

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§39.403, 39.411, 39.419, and 39.420, the repeal of §39.404, and new §39.404.

Certain provisions of the rules will constitute a revision to the state implementation plan (SIP) and will be submitted to the United States Environmental Protection Agency (EPA), specifically, §39.403(b)(8) - (10) and new (f), the repeal of §39.404, and new §39.404. The commission also proposes to withdraw §§39.411, 39.419, and 39.420 as submitted to EPA on July 31, 2002, and proposes to submit §§39.411(a), (b)(1) - (6), (8) - (10), (c)(1) - (6), and (d); 39.419(a), (b), (d), and (e); and 39.420(a), (b), and (c)(3) and (4) as a revision to the SIP.

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

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under these proposed rules, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission

permits, except for contested case hearings. Other portions of HB 2201 reflected in the proposed rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the proposed rules originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and new Texas Water Code (TWC), §5.558 and §27.022, which were created by HB 2201.

The purpose of the proposed revisions to Chapter 39 is to implement the requirements of HB 2201 with respect to the public notice requirements of permit applications required to authorize a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, public notice requirements for these applications need to be modified to reflect that the applications are not subject to contested case hearings. The proposed revisions include a reference to the new 30 TAC Chapter 91 that establishes the streamlined process for applications required to authorize a component of the FutureGen process. The proposed rules concerning the FutureGen project do not include an expiration date or sunset date, but the commission specifically requests comment on whether an expiration date or sunset date is necessary.

#### SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout the proposed rules to be consistent with Texas Register requirements and agency guidelines.

§39.403. *Applicability.*

The commission proposes an amendment to §39.403 by adding a new subsection (f) stating that applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in the concurrently proposed §91.30, Definitions, are subject to the public notice requirements of concurrently proposed new Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities, in addition to the requirements of this chapter, unless otherwise specified in Chapter 91. For most types of applications, the notice requirements in proposed new Chapter 91 will use existing notice requirements for the type of application sought, except to modify the text of the notice to indicate that the application is for authorization of a component of the FutureGen project and is not subject to a contested case hearing.

*§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities.*

The commission proposes the repeal of §39.404 and proposes to replace it with a new §39.404.

*§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities.*

The commission proposes new §39.404 that includes applicability requirements for certain designated projects, specifically applications submitted under Chapter 116, concurrently proposed new Subchapter L, Permits for Specific Designated Facilities.

*§39.411. Text of Public Notice.*

The commission proposes an amendment to §39.411 to specify in subsection (b)(10)(B) that notice for applications submitted under §39.404(b) only require a statement that any person is entitled to request a notice and comment hearing from the commission.

*§39.419. Notice of Application and Preliminary Decision.*

The commission proposes an amendment to §39.419 by adding a new paragraph (4) to subsection (e) to specify that applications to construct, authorize, or operate a component of the FutureGen project as defined in the concurrently proposed §91.30, Definitions, shall be subject to the public notice and participation requirements stated in Chapter 116, concurrently proposed new Subchapter L.

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

The commission proposes an amendment to §39.420 by adding a new subsection (f), to specify that the chief clerk shall not be required to transmit the item listed in §39.420(a)(4), concerning instructions for requesting a contested case hearing, for permit applications under Chapter 116, concurrently proposed new Subchapter L.

**FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT**

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period that the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or other units of state or local government. Any entities wishing to be permitted under the proposed rulemaking may experience some cost savings due to a streamlined permitting process.

The proposed rulemaking implements HB 2201. HB 2201 directs the agency to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. The legislature determined that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and determined that streamlining the permitting process for FutureGen projects would serve the public interest by improving the state's ability to compete for federal funding for FutureGen projects.

At this time, there have been no permits issued by the agency for FutureGen projects. It is anticipated that there may be one entity in the state that may apply for such a permit in the future. As the proposed rulemaking would eliminate the contested case hearing process for specific projects and does not impose any new requirements for the agency, there may be minor cost savings to TCEQ and the State Office of Administrative Hearings due to the reduction in the number of any contested case hearings.

#### PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rulemaking is in effect, the public benefit anticipated from the changes due to the proposed rules will be compliance with state law and improving the state's ability to compete for federal funding for FutureGen projects.

These projects are anticipated to result in the development of cleaner sources of power to meet energy demands.

The proposed rulemaking may result in some reduced costs for eligible industry projects, but in general any cost savings are not expected to be significant.

The proposed rulemaking is expected to only apply to one project at the current time. The project involves a variety of equipment used for power generation, hydrogen production, and carbon dioxide sequestration. This equipment may include bulk fuel handling equipment, gasifiers, reactors, separators, turbines, sulfur recovery units, and emission control equipment. Industry projects eligible for the proposed rulemaking would no longer be subject to a contested case hearing.

The elimination of contested case hearings may reduce travel costs for applicants, and may result in reduced administrative or professional costs that would have been incurred by the applicant to prepare for a contested case hearing.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small or micro-businesses are not expected to apply for permits for FutureGen projects, but if they do, they would experience the same cost savings as large businesses.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is 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 rules do not meet the definition of a “major environmental rule.” Under Texas Government Code, §2001.0225, “major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are intended to establish notice requirements for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing public notice requirements to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of “major environmental rule.”

Furthermore, the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation

agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements. First, the proposed rules are consistent with and do not exceed the standards set by federal law. Second, the proposed rules do not exceed an express requirement of state law, instead these rules implement HB 2201. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program.

Fourth, the commission does not propose these rules solely under the general powers of the agency, but rather under the authority of THSC, §382,0565, as added by HB 2201, which directs the commission to by rule implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The proposed rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rules will not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules

Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed revisions include procedural mechanisms to authorize new sources of air contaminants; however, the proposed revisions do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

FutureGen projects may or may not be subject to the Federal Operating Permits Program depending on the quantity and type of their emissions and their location. If subject, facilities will be required to meet all requirements of the Federal Operating Permits Program.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 20, 2005, at 10:00 a.m. in Building B, Room 201A, at the TCEQ's complex, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, 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 2005-053-091-PR. The proposed rules may be viewed on the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html).

Comments must be received by 5:00 p.m., December 27, 2005. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

**SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS**

**§§39.403, 39.404, 39.411, 39.419, 39.420**

**STATUTORY AUTHORITY**

The amendments and new section are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The proposed amendments and new section are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; and §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed amendments and new section implement TWC, §5.558(c) and THSC, §382.0565(d).

**§39.403. Applicability.**

(a) (No change.)

(b) As specified in those subchapters, Subchapters H - M of this chapter apply to notices for:

(1) - (7) (No change.)

(8) applications for air quality permits under THSC, §382.0518 and §382.055. In addition, applications for permit amendments under §116.116(b) of this title (relating to Changes to Facilities), initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), amendments to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) when an action involves:

(A) construction of any new facility as defined in §116.10 [§116.10(4) and (10)] of this title (relating to General Definitions);

(B) modification of an existing facility as defined in §116.10 [§116.10(9)] of this title which result in an increase in allowable emissions of any air contaminant emitted equal to or greater than the emission quantities defined in §106.4(a)(1) of this title (relating to Requirements for [Exemptions from] Permitting by Rule) and of sources defined in §106.4(a)(2) and (3) of this title; or

(C) (No change.)

(9) applications subject to the requirements of Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major

Sources (FCAA, §112(g), 40 CFR [Code of Federal Regulations] Part 63)), whether for construction or reconstruction;

(10) concrete batch plants registered under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]) unless the facility is to be temporarily located in or contiguous to the right-of-way of a public works project;

(11) - (14) (No change.)

(c) Notwithstanding subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

(1) - (3) (No change.)

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

(5) - (15) (No change.)

(d) Applications for initial issuance of voluntary emission reduction permits under THSC, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this

title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply. For MPP applications filed before September 1, 2001, the initial issuance, amendment, or revocation of MPPs under THSC, §382.05194 is subject to the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits, except as otherwise provided in §116.1040 of this title (relating to Multiple Plant Permit Public Notice and Public Participation).

(e) (No change.)

(f) Applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

**§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities.**

(a) Initial applications for air quality permits for grandfathered facilities.

(1) With the exception of §39.403(a)(1) of this title (relating to Applicability),

Subchapters H - M of this chapter (relating to 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) also apply to:

(A) applications for permits for electric generating facilities under Texas Health and Safety Code, §382.05185(c) and (d);

(B) applications for existing facilities permits under Texas Health and Safety Code, §382.05183; and

(C) applications for pipeline facility permits under Texas Health and Safety Code, §382.05186.

(2) Applications for initial issuance of permits under Texas Health and Safety Code, §§382.05183, 382.05185(c) and (d), and 382.05186 are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.418, 39.420, and 39.601 - 39.606 of this title (relating to Purpose; General Notice

Provisions; Mailing Lists; Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing; Text of Public Notice; Notice of Receipt of Application and Intent to Obtain Permit; Transmittal of the Executive Director's Response to Comments and Decision; Applicability; Mailed Notice; Newspaper Notice; Sign-Posting; Notice to Affected Agencies; and Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply.

(b) Applications for permits for specific designated facilities.

(1) With the exception of §39.403(a)(1) of this title, Subchapters H - M of this chapter also apply to applications for permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

(2) Applications for permits under Chapter 116, Subchapter L of this title are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.418, 39.420, and 39.601 - 39.605 of this title, except that any reference to contested case hearings shall not apply.

**§39.411. Text of Public Notice.**

(a) (No change.)

(b) When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - L of this chapter (relating to 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, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Mailed Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) - (3) (No change.)

(4) a brief description of public comment procedures, including:

(A) (No change.)

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commissions's decision that are raised during the comment period can be considered if a contested case hearing is granted; [.]

(5) - (9) (No change.)

(10) for notices of air applications:

(A) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants [Control of Air Pollution from Toxic Materials], Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(B) if notice is for applications described in §39.403(b)(11) or (12) of this title (relating to Applicability)[,] or §39.404(b) [§39.404] of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities), a statement that any person is entitled to request a notice and comment hearing from the commission. If notice is for any other air application, the following information [which] must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(i) - (iii) (No change.)

(iv) [and] that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; [and]

(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a contested case hearing; and

(D) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas [Natural Resource Conservation] Commission on Environmental Quality;" and

(11) - (13) (No change.)

(14) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittees compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for 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). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - L of this chapter, the text of the notice must include the following information:

(1) - (3) (No change.)

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit; and

(5) (No change.)

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title [(relating to Radioactive Substance Rules)], if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - L of this chapter, the text of the notice must include the following information:

(1) (No change.)

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) (No change.)

**§39.419. Notice of Application and Preliminary Decision.**

(a) - (c) (No change.)

(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 the following apply. [:]

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

(A) - (C) (No change.)

(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 and for Applications for Permits for Specific Designated 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) (No change.)

(4) If the applicant is seeking authorization by permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), that application shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

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

(a) - (e) (No change.)

(f) For applications for permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk shall not be required to transmit the item listed in subsection (a)(4) of this section.

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

### **[§39.404]**

#### **STATUTORY AUTHORITY**

The repeal is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; and §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed repeal implements TWC, §5.558(c) and THSC, §382.0565(d).

**§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities.**