

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§39.405, 39.418, 39.419, 39.503, 39.603, 39.604, and 39.651. Sections 39.405, 39.503, 39.603, and 39.604 are adopted *with changes* to the proposed text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2834). Sections 39.418, 39.419, and 39.651 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Prior to this rule adoption, alternative language notice was only required for air quality authorizations. The requirement to publish notice in an alternative language newspaper is triggered for air authorizations when either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program under the Texas Education Code. This standard applies to newspaper publication of the Notice of Receipt of Application and Intent to Obtain Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD), as identified under §39.418 and §39.419.

In response to recent legislative inquiries concerning the absence of bilingual public notice in media other than air quality, the commission proposed revisions to existing public notice regulations to maximize public participation in the permitting process, while complementing the goal of House Bill (HB) 801, enacted in 1999, to encourage early public participation. Under the adopted amendments, the requirement to provide published, public notice in an alternative language extends to NORIs and NAPDs for Municipal Solid Waste Permits, Industrial or Hazardous Waste Facility Permits, Class 3 Modifications of Industrial or Hazardous Waste Facility Permits, Wastewater Discharge Permits

(including permits for the disposal of sewage sludge or water treatment sludge, but excluding registrations and notifications for sludge disposal under 30 TAC §312.13), Underground Injection Control Permits, and applications for production area authorizations. It is important to note that this adopted rulemaking is not intended to change current notice requirements applicable to a particular program, but rather to require alternative language notice under specified circumstances. The adoption ensures meaningful participation in the permitting process.

The commission originally proposed that the alternative language newspaper notice requirements would apply to permit applications that are declared administratively complete by the executive director on or after March 31, 2006. The period of time between anticipated rule adoption and the trigger date of the new alternative language notice requirements was provided in the proposed rulemaking as a cushion to ensure adequate time for the translation of notice templates, designed to assist the regulated community in satisfying its notice obligations. Since the rulemaking was proposed, it has become clear that the agency will be in a position to offer this translated template assistance upon adoption of this rulemaking. Therefore, the commission adopts language that makes the alternative language newspaper notice requirements applicable to implicated applications filed on or after the effective date of this rulemaking, consistent with relevant provisions of the Texas Government Code.

SECTION BY SECTION DISCUSSION

To conform with commission and Texas Register formatting requirements, non-substantive revisions are made throughout the sections to correct citations, acronym usage, and other minor issues. The commission also changes the word “shall” to “must,” “must” to “shall,” and “which” to “that” in

numerous locations to the adopted amendments to conform to the drafting rules in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 39.405, General Notice Provisions

The adopted amendment to §39.405 would require newspaper publication of notice in alternative language(s) under certain circumstances. Specifically, when an applicant is required to publish a NORI or a NAPD, and either the elementary or middle school nearest in proximity to the facility subject to the permit application is required to provide a bilingual education program under the applicable provision of the Texas Education Code, in conjunction with the satisfaction of one of three elements identified in this adopted section, the applicant must publish the notice in an alternative language newspaper that is printed in the same language as that taught through the school bilingual education program.

To conform to Texas Register requirements, subsection (g) is adopted with change by adding “Copy of Application” so that the subsection structure is consistent with that of the other subsections.

Subsection (h) also sets standards for the acceptable circulation of an alternative language newspaper that may publish the required notice. The standards differ between notice for air quality permits and notices for all other media, which require alternative language notice publication under this adopted subsection. This difference is based upon the existence of specific statutory direction regarding the circulation standards for air quality alternative language notice publications. The standard for non-air quality alternative language notice publications is designed to achieve appropriate public notice,

consistent with the approach implemented in the English newspaper publication requirements for certain HB 801 authorizations. It should be noted that the newspaper circulation requirements differ between English and alternative language notices. This is due to the inherent differences between English and alternative language newspaper publications, and the statutory requirements which prescribe the circulation standards for newspapers qualified to publish English notices. The English newspaper circulation requirements also differ between media, such as solid waste versus water quality, per statutory mandate.

For air quality authorizations, an applicant is required to publish in a newspaper or publication of general circulation within either the municipality or county in which the subject facility is or will be located. This circulation requirement is mandated by statute. For waste and water quality authorizations, an applicant is required to publish in the county where the facility is or will be located. However, if there is a newspaper or publication of general circulation in the municipality that is home to the subject facility, then the applicant must publish in that newspaper or publication. The rationale behind this requirement is to avoid a result in which an applicant publishes notice in a part of the facility's county that is far in proximity from the potentially interested community.

Additionally, the adopted amendment provides a waiver under limited circumstances if all qualifying newspapers refuse to publish the notice or no qualifying publication exists within the applicable geographical area as currently provided for in the air quality permitting program.

The adopted amendment changes the applicability requirements set forth in the amendment as proposed to the extent that the alternative language newspaper notice requirements will apply to implicated permit applications which are filed on or after the effective date of these rule amendments. This change was made to ensure that the requirements of the rule were implemented in a timely manner. In light of the agency's ability to provide translated notice templates to assist the regulated community at the time that this rule will become effective, the commission is prepared to move forward with instituting these requirements upon adoption.

The adopted amendment also changes the publication requirements with respect to waste and water quality applications to require that alternative language notice be published only once within a publication. This alteration effectively maintains consistency with the counterpart English waste and water quality notice requirements. The requirement for the placement of a second, smaller notice for both English and alternative language newspaper publications within the air quality program remains unchanged. Furthermore, the adopted amendment changes publication waiver verification requirements to exclude waste and water quality authorization applicants from having to provide air pollution control agencies or the EPA copies of publication waiver verifications. These notifications are specific to the air quality program and continue to apply to applicable air quality authorization applicants. Finally, the adopted amendment changes the rule structure by moving the waste and water quality notice content requirements to directly follow the content requirements for air quality alternative language notices in order to ensure clear and consistent rule language.

Section 39.418, Notice of Receipt of Application and Intent to Obtain Permit

The adopted amendment to §39.418(b)(1) and (3) adds language clarifying that published notices under paragraphs (1) and (3) are subject to the alternative language newspaper publication requirements of §39.405(h).

Section 39.419, Notice of Application and Preliminary Decision

The adopted amendment to §39.419(b) and (e)(3) adds language clarifying that published notices under subsections (b) and (e)(3) are subject to the alternative language newspaper publication requirements of §39.405(h).

Section 39.503, Application for Industrial or Hazardous Waste Facility Permit

To conform to Texas Register formatting requirements, §39.503(c) is adopted with change to amend the citation “40 CFR §124.32(b) - (c)” to “40 CFR §124.32(b) and (c).”

The adopted amendment to §39.503(d) adds language clarifying that published notices under subsection (d) are subject to the alternative language newspaper publication requirements of §39.405(h).

Section 39.603, Newspaper Notice

The adopted amendment to §39.603 deletes previously existing subsection (d), which set forth procedural and substantive requirements for publishing certain notices of air quality permit applications in an alternative language newspaper. In light of adopted §39.405(h), the effect of the air-specific alternative language newspaper notice provision would be duplicative and unnecessary. There would

be no alteration to the current alternative language newspaper notice requirements for air quality permits as a result of the adopted amendment to §39.603.

Section 39.604, Sign-Posting

The adopted amendment to §39.604 changes the previously existing cross-reference in subsection (e), which applied the trigger for the air-specific alternative language newspaper notice requirements to alternative language sign-posting requirements within the air quality permitting program. Under the adopted amendments, §39.603, as it pertains to alternative language newspaper notice, would be deleted. However, the requirements of §39.603(d) remain in full force and effect under adopted §39.405(h). Therefore, the substitution of the cross-reference to §39.603 in favor of §39.405(h) achieves regulatory accuracy without imposing any different substantive change in requirements to the sign-posting requirements under §39.604. Non-substantive changes were made to §39.604(e), including the correction of citation to the waiver provisions in §39.405(h)(7) and the deletion of a rule citation in the next to the last sentence, which was included as a typographical error.

Section 39.651, Application for Injection Well Permit

The adopted amendment to §39.651(d) adds language clarifying that published notices under subsection (d) are subject to the alternative language newspaper publication requirements of §39.405(h).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. A "major environmental rule" is 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The primary purpose of this rulemaking action is to extend the alternative language notice requirements, as they exist within the air quality permitting program, to waste and water quality authorizations subject to HB 801 procedural requirements. The goal of this expansion is to maximize public awareness of, and involvement in, the commission's authorization activities. The rulemaking is procedural in nature and does not address environmental risks or exposures. Therefore, the rulemaking does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the rulemaking action under Texas Government Code, §2007.043. The specific primary purpose of the amendments is to revise the TCEQ rules to establish procedures for the provision of bilingual notice to the public of certain TCEQ permitting proceedings. The amendments will substantially advance this purpose by providing specific provisions on the previously mentioned matters. Promulgation and enforcement of the amendments will not affect private real property, which is the subject of the amendments because the rulemaking is

related to the commission's procedural rules, rather than substantive requirements. Implementation of the amendments will not result in any taking of real property. Alternative approaches to the amendments would include shifting financial burdens associated with providing notice in alternative language upon the state, or altering the scope of authorizations that would be subject to alternative language notice requirements. The alternatives to the amendments would advance the underlying goal of maximizing public involvement in environmental matters that concern the citizens of Texas. If implemented, neither the amendments as adopted, nor these alternatives, would constitute a taking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the action is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to the rules subject to the Texas Coastal Management Program (CMP), and therefore requires that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with the CMP goals and policies because the rulemaking concerns public notice rules. The public notice rules are a procedural mechanism for notifying the general public of certain permitting actions, but will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This rulemaking will not affect sites subject to the federal operating permits program in Chapter 122.

PUBLIC COMMENT

A public hearing for this rulemaking action was held on June 10, 2005, in Austin, and the comment period closed on June 13, 2005. The commission received written comments from Texas Representative Juan M. Escobar and an individual.

RESPONSE TO COMMENTS

Representative Escobar expressed gratitude towards the agency for proposing to amend its rules to provide notice in alternative languages to better serve the citizens of Texas.

Response to Comment

The commission appreciates the comments submitted by Representative Escobar on behalf of his constituency and the citizens of Texas.

An individual commented that the cost estimates or calculations are neither comprehensive nor inclusive of all potential costs to be borne by businesses or applicants. Specifically, the individual commented that the cost estimate did not account for expenses related to legal and title searches associated with mineral ownership verification obligations.

Response to Comment

The commission researched the costs of alternative language newspaper publication statewide and considered statistics concerning the anticipated number of applicants to be affected by this rulemaking in an effort to best quantify the financial implications associated with expanding alternative language notice publication requirements. This rulemaking will not require applicants to incur expenses related to legal and title searches associated with mineral ownership verification obligations. Therefore, such expenses are outside the scope of the rulemaking and were not considered by the commission.

An individual commented generally that the notice requirements under the proposal are vague and indefinite. Specifically, the individual suggested that under §39.651(c), it would prove clearer and definitive to substitute the term “district represented” for the term “area” as it is used to identify the facility location and state official who is to be notified under the applicable regulation.

Response to Comment

The amendments adopted through this rulemaking are narrowly limited to extending alternative language public notice requirements to media other than air quality. The adopted rule language concerning notice is consistent with that which currently exists within the public notice regulatory framework. More specifically, this language is consistent with Texas Water Code (TWC), §5.552(b)(2)(A), applicable to injection well permits, which provides that notice must be mailed to “the state senator and the representative who represent the general area in which the facility is located or proposed to be located.” With respect to the comments on §39.651(c), this rulemaking does not seek to amend this section in a substantive manner. Section 39.651(c) is amended to

conform with commission and Texas Register formatting requirements. The substantive requirements under subsection (c) were in existence prior to this rulemaking and are outside the scope of the adopted amendments.

An individual commented that the notice requirements under §39.651(c)(4)(D), (d)(4)(D), and (f)(3)(B)(iv), concerning the provision of notice to mineral rights owners, are impracticable and potentially impossible. The individual suggests altering the scope of notice recipients to include “not less than one mineral owner or a certain percentage of ownership.”

Response to Comment

The amendments adopted through this rulemaking are not intended to affect regulatory requirements existing prior to this rulemaking except to extend alternative language newspaper public notice requirements to non-air quality media. The regulatory provisions cited by the individual deal with requirements outside the scope of the adopted amendments. The commission notes that the requirement to provide mailed notice to persons that own mineral rights underlying tracts of land adjacent to an existing or proposed injection well facility is consistent with the provisions of the Injection Well Act. Specifically, TWC, §27.051(a)(2) provides that the commission may issue an injection well permit if it includes in its findings that no existing rights, including mineral rights, will be impaired.

An individual commented that the newspaper notice requirements contained in §39.651(f)(2)(A) are vague and indefinite. Specifically, the individual expressed concern whether the use of the term “area”

as the standard for determining which newspaper is the appropriate choice to satisfy the publication requirements.

Response to Comment

The amendments adopted through this rulemaking are not intended to affect regulatory requirements existing prior to this rulemaking except to extend alternative language newspaper public notice requirements to non-air quality media. The regulatory provisions cited by the individual deal with requirements outside the scope of the adopted amendments. The individual also commented on §39.651(f)(2)(A), which relates to notices for contested case hearings. However, this rulemaking package is limited to published notices for NORIs and NAPDs. Also, §39.651(f)(2)(A) was opened for the purpose of conforming the language with accepted drafting standards. Furthermore, the use of the term “area” is consistent with federal requirements.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§§39.405, 39.418, 39.419

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.013, concerning General Jurisdiction of Commission; §5.102, concerning General Powers; §5.103, concerning Rules; §5.105, concerning General Policy; §5.115, concerning Persons Affected in Commission Hearings; Notice of Application; §5.552, concerning Notice of Intent to Obtain a Permit; and §5.553, concerning Preliminary Decision; Notice and Public Comment. The amendments are also adopted under TWC, §26.028, concerning Action on Application; Texas Health and Safety Code, §361.011, concerning Commission's Jurisdiction: Municipal Solid Waste; §361.017, concerning Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; §361.024, concerning Rules and Standards; §361.064, concerning Permit Application Form and Procedures; §361.0665, concerning Notice of Intent to Obtain Municipal Solid Waste Permit; §361.082, concerning Application for Hazardous Waste Permit: Notice and Hearing; and §361.121, concerning Land Application of Certain Sludge; Permit Required. The extension of alternative language notice requirements to the regulated underground injection control media is also supported by TWC, §27.019, concerning Rules, Etc.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.115, 5.552, 5.553, 26.028, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, 361.064, 361.0665, 361.082, and 361.121.

§39.405. General Notice Provisions.

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

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

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

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

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

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

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

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

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality. For air applications subject to §39.603 of this title (relating to Newspaper Notice), applicants shall instead publish notice as required by that rule; and

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

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

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

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

(h) Alternative language newspaper notice.

(1) Air applications or registrations that are declared administratively complete by the executive director on or after September 1, 1999, are subject to this subsection. Permit applications other than air applications or registrations that are required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after the effective date of this subsection are subject to the requirements of this subsection.

(2) This subsection applies whenever notice is required to be published under §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision), and either the elementary or middle school nearest to

the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

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

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

(C) the school that otherwise would be required to provide a bilingual education program waives out of this requirement under 19 TAC §89.1205(g).

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

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

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

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

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

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

(i) permit application number;

(ii) company name;

(iii) type of facility;

(iv) description of the location of the facility; and

(v) a note that additional information is in the public notice section of the same issue.

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

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

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

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

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

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

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

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

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

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

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

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

(3) for air applications, paragraphs (1) and (2) of this subsection do not apply. Instead the applicant shall provide notice as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Applications). Specifically, publication in the newspaper must follow the requirements under §39.603 of this title (relating to Newspaper Notice), sign posting must follow the requirements under §39.604 of this title (relating to Sign-Posting), and the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice). The applicant shall also follow the requirements, as applicable, under §39.405(h) of this title; and

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

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the chief clerk, except for air applications under subsection (e)(1) of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application

and Preliminary Decision. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.405(h) of this title (relating to General Notice Provisions), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications:

(1) The applicant is not required to publish Notice of Application and Preliminary Decision, if:

(A) no hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit;

(B) a 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;

(C) 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; or

(D) the application is for initial issuance of a permit described in §39.403(b)(11) or (12) of this title (related to Applicability) or §39.404 of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities);

(2) If notice under this section is required, the agency shall mail notice according to §39.602 of this title (relating to Mailed Notice); and

(3) Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Applications) and, as applicable, under §39.405(h) of this title for permits that are not exempt under paragraph (1)(A) - (D) of this subsection or are for the following federal preconstruction approvals:

(A) applications under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review);

(B) applications under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review); and

(C) applications under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

SUBCHAPTER I: PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§39.503

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, §361.017, Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; §361.024, Rules and Standards; §361.064, Permit Application Form and Procedures; and TWC, §5.103, Rules; §5.552, Notice of Intent to Obtain Permit; and 5.553, Preliminary Decision; Notice and Public Comment.

The adopted amendment implements Texas Health and Safety Code, §§361.017, 361.024, and 361.064; and TWC, §§5.103, 5.552, and 5.553.

§39.503. Application for Industrial or Hazardous Waste Facility Permit

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the

proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth at 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417. The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.45 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice must comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an applicant proposes a new hazardous waste facility, the agency shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application.

(2) If an applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests.

(3) If an applicant proposes a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) of this subsection if public notice is provided under this subsection.

(5) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(6) For public meetings held by the agency under paragraph (1) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) This subsection applies if an application is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (concerning Contested Case Hearings).

(2) Newspaper notice.

(A) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) or have a total size of at least nine column inches (18 square inches). The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the hearing.

(g) This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, apply to all applications for hazardous waste permits.

SUBCHAPTER K: PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

§39.603, §39.604

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.013, General Jurisdiction of Commission, §5.102, General Powers; and §5.103, General Policy; and Texas Health and Safety Code, §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.017, Rules; §382.051, Permitting Authority of Commission; Rules; and §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing.

The adopted amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.017, 382.051, and 382.056.

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(b)(1) - (6) and (8) - (10) of this title (relating to Text of Public Notice).

(b) Notice of Application and Preliminary Decision under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the

chief clerk has mailed the preliminary decision concurrently with the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(c) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air application, the applicant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411 of this title.

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

(A) permit application number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(d) Alternative publication procedures for small businesses.

(1) The applicant does not have to comply with subsection (c)(2) of this section if all of the following conditions are met:

(A) the applicant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Exemption from Permitting) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(e) If an air application is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant shall publish notice once in a newspaper as described in subsection (c) of this section, containing the information under §39.411(d) of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs must be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must be provided by the applicant and must substantially meet the following requirements:

(1) Signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1-1/2 inches in size and block printed capital lettering;

(2) Signs must be headed by the words listed in the following subparagraph:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must include the words "APPLICATION NO." and the number of the permit application. More than one application number may be included on the signs if the respective public comment periods coincide;

(4) Signs must include the words "for further information contact";

(5) Signs must include the words "Texas Commission on Environmental Quality" and the address of the appropriate commission regional office;

(6) Signs must include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant shall provide a verification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs must be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.405(h) of this title (relating to General Notice Provisions). The

applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must be satisfied without regard to whether alternative language newspaper notice is waived under §39.405(h)(7) of this title. The alternative language signs must meet all other requirements of this section.

**SUBCHAPTER L: PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC
APPLICATIONS**

§39.651

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, §361.017, Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; §361.024, Rules and Standards; §361.064, Permit Application Form and Procedures; and TWC, §5.103, Rules; §5.552, Notice of Intent to Obtain Permit; §5.553, Preliminary Decisions; Notice and Public Comment; and §27.019, Rules.

The adopted amendment implements Texas Health and Safety Code, §§361.017, 361.024, and 361.064; and TWC, §§5.103, 5.552, 5.553, and 27.019.

§39.651. Application for Injection Well Permit.

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed

location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (12) of this title (relating to Text of Public Notice). Notice under §38.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice shall be in the form required by Texas Water Code, §5.115(c).

(4) For notice of receipt of application and intent to obtain permit concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility; and

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" shall have the meaning provided for that term in Texas Water Code, Chapter 26.

(4) For notice of application and preliminary decision concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility; and

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment or requests for reconsideration or hearing. A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) This subsection applies if an application is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county wherein the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a

shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility; and

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) All published notices required by this section must be in a form approved by the executive director prior to publication.