rules will not burden private real property,

nor restrict or limit the owner's right to property, nor reduce its value by 25% or more beyond what will otherwise exist in the absence of these regulations. The adopted rules merely allow the commission to issue an order in place of a permit for post-closure care at interim status facilities. Under existing rules, the facilities affected by this rulemaking are already required to obtain a permit. Thus, the adopted rules provide an option for a new mechanism to provide post-closure care. The adopted rules also allow for corrective action requirements as an alternative to closure requirements. Therefore, these adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rules and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the CMP.

#### PUBLIC COMMENT

The public comment period closed October 28, 2002. The commenters were Thompson and Knight, L.L.P, on behalf of Lone Star Steel Company (Lone Star Steel); Lloyd, Gosselink, Blevins, Rochelle & Townsend, P.C. (Lloyd, Gosselink); and Chevron Environmental Management Company (CEMC).

## RESPONSE TO COMMENTS

CEMC and Lloyd, Gosselink commented that most references in the preamble indicate that it is either interim status “units and facilities” or interim status “facilities” that are eligible for post-closure orders. CEMC and Lloyd, Gosselink believed that interim status is only relevant to post-closure order eligibility as it relates to units, not facilities. They suggested that the adopted rule and preamble not reference interim status facilities, but only reference interim status units to avoid confusion about the eligibility of other types of units (e.g., corrective action management units) that might not be located at interim status facilities.

**The commission disagrees with the portion of the comment that regards not referencing interim status facilities in the rules or preamble. While interim status units are expected to receive the most attention, interim status facilities do exist. As such, the ability to require facility-wide corrective action remains a concern of the commission. In addition, the commission is aware that there may be hazardous waste facilities that have not filed Part A and Part B hazardous waste permit applications. Although these facilities are not in interim status, they would, after discovery, be eligible for a post-closure order or permit and subject to the corresponding rules for facility-wide corrective action. The commission agrees that for additional clarity and consistency regarding “units” and “facilities,” the reference in the first paragraph in the Background and Summary of the Factual Basis for the Adopted Rules portion of this preamble has been amended to read: “Until the change made by the 77th Legislature, owners and operators of hazardous waste management units and facilities could only apply for, and the commission could only issue, post-closure permits.”**

## **SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS**

### **§39.420**

#### **STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §7.031, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility; Solid Waste Disposal Act, THSC, §361.024, which authorizes the commission to adopt rules consistent with Chapter 361; and THSC, §361.082, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

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

(a) 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) For air applications which meet the following conditions, items listed in subsection (a)(3) and (4) of this section are not required to be included in the transmittals:

(1) applications for initial issuance of permits under Texas Health and Safety Code, §§382.05183, 382.05185(c) and (d), 382.05186, and 382.0519;

(2) applications for initial issuance of electric generating facility permits under Texas Utilities Code, §39.264;

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

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

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

(d) 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).

(e) 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.

**SUBCHAPTER N: PUBLIC NOTICE OF POST-CLOSURE ORDERS**

**§§39.801 - 39.810**

**STATUTORY AUTHORITY**

The new sections are adopted under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §7.031, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility; Solid Waste Disposal Act, THSC, §361.024, which authorizes the commission to adopt rules consistent with Chapter 361; and THSC, §361.082, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

**§39.801. Applicability.**

The requirements of this subchapter apply to applications for a post-closure order, as defined in §335.2 of this title (relating to Permit Required).

**§39.802. Public Comment and Notice.**

(a) Public notice and the opportunity to comment shall be provided:

(1) when the agency declares an application for a post-closure order administratively complete;

(2) prior to final approval of the proposed post-closure order; and

(3) at the time of a proposed decision that remedial action is complete at the facility.

(b) The public comment periods described in subsection (a) of this section shall end 30 days after the last publication of the appropriate notice.

(c) Public comments for post-closure orders shall be processed under §55.156 of this title (relating to Public Comment Processing).

**§39.803. General Notice Provisions.**

(a) Failure to publish notice. If the chief clerk prepares a newspaper notice that is required by this subchapter and the applicant does not cause the notice to be published within 30 days after the executive director has declared the application administratively complete, filed the proposed post-

closure order or proposed decision that remedial action is complete with the chief clerk, or fails to submit the copies of notices or affidavit required in subsection (d) 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; or

(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 shall 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. Notice by hand delivery may be substituted for mailed notice. 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) Notice and affidavit. When this subchapter requires 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.

(e) Published notice. When notice is required to be published under §39.802 of this title (relating to Public Comment and Notice), the owner or operator shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of 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.

(f) Copy availability. The owner or operator shall make a copy of the application, preferred response action and/or the proposed post-closure order, or proposed decision that remedial action is complete, available for review, and copying at a public place in the county in which the facility is located or proposed to be located. The copy of the document compelling public notice shall comply with the following.

(1) A copy of the application, proposed post-closure order, or proposed decision that remedial action is complete 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 post-closure order and remain available for the publication's designated comment period.

(2) A copy of the complete application, proposed post-closure order, or proposed decision that remedial action is complete (including any subsequent revisions to the application) 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 SOAH.

**§39.804. 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 is given.

(b) When notice of receipt of application and intent to obtain post-closure order, notice of proposed order, or notice of proposed decision that remediation action is complete, by publication or by mail as required by this subchapter, the text of the notice must include the following information:

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

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

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

(4) a brief description of public comment procedures including a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant;

(5) the application, solid waste registration number, or post-closure order number;

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

(7) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(8) 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; and

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

**§39.805. Mailed Notice.**

When this subchapter requires mailed notice, the chief clerk shall mail notice to:

(1) the landowners named on the application map, 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 May 2, 1989 issue of the *Federal Register* (54 FR 18786);

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

(9) the owner or operator of the facility;

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

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

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

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

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

(15) the river authority in which the facility is located or proposed to be located if the document compelling public notice and comment is under Texas Water Code, Chapter 26.

**§39.806. Notice of Receipt of an Application and Intent to Obtain a Post-Closure Order.**

(a) When the executive director determines that an application is administratively complete, the chief clerk shall mail the notice of receipt of an application and intent to obtain a post-closure order to the applicant.

(b) Not later than 30 days after the executive director declares an application administratively complete, the notice of receipt of an application and intent to obtain a post-closure order:

(1) the applicant shall publish the notice of receipt of an application and intent to obtain a post-closure order once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of receipt of an application and intent to obtain a post-closure order to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice must include the information required by §39.804 of this title (relating to Text of Public Notice).

**§39.807. Notice of Proposed Post-Closure Order and Preliminary Decision.**

(a) Prior to final approval of the proposed order, the executive director shall file the proposed post-closure order with the chief clerk.

(b) Not later than 30 days after the executive director files the proposed post-closure order with the chief clerk:

(1) the applicant shall publish the notice of the proposed order and preliminary decision once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of a proposed post-closure order to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice of a proposed post-closure order must include the applicable information required by §39.804 of this title (relating to Text of Public Notice), including the assumptions the response action was based on, in particular those related to land use characterization.

**§39.808. Notice of a Proposed Decision that Remedial Action is Complete.**

(a) Prior to the executive director's determination that the remedial action is complete, the executive director shall file the proposed decision that remedial action is complete with the chief clerk.

(b) Not later than 30 days after the executive director files the proposed decision that remedial action is complete with the chief clerk:

(1) the applicant shall publish notice of a proposed decision that remedial action is complete once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of a proposed decision that remedial action is complete to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice of a proposed decision that remedial action is complete must include the applicable information required by §39.804 of this title (relating to Text of Public Notice).

**§39.809. Notice for Amendments to Post-Closure Orders.**

(a) When the executive director determines that an application for an amendment to a post-closure order is technically complete, the chief clerk shall mail the notice of application and preliminary decision to the applicant.

(b) Not later than 30 days after the executive director declares an application technically complete the notice of application and preliminary decision:

(1) the applicant shall publish the notice of application and preliminary decision once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of receipt of an application and preliminary decision to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice must include the information required by §39.804 of this title (relating to Text of Public Notice).

**§39.810. Notice of Post-Closure Order Contested Case Hearing.**

For any post-closure order contested case hearing, the chief clerk shall mail notice to the statutory parties, applicant, and persons who have requested to be on a mailing list for the pleadings in the action no less than 13 days before a hearing in accordance with APA, §2001.052. In addition, public notice and opportunity for comment before the commission relating to a proposed action shall be given under Chapter 10 of this title (relating to Commission Meetings).