

The Texas Commission on Environmental Quality (commission) adopts the amendments to §55.101 and §55.201. Sections 55.101 and 55.201 are adopted *with changes* to the proposed text as published in the April 9, 2004 issue of the *Texas Register* (29 TexReg 3586), and will be republished.

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

There are three separate reasons for the adopted amendments.

First, the adopted amendments to §55.101(f)(4) and §55.201(i)(6) implement House Bill (HB) 2567, 78th Legislature, 2003, which amended the Texas Water Code (TWC) by adding new §27.021. HB 2567 allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without a contested case hearing under TWC, §27.018, as long as all requirements for a Class I injection well permit are met. This rulemaking does not affect public notice of a permit application, opportunity to comment on a permit application, or the opportunity to request a public meeting on a permit application under §55.154. The public meeting provisions of §55.154 satisfy the public hearing provisions of 40 Code of Federal Regulations §124.12.

HB 2567 may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the potential for a contested case hearing under the provisions of TWC, §27.018. TWC, §27.021(b) establishes a notice and comment process for applications for the disposal of brine in Class I injection wells. It further sets forth that notwithstanding TWC, §27.018, this type of application is not subject to the hearing requirements of Texas Government Code, Chapter 2001. However, HB

2567 did not address the commission's discretionary authority to hold a hearing under its general powers.

If desalination brine is hazardous, and the applicant wishes to dispose of the hazardous waste in a Class I well, then the well (and in most cases the surface facility) must be permitted by the commission. In addition, the applicant is subject to the United States Environmental Protection Agency's (EPA's) regulations regarding a no-migration demonstration.

This rulemaking does not affect hearings on applications that seek authorization to dispose of desalination brine through methods other than Class I injection wells. Other options for disposal of nonhazardous desalination brine include Class V injection wells, evaporation ponds, and surface discharge under a Texas Pollutant Discharge Elimination System permit. 30 TAC §331.11(a) limits Class V wells to disposal of nonhazardous wastes. Disposal of nonhazardous waste through the use of a Class V injection well can be authorized by rule or by a site-specific permit, subject to certain water quality limitations. Authorizations by rule are not subject to hearings, while site-specific permits for Class V wells are subject to the hearing request process provided under Chapter 55.

Second, the adopted amendment to §55.101(g)(11) and the addition of §55.201(i)(7) updates the list of applications that are not subject to a contested case hearing by adding applications for pre-injection unit registrations. Pre-injection unit registrations were created by a previous rulemaking in the January 3, 2003 issue of the *Texas Register* (28 TexReg 340). The rules for pre-injection unit registrations, which can be found in 30 TAC §331.17 and §331.18, do not provide for contested case hearings.

Third, the adopted amendment to §55.101(f)(4) removes applications for weather modification licenses or permits from the list of applications that are not subject to a contested case hearing because the commission no longer administers the weather modification licensing and permitting program. Senate Bill (SB) 1175, 77th Legislature, 2001 transferred all powers, duties, obligations, rights, records, employees, and property that are used to administer the weather modification licensing and permitting program from the commission to the Texas Department of Licensing and Regulation. Additionally, SB 1175 transferred all powers, duties, obligations, rights, contracts, records, property, and unspent and unobligated appropriations and other funds used to administer the weather modification grant program to the Texas Department of Agriculture. The commission repealed the majority of the rules regarding weather modification in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1498).

Changes to 30 TAC Chapters 50, 305, and 331 are also adopted in this issue of the *Texas Register* to implement HB 2567.

#### SECTION BY SECTION DISCUSSION

The adopted amendment to §55.101, Applicability, updates the lists in subsections (f) and (g). Subsection (f) contains a list of applications and exemptions and provides that the hearing requests related to those applications and exemptions are not subject to the provisions of Chapter 55, Subchapters D - G. Subsection (g) contains a list of applications and permits that are not subject to Subchapters D - G. In subsection (f), the adopted amendment deletes paragraph (4), which references weather modification licenses or permits. These licenses or permits are no longer regulated by the commission. The adopted amendment also adds applications for Class I injection well permits used

only for the disposal of desalination brine as new paragraph (4). In subsection (g), the adopted amendment adds applications for pre-injection unit registrations to existing paragraph (11), and the existing language in paragraph (11) will move to new paragraph (12).

The adopted amendment to §55.201, Requests for Reconsideration or Contested Case Hearing, updates subsection (i), which contains the list of applications for which there is no right to a contested case hearing. Two applications are added to the list. First, applications for Class I injection well permits used only for the disposal of brine from desalination operations are added to paragraph (6), and the existing language under paragraph (6) is added to new paragraph (8). Second, applications for pre-injection unit registrations are added to new paragraph (7). This second change updates the list so that it conforms to previous adoptions.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission determined that the adopted amendments are not subject to §2001.0225 because they 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 do not meet the definition of “major environmental rule” because the specific intent of the amendments is to update the procedural rules to provide that an application for a Class I injection well

for the disposal of brine produced by a desalination operation and an application for a pre-injection unit registration are not subject to a contested case hearing, and to remove an outdated reference to weather modification. The rules substantially advance this purpose by providing under §55.201(i) that the application for a Class I injection well for the disposal of desalination brine is not subject to a contested case hearing, by adding applications for pre-injection unit registrations to the list of matters not subject to a contested case hearing, and by removing a reference to weather modification licenses or permits. The adopted rules do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because the rules simply conform the procedural rule for applications not subject to a contested case hearing to the statute. The amendments are not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the permit for a Class I injection well for the disposal of desalination brine must meet all the statutory and regulatory requirements for issuance of a permit for a Class I injection well and because the provision relating to applications for pre-injection units reflects existing rules and does not adversely affect these interests.

In addition, the amendments do not exceed the four applicability requirements of Texas Government Code, §2001.0225(a), because the adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or seek to adopt a rule solely under the general powers of the agency.

The amendments do not exceed a standard set by federal law because there are no corresponding federal standards requiring a contested case hearing on an application for a Class I injection well permit, a pre-

injection unit registration, or a weather modification license or permit. Furthermore, the amendments do not exceed an express requirement of state law because the exemption for Class I wells that dispose of brine produced by a desalination operation is mandated by state law, because no state law expressly requires a contested case hearing on pre-injection unit registrations, and because state law expressly moved the weather modification program from the commission to the Texas Department of Licensing and Regulation. In addition, the amendments do not exceed any requirement of the delegation agreement concerning injection wells because the delegation agreement does not establish express requirements for a contested case hearing for the issuance of a Class I injection well permit for the disposal of brine from a desalination operation and because the delegation agreement does not address pre-injection unit registrations or weather modification licenses or permits. Finally, the amendments are not adopted solely under the general powers of the agency but are adopted under the specific provisions of TWC, §27.019 and §27.021.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted amendments and performed an assessment of whether the amendments constitute a taking under Texas Government Code, §2007.043.

The specific purpose of the rulemaking is to revise the lists in §55.101 and §55.201 so they reflect the following: recent amendments to TWC, §27.021, current rules regarding pre-injection unit registrations, and the transfer of the weather modification licensing and permitting program away from the commission.

In §55.101, the rulemaking revises subsections (f) and (g). Subsection (f) contains a list of applications and exemptions not subject to hearing requests under Subchapters D - G. In subsection (f), the rulemaking adds applications for Class I injection well permits used only for the disposal of desalination brine and removes applications for weather modification licenses or permits because the commission no longer administers the weather modification licensing and permitting program. Subsection (g) contains a list of applications and permits not subject to Subchapters D - G. In subsection (g), the rulemaking adds applications for pre-injection unit registrations.

In §55.201, the rulemaking revises the list in subsection (i), which contains the list of applications for which there is no right to a contested case hearing. The rulemaking adds applications for Class I injection well permits used only for the disposal of brine from desalination operations and applications for pre-injection unit registrations to subsection (i).

The rulemaking substantially advances the previously stated purposes by providing that the permit procedures for Class I injection wells for the disposal of brine produced by desalination operations and the procedures for pre-injection unit registrations do not provide for a contested case hearing under TWC, §27.018, and by removing applications for weather modification licenses or permits from the list in §55.10.

The amendments do not impose any burden on private real property and do not result in any benefit to society from the use of private real property because the amendments do not directly apply to the ownership or use of private real property.

Promulgation and enforcement of the amendments will not be a statutory or a constitutional taking of private real property because the amendments do not apply to ownership or use of private real property. The amendments do not burden, restrict, or limit an owners right to property, or reduce its value by 25% or more beyond any reduction in value that would otherwise exist in the absence of the adopted amendments.

The commission has no reasonable alternative actions that could accomplish the specified purposes of revising the lists in §55.101 and §55.201 so they reflect recent amendments to the TWC and conform to current rules. Without the adopted amendments, these lists would remain outdated.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council. This rulemaking is a procedural change that allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without providing a contested case hearing under TWC, §27.018. The commission determined that the amendments are consistent with CMP goals and policies because the rulemaking is a procedural change that does not modify any of the requirements for the permitting of this kind of disposal, and the amendments therefore do not have a direct or significant adverse effect on any coastal natural resource areas, nor do they have a substantive effect on commission actions subject to the CMP. Promulgation and enforcement of the amendments does not violate or exceed any standards identified in the applicable CMP goals and policies.

#### PUBLIC COMMENT

The comment period ended May 10, 2004. Two written comments were received: one from EPA, Region 6, and another from the commission's Office of Public Interest Counsel (OPIC). EPA suggested changes to the rulemaking but did not indicate support of or opposition to the rules. OPIC indicated support of the rules.

#### RESPONSE TO COMMENTS

EPA recommends modifying the preamble to include language that clarifies that the opportunity to comment and request a public meeting, as described in §55.154 and 40 CFR §124.12, is not affected by the rulemaking.

**The preamble has been modified to address this concern by stating that this rulemaking does not affect the opportunity to comment on a permit application or the opportunity to request a public meeting under §55.154. The preamble also states that the public meeting provisions of §55.154 satisfy the public hearing provisions of 40 CFR §124.12.**

EPA recommends that the rulemaking explicitly state that permit applications for Class V wells for the disposal of waste from desalination operations are still subject to the opportunity for a contested case hearing. EPA also recommends identifying the state rules that prohibit the use of Class V wells for the injection of hazardous waste.

**The preamble has been modified to clarify that disposal of nonhazardous waste through the use of a Class V injection well can be authorized by rule or by a site-specific permit. The preamble also adds that this rulemaking does not affect hearings for a site-specific permit application that seeks authorization to dispose of desalination brine in a Class V injection well. This rulemaking does not impact authorizations by rule for Class V injection wells for disposal of desalination brine because authorizations by rule are not subject to the public hearing request process. The preamble also states that §331.11(a) limits Class V wells to disposal of nonhazardous wastes.**

EPA recommends that the rulemaking clarify that applicants applying for a permit to dispose of hazardous waste from desalination operations in a Class I well must file a Land Ban no-migration petition with EPA.

**The preamble has been modified to address this concern by stating that if desalination brine is hazardous, and the applicant wishes to dispose of it in a Class I well, then the well (and in most cases the surface facility) must be permitted by the commission, and the applicant is also subject to EPA's regulations regarding a no-migration demonstration.**

EPA also recommends that the rulemaking clarify that, in cases involving hazardous waste from desalination operations, no exception to the opportunity for contested case hearings will be granted.

**The legislature did not differentiate between hazardous and nonhazardous waste when it enacted TWC, §27.021. Under TWC, §27.021, all Class I underground injection control permit**

**applications for the disposal of desalination brine, whether hazardous or nonhazardous, are subject to public notice and comment procedures but are not subject to a contested case hearing under TWC, §27.018.**

**The EPA is recommending that the commission continue to make some permits issued under TWC, §27.021 subject to a contested case hearing. This recommendation exceeds the requirements of the EPA's federal rules for underground injection control. The federal rules require a public hearing under 40 CFR §124.12 but do not require a contested case hearing.**

**The commission's public meeting requirements in §55.154 satisfy the federal public hearing requirements (40 CFR §124.12). Public meetings provide an opportunity for public input and anyone can participate in a public meeting, but only affected parties may participate in a contested case hearing.**

**No change has been made in response to this comment.**

OPIC supports adoption of the rule and supports the recognition in the preamble that the rule changes do not affect the commission's discretionary authority to hold a hearing if the commission determines that a hearing is in the public interest. OPIC also agrees that the language added by HB 2567 does not remove the power of the commission to hold a hearing under TWC, §5.102(b). OPIC stated that the language added by HB 2567 does not remove the power of the commission to hold a hearing under TWC, §27.018. Moreover, OPIC stated that TWC, §27.021 does not exempt desalination injection

well permit applications from the power of the commission to grant a hearing in the public interest under TWC, §27.018(a).

**The commission appreciates the support for this rulemaking.**

**Under TWC, §27.021(b), permit applications authorized by TWC, §27.021 are not subject to the hearing provisions in TWC, §27.018. The first sentence of TWC, §27.021(b) provides for public notice and comment. The second sentence of TWC, §27.021(b) states that an application authorized by §27.021 is not subject to the hearing requirements of Texas Government Code, Chapter 2001, notwithstanding §27.018. The language contained in TWC, §27.021(b) means that permits issued under §27.021 are subject to public notice and comment procedures and are not subject to the hearing provisions under §27.018.**

**HB 2567 did not address the commission's discretionary authority to hold a hearing under its general powers. No change has been made in response to this comment.**

## **SUBCHAPTER D: APPLICABILITY AND DEFINITIONS**

### **§55.101**

#### **STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001. The pre-injection unit registration amendment is also adopted under Texas Health and Safety Code, §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; and under Texas Health and Safety Code, §401.051, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

#### **§55.101. Applicability.**

(a) Subchapters D - G of this chapter (relating to Applicability and Definitions; Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) apply to permit applications

that are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section.

(b) Subchapters D - G of this chapter apply to public comments, public meetings, hearing requests, and requests for reconsideration.

(c) Subchapters D - F of this chapter apply only to applications filed under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382.

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section and other than those filed under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382.

(e) Subchapters D - F of this chapter apply to applications for amendment, modification, or renewal 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. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Processing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing if 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.

(f) Subchapters D - G of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Exemptions from Permitting) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project;

(4) applications for Class I injection well permits used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells; and

(5) applications where the opportunity for a contested case hearing does not exist under other laws.

(g) Subchapters D - G of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal and Transportation);

(2) applications for authorization 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;

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under Texas Water Code, Chapter 13 and Texas Water Code, §§11.036, 11.041, or 12.013. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of hearing requests under standards specified by law, and may refer the application to the chief clerk for hearing processing. The maximum expected duration of a hearing on an application referred to the State Office of Administrative Hearings under this provision shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a State Office of Administrative Hearings hearing on an application subject to this provision are all those issues that are material and relevant under the law;

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

(7) applications for initial issuance of voluntary emissions reduction permits under Texas Health and Safety Code, §382.0519.

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

(9) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(10) applications for multiple plant permits under Texas Health and Safety Code, §382.05194;

(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-injection Units Registration); and

(12) applications where the opportunity for a contested case hearing does not exist under other laws.

**SUBCHAPTER F: REQUESTS FOR RECONSIDERATION OR  
CONTESTED CASE HEARING**

**§55.201**

**STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of TWC, §27.018 and Texas Government Code, Chapter 2001. The pre-injection unit registration amendment is also adopted under Texas Health and Safety Code, §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; and under Texas Health and Safety Code, §401.051, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

**§55.201. Requests for Reconsideration or Contested Case Hearing.**

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

- (1) the commission;
- (2) the executive director;
- (3) the applicant; and
- (4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, and may not be based on an issue that was raised solely in a public 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.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

(e) Any person may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case

hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, and the public interest counsel, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of a voluntary emission reduction permit or an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits); or

(C) amendment, modification, or renewal of an air 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. The commission may hold a contested case hearing if 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;

(4) hazardous waste permit renewals under §305.65(a)(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit  
if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be  
discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will  
maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public  
comment has been given; and

(E) the applicant's compliance history for the previous five years raises no  
issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells;

(7) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-injection Units Registration); and

(8) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law.