

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§90.2, 90.30, 90.36, 90.40, 90.42, and 90.44 *without changes* to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7239). The text of the amendments will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bills (HB) 2912 and 2997, 77th Legislature, 2001, created Texas Water Code (TWC), §5.131 and §5.127, respectively. These statutes require the commission to adopt, by rule, a comprehensive program that uses incentives to encourage entities to implement environmental management systems (EMSs). The statutes were passed in response to recommendations made by the Sunset Commission, as well as the Comptroller's *e-Texas* initiative. The intent of the legislation was to encourage regulated entities to use EMSs to help ensure compliance with applicable laws and regulations. In return, regulated entities could earn incentives, such as reduced inspection frequency and special consideration in their compliance history. The TCEQ adopted rules that took effect on December 16, 2001. The rules are codified in 30 TAC Chapter 90, Subchapter A, §90.1 and §90.2 and Subchapter C, §§90.30, 90.32, 90.34, 90.36, 90.38, 90.40, 90.42, and 90.44.

The TCEQ implemented the rules through the Lone Star and National Leader (i.e., the two highest) levels of the *Clean Texas, Cleaner World* (CTCW) program, TCEQ's voluntary recognition and incentive program. Entities that wished to join at those levels were required to implement an EMS that met a TCEQ EMS standard. Further, entities were required to make environmental improvements that went beyond or outside regulatory requirements to receive the incentives authorized by the statute.

A review of the CTCW program in the fall of 2005 concluded that changes to how the EMS statute was being implemented could improve and increase participation in CTCW. In February 2006, executive management recommended that entities no longer be required to implement an EMS that met a TCEQ EMS standard. Instead, the TCEQ would recognize any established EMS framework that meets the statutory provisions of the Texas Water Code. Further, it was recommended that TCEQ staff no longer conduct EMS audits for approval into the program. Finally, the name of the CTCW was changed to Clean Texas. The purpose of this rulemaking is to incorporate these changes.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 90.2, Applicability and Eligibility

The adopted amendment to subsections (e) and (f) would reflect the different compliance periods for each level of the Clean Texas program. Specifically, subsection (e) would state that an entity could not have any state or federal court orders for either two years or three years, depending on the level of the program for which they are applying. The adopted amendment to subsection (f) would extend the compliance period for criminal convictions regarding a site from three years to five years for all levels that require an EMS.

Section 90.30, Definitions

The adopted amendment to §90.30 would add definitions for assessment, certified, and independent

assessor, as well as renumber existing definitions accordingly. These definitions are necessary to reflect that the TCEQ will no longer conduct EMS audits, and that certified EMSs are necessary to receive regulatory incentives. Specific definitions would facilitate implementation, both for the agency and stakeholders.

Section 90.36, Evaluation of an Environmental Management System by the Executive Director

The adopted amendment to §90.36 would provide a more streamlined assessment process. The adopted rules would specify that an EMS must be certified by an independent assessor, and would note the documentation necessary for eligibility review. The adopted amendments would also provide for verification visits for certain applications. The verification visits would not constitute EMS audits but would ensure that all entry requirements for participation in the Clean Texas program are satisfied.

Specifically, the adopted amendment to §90.36(a) would change eligibility requirements for regulatory incentives based on an EMS, including removing the option of the executive director performing the on-site audit. Also, the adopted amendment would alter terms according to changes in §90.30 and renumber existing paragraphs accordingly.

The adopted amendment to §90.36(b) would replace the existing subsection with a provision stating the executive director may conduct an on-site verification visit as necessary to assure compliance with the program. The adopted amendment to subsection (c)(3) would change “attainment of environmental-performance improvement goals or targets” to “reasonable progress toward attainment” of those goals or targets. The adopted amendment to subsection (e) would delete the existing subsection and re-letter the rest of the section accordingly.

The adopted amendment to subsections (h) and (i) deletes references to an evaluation by the executive director or a third-party auditor and substitutes requirements for the use of an independent assessor and requires that the results of the independent assessment be provided to the executive director.

The adopted amendment to subsection (j) delineates criteria by which the executive director will review the use of an independent assessor. Several criteria would be deleted, including references to third-party auditors performing and documenting work in a manner similar to that of the executive director. The adopted amendment clarifies that the assessor is independent of the implementation of the EMS. Credentials of the independent assessor remain a criterion, while specific educational requirements are stricken. Certification of the assessor is included in the meaning of “credentials” rather than being expressly stated in the rule. The method of audit review is revised to include a requirement to confirm performance of the EMS, while striking specific time requirements.

Section 90.40, Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System

The adopted amendment to §90.40 would change the executive director’s considerations when evaluating a request for regulatory incentives which modify state or federal requirements. The adopted amendments to §90.40(c) clarify that the executive director can consider the establishment of and progress toward environmental performance improvement goals beyond or outside of regulatory requirements.

Section 90.42, Termination of Regulatory Incentives under an Environmental Management System

The adopted amendment to §90.42(b) would make conforming changes to reflect the addition of terms in §90.30 and to allow independent assessors to conduct EMS audits in lieu of the executive director.

Section 90.44, Motion to Overturn

The adopted amendment to §90.44 adds language whereby any person may file with the chief clerk a motion to overturn, not just those persons whose request for incentives has been denied or terminated.

The adopted amendment makes the rules consistent with TCEQ rules that allow members of the public to file a motion to overturn.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is adopted to protect the environment and reduce the risk to human health from environmental exposure, it would not be a major environmental rule because it would 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.

Furthermore, the adopted rule does not meet any of the four applicability requirements listed in §2001.0225(a). The rule would not exceed a standard set by federal law because standards in the adopted rules are in accordance with the corresponding federal regulations, and they do not exceed an express requirement of state law. The adopted rule does not 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. The rulemaking adopts a rule under specific state law (i.e., Texas Water Code, §5.131 and §5.127). Finally, this rulemaking is not being adopted on an emergency basis either to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

In accordance with Texas Government Code, §2007.043, the commission has prepared a takings impact assessment for the adopted rule. The following is a summary of that assessment. The specific purpose of the adopted rule is to enhance the TCEQ's EMS program. Promulgation and enforcement of the adopted rule would not affect private property mainly because it would not require anyone to do anything; everything it proposes is strictly voluntary. The adopted standards are not more stringent than existing standards. For these reasons, the adopted rule would not be a burden to private real property and would not constitute a taking under Texas Government Code, Chapter 2007. The adopted rule would not affect a landowner's rights in private real property.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rulemaking is subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP.

In accordance with 31 TAC §505.22, the commission has prepared a consistency determination for the adoption and has found that it is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural

resource areas (CNRAs). CMP policies focus on construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq.* Promulgation and enforcement of this rule would be consistent with the applicable CMP goals and policies because it would provide a framework that landfills could voluntarily use to help ensure and go beyond compliance with applicable laws. Thus, the rule would serve to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Changing the rules on environmental management systems will not impact new solid waste facilities and areal expansions of existing solid waste facilities. The commission has determined that the specific actions detailed in this section and earlier in this preamble under the sections explaining the adopted rule, concerning explanation of the adopted rule, final regulatory impact assessment, and takings impact assessment will comply with the goals and policies of the CMP. In addition, the adopted rule does not violate any applicable provisions of the CMP's stated goals and policies.

PUBLIC COMMENTS

The public comment period closed at 5:00 p.m. on October 9, 2006. The commission received comments from Baker Botts on behalf of the Texas Industry Project (TIP).

TIP suggested modifications to the proposed rules as stated in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

§90.44, Motion to Overturn

TIP comments that the change to §90.44 which would allow any person to file a motion to overturn the executive director's decision on EMS and incentive approval is unnecessary and would, in all likelihood, result in significantly fewer companies deciding to participate in the program. First, TIP describes a motion to overturn filed by the public as analogous to public comment on a general permit, which TIP advocates should only be allowed during the development stage of EMS incentives applicable to all approved EMSs, not after a decision has been made on an individual EMS or EMS-related incentive request. Second, TIP states that companies would be less inclined to pursue TCEQ approval of their EMS if the public could request a motion to overturn the approval decision, thus undermining the reason for the proposed rule, to increase program participation.

Commission powers under Texas Water Code, §5.012 are broad enough “. . . to perform any acts whether specifically authorized or implied by code or law, necessary . . . the exercise of its jurisdiction. . .” It is within the breadth of commission powers to include a condition allowing the public to request a motion to overturn (MTO) under EMS programs. The permitting procedures for several media already afford the public the option of requesting an MTO (30 TAC Chapter 55).

The commission currently has the right to request an MTO on an EMS-approved entity; the

public would only serve as an additional input to the ongoing monitoring of EMS-approved entities. Allowing the public to request an MTO on an EMS-approved entity therefore would not affect the EMS approval or constitute a disincentive to participate in the EMS program.

The commission responds to the second point raised by TIP, that companies would be less inclined to seek TCEQ approval for their EMS with a public right to file a motion to overturn the approval. If a company in the United States seeks the internationally-recognized ISO14001 EMS approval, it must use a registration body certified by ANSI-ASQ National Accreditation Board (ANAB). ANAB requires registration bodies to address complaints from any individual or company in a way analogous to a motion to overturn the executive director’s decision. Since companies continue to pursue other EMS approvals with “motions to overturn,” the TCEQ does not believe that including a right for the public to file a motion to overturn an EMS approval decision will negatively impact a company’s desire to pursue EMS approval from the TCEQ.

TIP comments that the approval period for an EMS should be extended from three years to five so that incentives granted would be more valuable and fewer agency and participant resources would need to be expended to maintain EMS approval.

Industry standard third-party EMS certifications, such as ISO 14001, are on a three-year renewal cycle. The TCEQ is implementing EMS approval through the Clean Texas program, the top level of which is implemented in conjunction with the United States Environmental Protection Agency’s (EPA’s) National Environmental Performance Track, which has a three-year membership period.

A five-year approval period would not coincide with the three-year audit cycle needed to maintain

certification to many industry-recognized management system standards, resulting in additional expenses for additional independent assessments. The TCEQ has chosen to follow timing precedent set by recognized environmental management system certifying bodies and by the EPA.

SUBCHAPTER A: PURPOSE, APPLICABILITY, AND ELIGIBILITY

§90.2

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and TWC, §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization is derived from TWC, §5.131 and TWC, §5.127, which requires the commission to promulgate rules that establish a regulatory process that encourages the use of an EMS by regulated entities; and TWC, §5.122, which delegates to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration or other authorization, or approval. The adopted rules also relate to the incentives the commission will use to encourage the use of an EMS by those same regulated entities. Finally, this amendment is also adopted under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The adopted amendment implements HB 2912 and HB 2997, 77th Legislature, 2001, which created the requirements for Environmental Management Systems under TWC, §5.131, Environmental Management Systems, and §5.127, Regulatory Flexibility.

§90.2. Applicability and Eligibility.

(a) Subchapter B of this chapter applies to any statute or commission rule regarding the control or abatement of pollution, except that it does not apply to requirements for storing, handling, processing, or disposing of low-level radioactive materials.

(b) Subchapter C of this chapter applies to any site that has an environmental management system (EMS) that meets the minimum standards in §90.32 of this title (relating to Minimum Standards for Environmental Management Systems).

(c) Except as provided in subsection (e) or (f) of this section, a person whose EMS for a specific site meets the minimum standards of §90.32 of this title may be eligible to receive regulatory incentives under this chapter.

(d) Except as provided in subsection (g) or (h) of this section, any person subject to any statute or commission rule regarding the control or abatement of pollution may be eligible to receive a regulatory flexibility order (RFO).

(e) A person who has been referred to the Texas or United States attorney general and has incurred a judgment against the site for which the person is requesting regulatory incentives, is ineligible to receive regulatory incentives at that site for using an EMS for a period of two or three years from the date the judgment was final, depending on the level of the program for which the person is applying.

(f) A person who has been convicted of willfully or knowingly committing an environmental crime regarding the site for which the person is requesting regulatory incentives is ineligible to receive regulatory incentives for using an EMS for a period of five years from the date of the conviction.

(g) A person who has been referred to the Texas or United States attorney general, and has incurred a judgment, is ineligible to receive an RFO for a period of three years from the date the judgment was final.

(h) A person who has been convicted of willfully or knowingly committing an environmental crime in this state, or any other state, is ineligible to receive an RFO for a period of three years from the date of the conviction.

**SUBCHAPTER C: REGULATORY INCENTIVES FOR USING ENVIRONMENTAL
MANAGEMENT SYSTEMS**

§§90.30, 90.36, 90.40, 90.42, 90.44

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and TWC, §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization is derived from TWC, §5.131 and TWC, §5.127, which requires the commission to promulgate rules that establish a regulatory process that encourages the use of an EMS by regulated entities; and TWC, §5.122, which delegates to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration or other authorization, or approval. The adopted rules also relate to the incentives the commission will use to encourage the use of an EMS by those same regulated entities. Finally, these amendments are also adopted under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The adopted amendments implement HB 2912 and HB 2997, 77th Legislature, 2001, which created the requirements for Environmental Management Systems under TWC, §5.131, Environmental Management Systems, and §5.127, Regulatory Flexibility.

§90.30. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Assessment**--On-site review of the environmental management system by an independent assessor.

(2) **Certified**--For purposes of this subchapter, a documented decision that the environmental management system meets either the minimum standards of this subchapter or another recognized environmental management system standard which is substantively equivalent to the minimum standards.

(3) **Environmental aspect**--Element of a person's activities, products, or services that can interact with the environment.

(4) **Environmental impact**--Any change to the environment, whether adverse or beneficial, wholly or partially resulting from a person's activities, products, or services regarding a specific site.

(5) **Environmental management system**--A documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

(6) **Independent assessor**--A person or team of people, at least one of whom has appropriate professional credentials and experience to review an environmental management system. The assessor(s) must not have contributed to the development of the system being assessed.

(7) **Site**--For purposes of this subchapter, any individual location or contiguous location of a person.

§90.36. Review of an Environmental Management System by the Executive Director.

(a) A person must submit written documentation of the person's environmental management system (EMS) for a specific site as part of a written request for approval of the site's EMS to the executive director to be eligible to receive regulatory incentives under this subchapter. The documentation must include:

(1) the environmental policy statement as required in §90.32(1) of this title (relating to Minimum Standards for Environmental Management Systems);

(2) scope of the EMS (programmatic, geographic area, sites, facilities, or units included in the EMS);

(3) the prioritized environmental aspects for the site as required in §90.32(2) and (3) of this title;

(4) environmental improvement goals and targets for continuous improvement in environmental performance as required in §90.32(4) of this title;

(5) environmental performance indicators that the person measures to demonstrate the effectiveness of the EMS at the site including continuous improvement goals and audit functions;

(6) list of any independent certifications that have been completed on the EMS;

(7) main point of contact on the EMS;

(8) a description of the regulatory incentives of interest to the person regarding that site;

(9) any other information requested by the executive director during the review period;
and

(10) signature of the requestor or the duly authorized agent, that certifies that all information is true, accurate, and complete to the best of that person's knowledge.

(b) The executive director will determine, based on risk, if an on-site verification visit shall be conducted by the executive director to assure that all requirements have been met.

(c) If the request for regulatory incentives is solely to request additional incentives under the EMS regulatory incentive program for an EMS that has already been approved by the executive director, the person is exempt from the submittal requirements of subsection (a) of this section. The executive director will act on the request in accordance with the time frames in §90.40(d) of this title (relating to Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System). The person must instead submit the following information:

(1) a description of the additional regulatory incentives requested for the site;

(2) main point of contact for the EMS; and

(3) any additional information requested by the executive director to evaluate the regulatory incentive request including demonstration of reasonable progress toward attainment of environmental performance improvement goals or targets.

(d) Within 90 days of submission of the request for review of an EMS, the executive director shall notify the requestor in writing of whether the information provided is complete or whether additional information must be submitted to the executive director.

(e) The executive director will notify the person who submitted the request for review of whether the EMS qualifies for regulatory incentives under this subchapter. If the EMS does not qualify for regulatory incentives under this subchapter, the executive director will send the person who requested a review of the EMS a notice detailing where the EMS does not meet the standards in §90.32 of this title.

(f) If the person makes no formal response within 90 days to the executive director's request regarding areas where the EMS does not meet the standard in §90.32 of this title, the EMS review will be placed on inactive status and the person may be required to submit additional information to demonstrate compliance with this subchapter.

(g) If a person receives regulatory incentives under this subchapter for a specific site, the executive director will require an additional independent reassessment of the EMS at least every three years from the date of the initial assessment. Results of this reassessment must be provided to the executive director. Regulatory incentives granted prior to the three-year reassessment will remain in effect until such time as the executive director terminates them under §90.42 of this title (relating to Termination of Regulatory Incentives under an Environmental Management System).

(h) Any areas in which an independent assessor finds the EMS does not meet the standards in §90.32 of this title during the reassessment shall be corrected in accordance with the schedule required by the independent assessor. If the deficiencies are not corrected within the time frame allowed or are of such a nature to indicate the EMS no longer meets the standards of this subchapter, the regulatory incentives may be terminated under §90.42 of this title.

(i) In order for the executive director to approve the use of an independent assessor, the following criteria shall be considered by the executive director:

- (1) independence of the assessor from the implementation of the EMS;
- (2) credentials of the independent assessor;
- (3) method of assessment to confirm performance of the EMS; and
- (4) any other information the executive director deems necessary to verify the capability of the assessor to complete the assessment process.

§90.40. Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System.

(a) Executive director action on regulatory incentives authorized by rule is not required.

Regulatory incentives authorized by rule may be implemented as soon as the person is notified that its environmental management system (EMS) meets the requirements of §90.32 of this title (relating to Minimum Standards for Environmental Management Systems).

(b) Where approval by the executive director is required under this subchapter, the executive director shall consider, among other factors:

(1) the compliance history of the person who submitted the EMS;

(2) the efforts made by the person to include stakeholder involvement and environmental reporting of the person's EMS internal and external to the site with consideration of the size, resources, compliance history, environmental impact, and other operational factors of the specific site;

(3) the person's participation in voluntary programs for environmental improvement;
and

(4) if the request is specifically for additional incentives after the review of the EMS has been completed and approved, or for reconsideration of granting an incentive that was previously denied, the progress made at a site toward the environmental improvement goals and compliance assurance targets listed in the site's EMS will be considered in granting further regulatory incentives.

(c) When considering regulatory incentives which modify state or federal requirements, the executive director shall consider the steps the person has taken at the site to establish and make progress toward environmental performance improvement goals beyond or outside of regulatory requirements.

(d) Where approval by the executive director is required under this subchapter, the executive director shall act within 60 days of notifying the person that the EMS meets the standards outlined in this subchapter. If a request for additional regulatory incentives is submitted under §90.36(c) of this title (relating to Review of an Environmental Management System by the Executive Director), the executive director shall act on the request within 60 days of its submission. These time frames may be extended at the request of the person or the executive director to allow additional approval time for incentives that require approval by the EPA for implementation or adoption by rule.

§90.42. Termination of Regulatory Incentives under an Environmental Management System.

(a) Termination by the recipient.

(1) A person who receives regulatory incentives for a site through the use of an environmental management system (EMS) that meets the standards in this subchapter may terminate the regulatory incentives at any time by sending a notice of termination to the executive director by certified mail.

(2) Once a regulatory incentive is terminated, the site for which a person has requested incentives must be in compliance with all permits, existing statutes, or commission rules affected by the regulatory incentives granted at the time of termination except as otherwise provided in this section.

(3) If the regulatory incentives approved involve the use of an order, the person who received the regulatory incentives shall comply with the applicable provisions of §90.20 of this title (relating to Termination).

(b) Termination by the executive director.

(1) Noncompliance with the terms and conditions of the regulatory incentives, Texas Water Code, §5.127 or §5.131, or this chapter, may result in the regulatory incentives being terminated.

(2) If a person who is approved to use regulatory incentives for a specific site under this subchapter is found by the executive director or an independent assessor to no longer meet the requirements of this subchapter, the executive director shall notify the person in writing of the deficiencies found.

(3) Any areas in which the executive director or an independent assessor finds the EMS does not meet the standards in §90.32 of this title (relating to Minimum Standards for Environmental Management Systems) based on a reassessment shall be corrected in accordance with the schedule required by the executive director. If the deficiencies are not corrected within the time frame allowed or are of such a nature to indicate the EMS no longer meets the standards of this subchapter, the regulatory incentives will be terminated under this section.

(4) In the event regulatory incentives are terminated under this section, the executive director may specify an appropriate and reasonable transition period to allow the site previously

operating under regulatory incentives to come into full compliance with all existing commission requirements, including time to apply for any necessary permits or other authorizations.

§90.44. Motion to Overturn.

Any person who has requested approval of an environmental management system (EMS) and whose EMS was denied approval, any person who has been notified by the executive director that the approval for the person's system has been terminated, any person who has been denied regulatory incentives that the executive director is authorized to approve under §90.40 of this title (relating to Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System), any person who has been notified by the executive director that a regulatory incentive has been terminated, or any other person may file with the chief clerk a motion to overturn the executive director's decision. A motion must be filed within 23 days after the date the commission mails notice of the executive director's decision to the person. Timely motions are subject to §50.139(e) - (g) of this title (relating to Motion to Overturn Executive Director's Decision).