

The Texas Commission on Environmental Quality (commission) proposes amendments to §§39.405, 39.418, 39.419, 39.503, 39.603, 39.604, and 39.651.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Currently, alternative language notice is 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 other media, the commission proposes 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 proposed amendments, the requirement to provide published, public notice in an alternative language would extend 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 proposed 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 proposal ensures meaningful participation in the permitting process.

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 proposes to change the word “shall” to “must,” “must” to “shall,” and “which” to “that” in numerous locations to the proposed amendments to conform to the drafting rules in the *Texas Legislative Council Drafting Manual*, October 2004.

Section 39.405, General Notice Provisions

The proposed 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 proposed 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.

Section 39.405(h) would also set 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 proposed 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 proposal 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 would be 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 would be 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 proposed 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.

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

The proposed amendment to §39.418(b)(1) and (3) would add 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 proposed amendment to §39.419(b) and (e)(3) would add language clarifying that published notices under subsection (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

The proposed amendment to §39.503(d) would add 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 proposed amendment to §39.603 would delete subsection (d), which sets forth procedural and substantive requirements for publishing certain notices of air quality permit applications in an

alternative language newspaper. In light of proposed §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 proposed amendment to §39.603.

Section 39.604, Sign-Posting

The proposed amendment to §39.604 would change the existing cross-reference in subsection (e), which applies 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 current proposal, §39.603, as it pertains to alternative language newspaper notice, would be deleted. However, the requirements of current §39.603(d) remain in full force and effect under proposed §39.405(h). Therefore, the substitution of the cross-reference to §39.603 in favor of §39.405(h) will achieve regulatory accuracy without imposing any different substantive change in requirements to the sign-posting requirements under §39.604.

Section 39.651, Application for Injection Well Permit

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

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, no significant fiscal implications are anticipated for the agency or other units of state as a result of administration or enforcement of the proposed amendments. There are anticipated fiscal implications for local governments due to increased publication. The proposed amendments would require that all Notices of Receipt and Intent (NORI) and Notices of Application and Preliminary Decision (NAPD), required for authorizations subject to the public notice requirements in Chapter 39, Subchapters H - N, be published in an alternative language in a bilingual newspaper in addition to the English publication requirements.

Current rules only require the Air Quality Permitting Program to provide notice in an alternative language when either an elementary or middle school closest to a facility or proposed facility offers a bilingual education program. The proposed amendments would extend the alternative language requirement to all NORI and NAPD notices for all House Bill (HB) 801 media if the nearest elementary or middle school to the facility or proposed facility has a bilingual education program. The experience of the Air Quality Permitting Program shows that approximately 60% of its notices are affected by the bilingual rules. This fiscal note assumes that the waste and water NORIs and NAPDs could be translated into Spanish templates through the use of contracted services. Based upon the experience of the air quality program, the vast majority of required alternative notices are published in Spanish. The agency does not provide templates to the applicants in other languages. In the rare circumstances in which publication is required in a non-Spanish alternative language, an applicant is required to ensure proper translation for publication.

An increase in the number of alternative language notices required will increase the cost to translate notices in a template format. Translation costs are negotiable and can vary widely depending on the vendor, the number of words in the document, the language difficulty of the document, and the number of documents a vendor may be asked to translate. Costs to translate 23 NORI and 25 NAPD templates are estimated to range from \$2,000 to \$7,000 for NORIs and \$2,500 to \$7,000 for NAPDs. These costs assume that a NORI for water quality issues would have an estimated 665 words and a NAPD would have 691 words. Recent quotes for translation costs ranged \$.15 cents a word to \$30 for 225 words and \$225 for 300 words. The number of words above the base word limits quoted were estimated to cost \$.15 cents per word to translate. If the actual number of words in a translated NORI or NAPD exceed the number of words used for cost estimates, then translation costs could be higher. Translation costs are expected to be one-time costs, but additional costs could be incurred in future years and will vary depending on legislative or rule changes that would affect the need to change the wording of the templates.

Local Governments

Local governments would be fiscally impacted by the proposed amendments. Local governments could see publication costs increase since NORIs and NAPDs will be required to be published in both English and an alternative language. However, the exact amount of publication costs, which for some local governments could be significant, is not known since such costs vary widely across the state depending on the circulation numbers of the newspaper, the size of the notice, and the number of competitors in the newspaper market. Costs to publish in alternative language newspapers with a circulation of 10,000 in an East Texas county where there is no large metropolitan area can range from \$600 to

\$630. Costs to publish public notices in an alternative language newspaper serving Hidalgo, Cameron, Starr, and Willacy Counties with a circulation of 15,000 is estimated to be \$255. In Harris County, publication costs in an alternative language newspaper can range from \$700 to \$1,000 depending on the circulation statistics of the paper. In Travis County, publication of public notices can range from \$400 to \$500.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes seen in the proposed amendments will be in compliance with legislative mandates and increased opportunity for non-English speaking citizens to become more involved in environmental issues that could affect them.

Fiscal implications are anticipated for businesses and individuals required to publish NORIs and NAPDs. Businesses and individuals, dealing with water and waste actions, will see an increase in publication costs since NORIs and NAPDs will be required to be published in both English and an alternative language. However, the exact amount of publication costs, which for some local governments could be significant depending on number of authorizations sought, is not known since such costs vary widely across the state depending on the circulation numbers of the newspaper, the size of the notice, and the number of competitors in the newspaper market. Costs to publish in alternative language newspapers with a circulation of 10,000 in a county where there is no large metropolitan area can be \$600 to \$630. Costs to publish public notices in an alternative language newspaper serving Hidalgo, Cameron, Starr, and Willacy Counties with a circulation of 15,000 is estimated to be \$255.

In Harris County, publication costs in an alternative language newspaper can range from \$700 to \$1,000 depending on the circulation statistics of the paper. In Travis County, publication of public notices can range from \$400 to \$500. Additional costs borne by regulated entities, may be passed on to rate payers, taxpayers, or consumers.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses because of the proposed amendments. A small business is defined as having fewer than 100 employees or less than \$1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees.

Small or micro-businesses would be subject to the same publication costs as those experienced by larger businesses when publishing waste and water NORIs and NAPDs in an alternative language. If publication costs for water and waste NORIs and NAPDs in an alternative language newspaper range from \$255 to \$1,000, cost per employee would range from \$2.55 to \$10 per employee. For a micro-business, these publication costs could range from \$12.75 to \$50 per employee.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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 proposed rulemaking action is to extend the alternative language notice requirements, as they currently 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 proposed 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 proposed rulemaking action under Texas Government Code, §2007.043. The specific primary purpose of the proposed 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 proposed amendments will substantially advance this purpose by providing specific provisions on the previously mentioned matters. Promulgation and enforcement of the proposed amendments will not affect private real property, which is the subject of the amendments because the proposed rulemaking is related to the commission's procedural rules, rather than

substantive requirements. Implementation of the proposed amendments would not result in any taking of real property. Alternative approaches to the amendments as proposed 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 proposed 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 proposed, nor these alternatives, would constitute a taking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking 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 will, therefore, require 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 proposed amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Comments on the consistency of this proposed rulemaking with the CMP may be submitted to the contact persons at the addresses listed under the SUBMITTAL OF COMMENTS section of this proposal.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

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

ANNOUNCEMENT OF HEARING

A public hearing for this proposed rulemaking has been scheduled for June 10, 2005, 10:00 a.m., at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building F, Room 2210, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available 30 minutes before the hearing to discuss the proposal and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Ms. Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-014-039-LS. Comments must be received no later than 5:00 p.m., June 13, 2005. For further information, please contact Mr. Les Trobman of the Environmental Law Division at (512) 239-6056 or Ms. Kerrie Qualtrough of the Environmental Law Division at (512) 239-3990.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§§39.405, 39.418, 39.419

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §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 proposed under Texas Water Code, §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 proposed extension of alternative language notice requirements to the regulated underground injection control media is also supported by Texas Water Code, §27.019, concerning Rules, Etc.

The proposed amendments implement Texas Water Code, §§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, 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 [shall] be exempt from any application fee requirements.

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

(c) Mail or hand delivery. 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) 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 [shall] 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 [SOAH].

(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 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 declared administratively complete by the executive director on or after March 31, 2006, are subject to 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) 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.

_____ (8) Notice under this subsection will only be required to be published within the
United States.

_____ (9) Each alternative language publication must follow the requirements of this chapter
that are consistent with this subsection.

_____ (10) If a waiver is received under this subsection, the applicant shall complete a
verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected
Agencies).

(11) Waste and water quality alternative language notices are subject to the requirements set forth in paragraph (6)(A) and (B) of this subsection.

§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 [shall] follow the requirements under §39.603 of this title (relating to Newspaper Notice), sign posting must [shall] 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 [shall] 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 [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 [shall] be published as specified in Subchapter K of this chapter (relating to Public Notification 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 proposed 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 Texas Water Code, §5.103, Rules; §5.552, Notice of Intent to Obtain Permit; and 5.553, Preliminary Decision; Notice and Public Comment.

The proposed amendment implements Texas Health and Safety Code, §§361.017, 361.024, and 361.064; and Texas Water Code, §§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 [shall] also be mailed to the mayor of the municipality. Mailed notice must [shall] 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) - (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 [shall] 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 [shall] 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 [which] 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 [shall] comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will [shall] 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 [APA]. 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 [shall] be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [3] 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 [shall] 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 [SOAH] 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 [which] 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 [shall] be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [3] inches (7.6 centimeters) or have a total size of at least nine [9] column inches (18 square inches). The text of the notice must [shall] 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 [shall] 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 [must] 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 [shall] 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 proposed under Texas Water Code, §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 proposed 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 [(relating to Text of Public Notice)].

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

(2) Another notice with a total size of at least six [6] column inches, with a vertical dimension of at least three [3] inches and a horizontal dimension of at least two [2] column widths, or a size of at least 12 square inches, must [shall] be published in a prominent location elsewhere in the same issue of the newspaper. This notice must [shall] 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 language newspaper notice.]

[(1) This subsection applies whenever notice is required to be published under §39.418 of this title, §39.419 of this title, and this section 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).]

[(2) 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.]

[(3) The notice shall 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.]

[(4) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located. Notice under this subsection shall only be required to be published within the United States.]

[(5) 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.]

[(6) Each alternative language publication shall follow the requirements of this chapter that are consistent with this section.]

[(7) If a waiver is received under this section, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies).]

(d) [(e)] 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 Health and Safety Code, §382.0365 [of the Texas Health and Safety Code] 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) [(f)] If an air application is referred to State Office of Administrative Hearings [SOAH] 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 [shall] 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 [shall] 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 [shall] be provided by the applicant and must [shall] substantially meet the following requirements:

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

(2) Signs must [shall] be headed by the words listed in the following subparagraphs [below]:

(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 [shall] 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 [shall] include the words "for further information contact";

(5) Signs must [shall] include the words "Texas Commission on Environmental Quality" ["Texas Natural Resource Conservation Commission, "] and the address of the appropriate commission regional office;

(6) Signs must [shall] 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 [must] 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 [shall] 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 [which] 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) [§39.603 of this title (relating to Newspaper Notice)]. The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must [shall] be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must [shall] be satisfied without regard to whether alternative language newspaper notice is waived under §39.405(h)(10) of this title [§39.703(d)(5) of this title (relating to Newspaper Notice)]. The alternative language signs must [shall] 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 proposed 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 Texas Water Code, §5.103, Rules; §5.552, Notice of Intent to Obtain Permit; §5.553, Preliminary Decisions; Notice and Public Comment; and §27.019, Rules.

The proposed amendment implements Texas Health and Safety Code, §§361.017, 361.024, and 361.064; and Texas Water Code, §§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 [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. 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 [shall] 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 [shall] 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 [shall] 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 [3] inches (7.6 centimeters) and the notice must [shall] 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 [shall] 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 [which] 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 [3] inches (7.6 centimeters) and the notice must [shall] 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 [shall] 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 [APA]. 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 [shall] be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [3] 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 [SOAH] 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 [which] 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 [3] inches (7.6 centimeters) and the notice must [shall] 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 [shall] be at least 15 square inches (96.8 square centimeters)

with a shortest dimension of at least three [3] inches (7.6 centimeters). The notice must [shall] appear in the section of the newspaper containing state or local news items. The text of the notice must [shall] 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 [shall] 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 [must] 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 [shall] be completed at least 30 days before the contested case hearing.

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