

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§39.501, 39.503, and 39.651.

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

House Bill (HB) 1609, 79th Legislature, 2005, amended Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082, by making the applicant's public meeting and the TCEQ's public meeting on new hazardous waste management facilities and new municipal solid waste management facilities discretionary, rather than mandatory. In order to implement this change, the commission is proposing to amend §§39.501, 39.503, and 39.651 to reflect the change in statutory language from "shall hold a public meeting" to "may hold a public meeting."

#### SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with Texas Register requirements, agency guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

The proposed amendments to §39.501(e), Application for Municipal Solid Waste Permit, distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005. The mandatory public meeting requirements in paragraph (1) for applications filed before September 1, 2005, are left in place, changing the subject from the "applicant" to the "application" to conform to the language in Section 6 of HB 1609. New paragraph (2) is proposed for discretionary public meetings for applications filed on or after September 1, 2005,

and removing the 45-day requirement for the applicant's public meeting. New paragraph (2)(A)(i) also specifies that the agency's public meeting will be held under 30 TAC §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of Texas Water Code (TWC), §5.554 in new clause (ii). New paragraph (3) defines "substantial public interest" in terms of a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located. Existing paragraphs (2) - (4) are renumbered as paragraphs (4) - (6), and references back to paragraph (1)(A) in renumbered paragraphs (4) and (6) are made to refer back to paragraphs (1)(A) or (2)(A) while the reference back to paragraph (1)(B) in renumbered paragraph (5) is made to refer back to paragraphs (1)(B) or (2)(B).

The proposed amendments to §39.503(e)(1), Application for Industrial or Hazardous Waste Facility Permit, distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the “applicant” to the “application” to conform to the language in Section 6 of HB 1609. New paragraph (1)(A) retains the mandatory public meeting for applications filed before September 1, 2005, while new paragraph (1)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005. New paragraph (1)(B)(i) also specifies that the agency’s public meeting will be held under 30 TAC §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director’s discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii).

The proposed amendments to §39.503(e)(2) distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the applicant to the application to conform to the language in Section 6 of HB 1609 and including Class 3 modifications with major amendments. New paragraph (2)(A) retains the mandatory public meeting for applications filed before September 1, 2005, if a person affected files a request for a public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. New paragraph (2)(B) makes the public meeting discretionary for

applications filed on or after September 1, 2005, and removes the affected person requirement deleted from the statute in HB 1609. New paragraph (2)(B)(i) also specifies that the agency's public meeting will be held under §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii). New paragraph (3) defines "substantial public interest" in terms of a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located proposed to be located. Existing paragraphs (3) - (6) are renumbered as paragraphs (4) - (7).

The proposed amendments to renumbered §39.503(e)(4) distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the "applicant" to the "application" to conform to the language in

Section 6 of HB 1609. New paragraph (3)(A) retains the mandatory applicant's public meeting for applications filed before September 1, 2005, and retains the 45-day deadline. New paragraph (3)(B) makes the applicant's public meeting discretionary for applications filed on or after September 1, 2005.

The proposed amendments to renumbered §39.503(e)(5) and (7) make references back to paragraph (1) refer back to paragraphs (1) or (2).

The proposed amendments to §39.651(e)(1), Application for Injection Well Permit, distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the "applicant" to the "application" to conform to the language in Section 6 of HB 1609. New paragraph (1)(A) retains the mandatory public meeting for applications filed before September 1, 2005, while new paragraph (1)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005. New paragraph (1)(B)(i) also specifies that the agency's public meeting will be held under §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii).

New §39.651(e)(2) separates the requirements for public meetings on applications for major amendments from old paragraph (1) and distinguishes between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the applicant to the application to conform to the language in Section 6 of HB 1609 and including Class 3 modifications with major amendments. New paragraph (2)(A) retains the mandatory public meeting for applications filed before September 1, 2005, 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. New paragraph (2)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005, and removes the affected person requirement deleted from the statute in HB 1609. New paragraph (2)(B)(i) also specifies that the agency's public meeting will be held under §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii). New paragraph (3) defines "substantial public interest" in terms of a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten

members located in the general area in which the facility is located or proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located proposed to be located.

New §39.651(e)(4) separates the statements that a public meeting is not a contested case proceeding and that a public meeting held as part of a local review committee process meets the requirements of this subsection if public notice is provided, similar to the separation of these statements in §39.501(e)(4) and §39.503(e)(5). Existing paragraphs (2) and (3) are renumbered as paragraphs (5) and (6).

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

Jeff Horvath, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed rulemaking.

The proposed rulemaking implements certain provisions of HB 1609 by making public meetings for new, amended, or Class 3 modifications of hazardous waste management facilities and new municipal solid waste management facilities discretionary, rather than mandatory. Texas Water Code, Chapter 5, and applicable agency regulations still provide an opportunity for the public or a member of the legislature to request a public meeting. Public meetings shall be held if the executive director determines that there is a substantial or significant degree of public interest in an application or if a

member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held.

The proposed rulemaking is expected to decrease the number of public meetings held, depending upon the number of applicants and whether it is determined that there is significant public interest in the application. On average, there are between ten to 15 public meetings held each year for new municipal solid waste permits and hazardous waste permits (including Class 3 permits and major amendments).

Units of local government that wish to obtain new or amended permits for municipal solid waste facilities may save the cost of public notice, and preparation time for public meetings for those applications where there is no substantial or significant public interest and no request for a public meeting by a member of the legislature. Public notice may cost as much as \$1,000 depending upon the size of the circulation of the newspaper. Travel and staff time would depend upon the number of staff attending and the distance traveled.

The agency may save the cost of sending between four to seven staff members to public meetings at places anywhere in the state, for those applications where there is no substantial or significant public interest and no request for a public meeting by a member of the legislature. It is estimated that there will be five fewer mandatory public meetings each fiscal year. It is estimated that staff will attend approximately ten meetings per year due to significant interest or a legislative request. Most public meetings attended by agency staff generally only have per diem costs. However, some meetings take place in areas of the state where air travel, car rental, and overnight stay are required in addition to per diem costs. These trips may cost up to \$3,000 depending upon the number of staff attending.

Assuming each of the estimated five meetings required air travel and overnight stay for seven staff, the agency could save approximately \$3,000 for each meeting, with total savings as much as \$15,000 each year.

#### 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 seen in the proposed rulemaking will be compliance with state law and the more efficient use of public meetings.

There may be cost savings for businesses or individuals that seek new, major amendments, or Class 3 modifications of hazardous waste management facility permits or new municipal solid waste management facility permits.

The proposed rulemaking is expected to decrease the number of public meetings held, though any decrease will depend upon the number of applicants and whether it is determined that there is a substantial or significant public interest in the application or if there is a request by a member of the legislature. It is anticipated that there will be five fewer public meetings held each fiscal year.

Affected businesses or individuals may save the cost of public notice and travel costs for sending personnel to public meetings for those applications where there is no substantial or significant public interest and no request for a public meeting by a member of the legislature. Public notice costs may be as much as \$1,000, depending upon the size of the circulation of the newspaper. Other cost savings will vary depending upon personnel costs and other financial factors.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. It is not known how many small or micro-businesses will seek new, major amendments, or Class 3 modifications of hazardous waste management facility permits or new municipal solid waste management facility permits, but for those that do, there may be cost savings due to the fact that there may be a decrease in the number of public meetings held, though any decrease will depend upon the number of applicants and whether it is determined that there is significant public interest in the application.

#### 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 proposed rulemaking is not subject to §2001.0225, because it does not meet the criteria for a “major environmental rule” as defined in that statute.

A “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 specific intent of the proposed rulemaking is to make public meetings on applications for new, major amendments, or Class 3 modifications for hazardous waste management facilities or new municipal solid waste management facilities discretionary. It is not anticipated that the proposed rulemaking will 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 commission concludes that this proposed rulemaking does not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a 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 rulemaking does not meet any of these requirements. First, the applicable federal standard calls for discretionary public meetings if there is a significant degree of public interest in a draft permit (40 Code of Federal Regulations §124.12(a)). Second, the proposed rulemaking does not exceed an express requirement of state law in Texas Health and Safety Code, §§361.0666(a), 361.0791(a) and (b), and 361.082(d), as amended by HB 1609. Third, there is no delegation agreement that would be exceeded by the proposed rulemaking. Fourth, the commission proposes this rulemaking under the specific authority of Texas Health and Safety Code, §§361.0666(a), 361.0791(a) and (b), and 361.082(d). This rulemaking is also proposed under the authority of Texas Health and Safety Code, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not propose this rulemaking solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to make public meetings for solid waste applications discretionary. The proposed rulemaking would substantially advance this stated purpose by making public meetings on solid waste applications subject to the same discretionary standards used for other waste programs.

Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property because the rulemaking does not affect real property.

This rulemaking exercises commission jurisdiction over public meetings for municipal solid waste and hazardous waste applications.

There are no burdens imposed on private real property, and the benefits to society are more efficient use of agency staff resources in avoiding public meetings where no one from the public attends. In addition, the proposed rulemaking does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC, §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, 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 2005-068-039-LS.

Comments must be received by 5:00 p.m., April 24, 2006. Copies of the proposed rules can be obtained from 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). For further information, please contact John E. Williams, Environmental Law Division, (512) 239-0455.

**SUBCHAPTER I: PUBLIC NOTICE OF SOLID WASTE APPLICATIONS**

**§39.501, §39.503**

**STATUTORY AUTHORITY**

The amendments are proposed under Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082, as amended by HB 1609, which makes public meetings on solid waste applications discretionary; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

The proposed amendments implement HB 1609, which amended Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082.

**§39.501. Application for Municipal Solid Waste Permit.**

(a) Applicability. This section applies to applications for municipal solid waste [(MSW)] permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant for a municipal solid waste [an MSW] permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall [must] submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director 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. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing must [shall] be by certified mail.

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

(1) (No change.)

(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 Notice of Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located. This notice must contain the text as required by §39.411(b)(1) - (9), (11), and (12) of this title (relating to Text of Public Notice);

(B) (No change.)

(C) the executive director or chief clerk shall mail the Notice of Receipt of Application and Intent to Obtain Permit, 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). The notice must [shall] be published after the chief clerk has mailed the Notice of Application and Preliminary Decision to the applicant. The notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(e) Notice of public meeting.

(1) If an application for [applicant proposes] a new facility is filed before September 1, 2005:

(A) - (B) (No change.)

(2) If an application for a new facility is filed on or after September 1, 2005:

(A) the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility; and

(B) the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(3) For purposes of this subsection, “substantial public interest” is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located.

(4) [(2)] 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)(A) or (2)(A) of this subsection if public notice is provided under this subsection.

(5) [(3)] 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 (1)(B) or (2)(B) 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) [(4)] For public meetings held by the agency under paragraph (1)(A) or (2)(A) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(f) Notice of hearing.

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

(2) (No change.)

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing 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 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) (No change.)

(4) Notice under paragraphs (2) and (3)(B) of this subsection must [shall] be completed at least 30 days before the hearing.

**§39.503. Application for Industrial or Hazardous Waste Facility Permit**

(a) (No change.)

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

(2) The requirements of this paragraph are set forth in [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, (60 FR 63417) [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, (60 FR 63417) [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, (60 FR 63417) [at 60 FedReg 63417].

The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.45 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) (No change.)

(d) (No change.)

(e) Notice of public meeting.

(1) If an application for [applicant proposes] a new hazardous waste facility is filed: [, 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.]

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning this application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for [applicant proposes] a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed: [, 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.]

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment concerning the application if a person affected files a request for a public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(II) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, “substantial public interest” is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity’s governing body;

(B) a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council’s solid waste advisory committee, executive committee, or governing board;

(C) a homeowners’ or property owners’ association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) [(3)] If an application for [applicant proposes] a new industrial or hazardous waste facility that would accept municipal solid waste is filed: [, 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.]

(A) before September 1, 2005, 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; or

(B) on or after September 1, 2005, the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(5) [(4)] A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) or (2) of this subsection if public notice is provided under this subsection.

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

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

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

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

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

(7) [(6)] For public meetings held by the agency under paragraph (1) or (2) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

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

(2) - (3) (No change.)

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

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

(g) Injection wells. 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, (60 FR 63417) [at 60 FedReg 63417,] apply to all applications for hazardous waste permits.

**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, §§361.0666, 361.0791, and 361.082, as amended by HB 1609, which makes public meetings on solid waste applications discretionary; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

The proposed amendment implements HB 1609, which amended Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082.

**§39.651. Application for Injection Well Permit.**

(a) - (b) (No change.)

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

(1) (No change.)

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

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

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

(A) - (D) (No change.)

(5) - (6) (No change.)

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once 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) - (2) (No change.)

(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 as defined [provided for that term] in Texas Water Code, Chapter 26.

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

(A) - (D) (No change.)

(5) - (6) (No change.)

(e) Notice of public meeting.

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

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment on the application if a person affected files with the chief clerk a request for a public meeting concerning the application before the deadline to file public comment or to file requests for reconsideration or hearing; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(II) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, “substantial public interest” is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity’s governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council’s solid waste advisory committee, executive committee, or governing board;

(C) a homeowners’ or property owners’ association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

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

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

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

(f) Notice of contested case hearing.

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

(2) Newspaper notice.

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

(B) - (C) (No change.)

(3) (No change.)

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

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

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