

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§90.2, 90.30, 90.36, 90.40, 90.42, and 90.44.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 C, §§90.1 - 90.2 and 90.30 - 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 proposes 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 proposed amendment to subsections (e) and (f) would reflect the different compliance periods for each level of the Clean Texas program. Specifically, proposed 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 proposed 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 proposed 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 proposed amendment to §90.36 would provide a more streamlined assessment process. The proposed rules would specify that an EMS must be certified by an independent assessor, and would note the documentation necessary for eligibility review. The proposed 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 proposed 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 proposed amendment would alter terms according to changes proposed in §90.30 and renumber existing paragraphs accordingly.

The proposed 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 proposed 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 proposed amendment to subsection (e) would delete the existing subsection and re-letter the rest of the section accordingly.

The proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 requirement.

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

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

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

Nina Chamness, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. Other state agencies, local governments, and federal entities may voluntarily choose to have their environmental management system (EMS) approved by the agency. A cost-neutral impact is anticipated for any regulated entities that choose to establish an EMS and participate in the Clean Texas program.

The proposed rules would amend various sections of Chapter 90 of the Texas Administrative Code (TAC), which establishes an incentive program to encourage regulated entities to implement EMSs. A review of this program, named the Clean Texas program, concluded that it could be enhanced by making the changes contained in the proposed rules. The proposed rules would reflect different compliance periods for different levels of the program, provide for a more streamlined assessment process, require that certification of EMSs be done by independent assessors, and modify definitions and requirements of the program. Entities volunteering to get EMSs approved by the agency will be required to notify the agency and coordinate review of their EMSs at least six months before they

expect to receive the agency's decision. To obtain agency approval, the EMS will be required to receive certification from an independent assessor.

The proposed rules are expected to have a cost-neutral impact on governmental entities volunteering to implement an EMS. Governmental entities can choose to have their own staff certify the system, if specified independence criteria are met. In addition, any costs incurred if a governmental entity chooses to employ an independent assessor are expected to be offset by cost savings that typically occur when an EMS is implemented. Costs to employ an independent assessor could range from \$100 to \$200 per hour.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater participation in the Clean Texas program and improved environmental performance by regulated entities.

No fiscal implications are anticipated for individuals or industry as a result of the proposed rulemaking.

Participation in the Clean Texas program and the implementation of an EMS is strictly voluntary. The proposed rules are expected to have a cost-neutral impact on individuals or industry electing to establish an EMS. Any costs they may incur for obtaining independent certification of their system from an outside assessor are expected to be offset by cost savings that are typically experienced when an EMS is implemented. Costs to employ an independent assessor could range from \$100 to \$200 per hour.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Participation in the Clean Texas program and the implementation of an EMS is strictly voluntary. The proposed rules are expected to have the same cost-neutral effect on small or micro-businesses that they would have on individuals and large businesses.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### DRAFT 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 proposed 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 proposed 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 proposed rules are in accordance with the corresponding federal regulations, and they do not exceed an

express requirement of state law. The proposed 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 proposes a rule under specific state law (i.e., Texas Water Code, §5.131 and §5.127). Finally, this rulemaking is not being proposed 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 proposed rule. The following is a summary of that assessment. The specific purpose of the proposed rule is to enhance the TCEQ's EMS program. Promulgation and enforcement of the proposed rule would not affect private property mainly because it would not require anyone to do anything; everything it proposes is strictly voluntary. The proposed standards are not more stringent than existing standards. For these reasons, the proposed rule would not be a burden to private real property and would not constitute a taking under Texas Government Code, Chapter 2007. The proposed 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 proposal 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 proposal 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 proposed rule, concerning explanation of the proposed rule, final regulatory impact assessment, and takings impact assessment will comply with the goals and policies of the CMP. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies.

#### SUBMITTAL OF COMMENTS

Written 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. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. All comments should reference Rule Project Number 2006-028-090-AD. The comment period closes October 9, 2006. Copies of the proposed rulemaking 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

Larissa Peter, Small Business and Environmental Assistance Division, at (512) 239-3766.

## **SUBCHAPTER A: PURPOSE, APPLICABILITY, AND ELIGIBILITY**

### **§90.2**

#### **STATUTORY AUTHORITY**

The amendment is proposed 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 proposed 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 proposed 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 proposed 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) - (d) (No change.)

(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 [three] years from the date of the conviction.

(g) – (h) (No change.)

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

**§§90.30, 90.36, 90.40, 90.42, 90.44**

**STATUTORY AUTHORITY**

The amendments are proposed 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 proposed 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 proposed 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 proposed 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, [shall] 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) [(1)] **Environmental aspect**--Element of a person's activities, products, or services that can interact with the environment.

(4) [(2)] **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) [(3)] **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) [(4)] **Site**--For purposes of this subchapter, any individual location or contiguous location of a person.

**§90.36. Review [Evaluation] 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 [an on-site evaluation of that] site's EMS to the executive director to be eligible to receive regulatory incentives under this subchapter [except as described in subsection (b) of this section]. The documentation must include:

(1) – (5) (No change.)

(6) list of any independent [or third-party reviews or] certifications that have been completed on the EMS;

(7) (No change.)

[(8) date when the requestor would be ready to have the executive director conduct a formal on-site evaluation of the EMS or whether the person will be requesting approval of the person's third-party auditor(s);]

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

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

(10) [(11)] 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.

[(b) A person who qualifies as a Clean Texas Leader is exempt from providing documentation for the EMS regarding the specific site to the executive director if the information the person submitted to qualify to become a Clean Texas Leader is still current. Clean Texas Leaders must still submit a written request to the executive director for an on-site evaluation of the EMS to be eligible for regulatory incentives under this subchapter.]

(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) – (2) (No change.)

(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 [evaluation] 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) Within 90 days of submission of the request for an on-site evaluation of an EMS, the executive director will schedule with the requestor an on-site evaluation to be performed by the executive director or allow the use of the results from an approved third-party auditor that satisfies the evaluation criteria in subsection (j) of this section.]

(e) [(f)] The executive director will notify the person who submitted the request for review [evaluation] 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 [an evaluation] of the EMS a notice detailing where the EMS does not meet the standards in §90.32 of this title.

(f) [(g)] 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 [evaluation] will be placed on inactive status and the person may be required to submit additional information to demonstrate compliance with this subchapter.

(g) [(h)] If a person receives regulatory incentives under this subchapter for a specific site, the executive director will require an additional independent reassessment [schedule a follow-up on-site evaluation by the executive director or authorize the use of an approved third-party auditor to conduct a follow-up on-site evaluation] of the EMS at least every three years from the date of the initial assessment [evaluation]. Results of this reassessment must be provided to the executive director. Regulatory incentives granted prior to the three-year reassessment [evaluation] 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) [(i)] Any areas in which an independent assessor [the executive director or an approved third-party auditor] finds the EMS does not meet the standards in §90.32 of this title during the reassessment [follow-up evaluation] shall be corrected in accordance with the schedule required by the independent assessor [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 may be terminated under §90.42 of this title.

(i) [(j)] In order for the executive director to approve the use of an independent assessor [a third-party auditor(s) to complete the on-site evaluation of the EMS or to recognize the results of past evaluations completed on an EMS as equivalent to the executive director's review process], the following criteria shall be considered by the executive director:

[(1) ability of the auditor's EMS review protocols to meet the same requirements as the executive director's audit protocols;]

[(2) ability of the auditor's documentation of the EMS evaluation process to provide comparable information to the commission that the executive director would collect if completing the same evaluation;]

(1) [(3)] independence of the assessor from the implementation of the EMS; [third-party auditor completing the evaluation;]

(2) credentials of the independent assessor; [(4) demonstrated experience of the auditor in EMS programs and environmental regulatory programs and auditing;]

(3) [(5)] method of assessment [audit review--time allotted for review of documentation versus field observation and personnel interviews] to confirm performance of the EMS;  
and

[(6) educational background of auditor;]

[(7) certifications already granted to the auditor by other audit/standards bodies for EMS or auditing methodologies; and]

(4) [(8)] any other information the executive director deems necessary to verify the capability of the assessor [auditor] to complete the assessment [evaluation] process [as the executive director would have if he completed the evaluation].

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

(a) (No change.)

(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; [and]

(2) – (3) (No change.)

(4) if the request is specifically for additional incentives after the review [evaluation] 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. [develop an EMS that exceeds the minimum requirements in §90.32 of this title.]

(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 [Evaluation] 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) (No change.)

(b) Termination by the executive director.

(1) (No change.)

(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 [approved third-party auditor] 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 [approved third-party auditor] 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 [during the follow-up evaluation] 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) (No change.)

**§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 [or] 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).