

The Texas Commission on Environmental Quality (commission) proposes an amendment to §39.420.

The commission also proposes new §§39.801 - 39.810.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to 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 facilities could only apply for, and the commission could only issue, post-closure permits. HB 2912 became effective on September 1, 2001.

The commission proposes to amend Chapter 39 by adding a new Subchapter N for post-closure orders. Subchapter N would 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 a proposed 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 would 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 would 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 proposes to amend §39.420 to reflect the requirements for response to comments under new Subchapter N.

Corresponding amendments are also proposed 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; Chapter 305, Consolidated Permits; and Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, in this issue of the *Texas Register*. The amendment to Chapter 37 would entail the minor addition of a post-closure order definition. Chapter 55 would detail how the agency processes public comments. An opportunity for a hearing would be provided upon request by the executive director, applicant, and the Public Interest Counsel, in accordance with the amendment proposed in Chapter 80. The financial assurance requirements for post-closure orders would be the same as for post-closure permits. The proposed amendments to Chapter 305 are intended to streamline the application process for post-closure orders and post-closure permits. Post-closure applications would be limited to that information pertinent to post-closure care.

The proposed amendments to Chapter 335 would allow greater flexibility for the agency and the regulated community in two areas. First, the proposed rulemaking would allow the agency to issue an order in lieu of a permit for post-closure care at interim status units or facilities. Second, the proposed 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.

Lastly, the proposed rulemaking would 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

Proposed 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

Proposed new §39.801, Applicability, specifies that new Subchapter N applies to applications for a post-closure order, as defined in 30 TAC §335.2 concerning permit required.

Proposed 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.

Proposed 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 would prepare a response that would 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.

Proposed 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 proposed post-closure order.

Proposed 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 would 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 would still allow for comment before termination of agency regulation while not requiring a fourth notice.

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

Proposed 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.

Proposed 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 would allow the chief clerk to publish the notice and have the applicant reimburse the agency for the cost of publication. The second option would 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 would be consistent with §39.405(a).

Proposed 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 proposed order available for public review.

Proposed 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 would parallel §39.411(a) and (b) with slight modifications.

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

Proposed 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 would have to be published within 30 days after the executive director declares it administratively complete with the required text outlined in proposed new §39.804. These requirements and procedures match those prescribed for permits in §39.418.

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

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

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

Proposed 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state or local government due to administration and enforcement of the proposed rules. Units of government that own or operate a site affected by the proposed rules that are authorized to close hazardous waste management units via post-closure orders may experience cost savings, which would vary greatly depending on the type of facility closed. The cost savings would be due to a likely decrease in the number of contested case hearings on applications to close certain hazardous waste management units.

The proposed rules are intended to implement certain provisions of HB 2912, and federal regulations that were promulgated in the October 22, 1998 issue of the *Federal Register* (63 FR 56509). HB 2912 provided the commission with 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. The 1998 federal regulations allow the EPA and authorized states to: 1) issue an enforceable document in lieu of a post-closure permit for interim status units and facilities; and 2) substitute corrective action requirements (alternative standards) for closure requirements for regulated units in cases where there is a release and both a regulated unit and a solid waste management unit or area of concern have contributed to the release. An interim status unit or facility does not have a hazardous waste permit, but has submitted a Part A permit application and is compliant with groundwater monitoring requirements. Currently, the commission's rules only allow the issuance of post-closure permits, not orders, for post-closure care at hazardous waste management facilities.

In order to implement the provisions of HB 2912 and the 1998 federal regulations, the commission is proposing several concurrent changes. These proposed rules would update Chapter 39 by adding public participation requirements applicable to post-closure orders, including public notice and an opportunity to comment on at least three occasions. An opportunity for a contested case hearing would be provided upon request by the executive director, applicant, and the Public Interest Counsel.

The proposed rules would affect all applicants who voluntarily seek orders in lieu of permits for interim status land-based units that close with waste in place or request alternate corrective action requirements

for commingled contaminant plumes. Examples of sites affected include a publicly- or privately-owned hazardous waste management facility consisting of hazardous waste processing, storage, or disposal units such as one or more landfills, surface impoundments, land treatment facilities, or a combination of units. The total number of applications for orders cannot be determined at this time. There are an estimated 28 facilities affected by the proposed rules, some of which may be owned and operated by units of government. Additional facilities may be affected by the proposed rules if and when they chose to implement alternative corrective action requirements under an order.

The commission anticipates there may be cost savings for sites affected by the proposed rules, due to a likely decrease in the number of contested case hearings. The proposed rules are voluntary in nature and are intended to provide regulated entities with post-closure regulatory alternatives. The proposed rules allowing for orders in lieu of permits would require applicants to achieve equivalent levels of environmental protection compared to existing procedures. No additional environmental controls are required by this rulemaking, beyond what is already required by existing regulations. The proposed rules would still require three separate public notice sessions during the application of a post-closure order; however, there would be no provision allowing the public to request a contested case hearing on the application as is currently allowed under existing post-closure permit rules. This change will likely result in cost savings, which cannot be estimated at this time, for the agency and other affected units of state and local government. Based on commission data, the cost for contested case hearings vary greatly, but can exceed \$100,000.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of implementing the proposed rules will be implementation of provisions of HB 2912, and incorporation of rule updates to make commission rules consistent with federal regulations.

The proposed rules are intended to implement certain provisions of HB 2912, and federal regulations that were promulgated in the October 22, 1998 issue of the *Federal Register* (63 FR 56509). In order to implement the provisions of HB 2912 and the 1998 federal regulations, the commission is proposing several concurrent rule changes. These proposed rules would update Chapter 39 by adding public participation requirements applicable to post-closure orders, including public notice and an opportunity to comment on at least three occasions. An opportunity for a contested case hearing would be provided upon request by the executive director, applicant, and the Public Interest Counsel, but not by the public as is currently allowed.

The commission anticipates there will be cost savings to affected individuals and businesses, due to potentially fewer contested case hearings. There are an estimated 28 facilities currently eligible for post-closure orders, the majority of which are operated by larger industrial businesses. It is unknown how many of these facilities will require post-closure care and conduct such care under a post-closure order in lieu of a post-closure permit. Additionally, it is unknown how many current and future applications for orders will be received by the agency that would have resulted in requests for contested case hearings under existing regulations. Based on commission data, the cost for contested case hearings vary greatly, but can exceed \$100,000.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses due to implementation of the proposed rules, which are intended to implement certain provisions of HB 2912, and federal regulations that were promulgated in the October 22, 1998 issue of the *Federal Register* (63 FR 56509).

In order to implement the provisions of HB 2912 and the 1998 federal regulations, the commission is proposing several concurrent rule changes. This rulemaking would update Chapter 39 by adding public participation requirements applicable to post-closure orders, including public notice and an opportunity to comment on at least three occasions. An opportunity for a contested case hearing would be provided upon request by the executive director, applicant, and the Public Interest Counsel, but not by the public as is currently allowed.

The commission anticipates there will be cost savings to affected small and micro-businesses, due to potentially fewer contested case hearings. There are an estimated 28 facilities currently eligible for post-closure orders, some of which may be owned and operated by small or micro-businesses. It is unknown how many of these facilities will require post-closure care and conduct such care under a post-closure order in lieu of a post-closure permit. It is unknown how many current and future applications for orders will be received by the agency that would have resulted in requests for contested case hearings under existing regulations. Based on commission data, the cost for contested case hearings vary greatly, but can exceed \$100,000.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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 proposed 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 proposed rules would 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 proposed 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 proposed rules do not meet any of these four applicability requirements. These proposed 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 proposed 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 proposed 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 would be authorized in accordance with these rules are authorized by EPA RCRA regulations. These rules are not proposed 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. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed rules is to implement applicable requirements of HB 2912, which amended THSC, §361.082 and TWC, §7.031. The purpose of these proposed 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 proposed 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 proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed 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 would otherwise exist in the absence of these regulations. The proposed 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 proposed rules provide an option for a new mechanism to provide post-closure care. The proposed rules also allow for corrective action requirements as an alternative to closure requirements. Therefore, these proposed rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed 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 proposed rules are not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808.

Comments must be received by 5:00 p.m., October 28, 2002, and should reference Rule Log Number 2000-048-335-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§39.420

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements TWC, §5.103 and §7.031 and THSC, §361.024 and §361.082.

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

(a) - (d) (No change.)

(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 proposed 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.

The new sections implement TWC, §5.103 and §7.031 and THSC, §361.024 and §361.082.

§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).