The Texas Commission on Environmental Quality (TCEQ, agency or commission) adopts amended §§39.403, 39.651, 39.653, 39.702, 39.703, and 39.707; and adopts new §39.655.

Sections 39.403, 39.651, 39.653, 39.655 39.702, 39.703, and 39.707 are adopted *without changes* to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7423) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The changes adopted to this chapter are part of a larger adoption to revise the commission's radiation control and underground injection control (UIC) rules. The purpose of this rulemaking is to implement the remaining portions of Senate Bill (SB) 1604, 80th Legislature, 2007, its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)), Texas Water Code (TWC), Chapter 27 (also known as the Injection Well Act), and House Bill (HB) 3838, 80th Legislature, 2007. This rulemaking incorporates new provisions for notice and contested case hearing opportunities related to Production Area Authorizations and UIC Area Permits, financial assurance requirements, and new state fees on gross receipts associated with the radioactive waste disposal. HB 3838 specifically addresses the period between uranium exploration, which is regulated by the Railroad Commission of Texas (RRC), and permitting of injection wells for in situ uranium mining, which is regulated by TCEQ. HB 3838 requires TCEQ to establish a registration program for exploration wells permitted by the RRC that are used for development of the UIC area permit application. In response to a previous petition for rulemaking, the commission has also directed staff to review, seek stakeholder input on, and recommend revision of commission rules related to in situ uranium recovery. The adopted amendments to Chapter 39 amend public notice requirements for applications for radioactive materials

licenses, injection well permits and production area authorizations, and aquifer exemptions. The rules clarify requirements for public notice of radioactive materials licenses, add requirements for the provision of public notice for injection well permits and production area authorizations to mineral interest owners and groundwater conservation districts, and establish specific requirements for public notice of aquifer exemptions.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapters 37, 55, 305, 331, and 336.

SECTION BY SECTION DISCUSSION

The commission adopts amendments to §39.403 to establish public notice requirements for aquifer exemptions. Under §331.13, the commission may identify exempted aquifers after notice and opportunity for a public hearing. However, there are no specific rules in Chapter 39 that specify the public notice requirements applicable to the designation of exempted aquifers. Section 39.403 is amended to apply the public notice requirements of Chapter 39 to the designation of aquifer exemptions.

The commission adopts the amendment to §39.403(a) to include "of this Section" to conform to *Texas Register* requirements. The commission adopts the amendment to §39.403(b)(9) to correct the reference of Chapter 116, Subchapter C to Chapter 116, Subchapter E.

The commission adopts the amendment to §39.651 to address public notice requirements for Class III injection well permits. The adopted section would require that mailed notice of Class III injection well permits be mailed to persons who own the property on which the existing or proposed injection well

facility is or will be located, if different from the applicant; landowners adjacent to the property on which the existing or proposed injection well facility is or will be located; persons who own mineral rights underlying the existing or proposed injection well facility; and persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located. Currently, the requirement to provide mailed notice to mineral interest owners applies only to Class I injection well (waste disposal well) permits, and the commission intends to apply these same requirements to Class III injection well (wells used for the extraction of minerals) permit applications. In addition, under the adopted amendments, mailed notice of both Class I and Class III injection well permit applications would be provided to any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located. These adopted mailed notice requirements would apply to the Notice of Receipt of Application and Intent to Obtain a Permit under §39.651(c), the Notice of Application and Preliminary Decision under §39.651(d), and Notice of Contested Case Hearing under §39.651(f).

The commission adopts the amendment to §39.653 to provide similar mailed notice requirements for applications for production area authorizations. The adopted amendment would require that mailed notice be provided to persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant; landowners adjacent to the property on which the existing or proposed production area is or will be located; persons who own mineral rights underlying the existing or proposed production area and persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located. In addition, under the adopted amendment, the public notices under §39.653 would be provided to any groundwater conservation district established in the county in which the existing or proposed production area is or will

be located. The commission adopts the amendment to §39.653(d)(1) to replace the acronym "SOAH" with "the State Office of Administrative Hearings."

The commission adopts new §39.655 to establish public notice requirements for an aquifer exemption. Under adopted new §39.655, specific notice requirements would apply to a Notice of Aquifer Exemption, any Notice of Public Meeting on Aquifer Exemption, and any Notice of Contested Case on Aquifer Exemption. The commission intends that the manner for newspaper publication of the notice of aquifer exemption be the same as required for the Notice of Application and Preliminary Decision of the injection well permit application associated with the aquifer exemption. And similarly, the recipients of the Notice of Aquifer Exemption should be the same as required for the Notice of Application and Preliminary Decision of the injection well permit application associated with the aquifer exemption.

The commission adopts the amendment to §39.702 to establish that applications for initial issuance, major amendment, or renewal of a license under Chapter 336 are subject to Notice of Declaration of Administrative Completeness. Applications for minor amendments are not subject to this requirement.

The commission adopts the amendment to §39.703 to clarify that the deadline to file public comment for minor amendments is either ten days from mailing of the public notice by the Office of the Chief Clerk, or ten days from the date of publication in the *Texas Register* for those applications for minor amendments of licenses for Chapter 336, Subchapters H and M.

The commission adopts the amendment to §39.707 to correct the title of Subchapter L in subsection (a).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the 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 adopted rulemaking action implements legislative requirements in SB 1604, transferring responsibilities for the regulation of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Department of State Health Services to the commission and amends the UIC program requirements for in situ recovery of uranium. The adopted rules to Chapter 39 amend public notice requirements for applications for radioactive materials licenses, injection well permits and production area authorizations, and aquifer exemptions. The adopted rules clarify requirements for public notice of radioactive materials licenses, add requirements for the provision of public notice for injection well permits and production area authorizations to mineral interest owners and groundwater conservation districts, and establish specific requirements for public notice of aquifer exemptions. The adopted rules to Chapter 39 are not anticipated to 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, because the adopted rules apply only to procedural requirements for providing public notice. The adopted rulemaking action also amends technical requirements for the radioactive material licensing programs and establishes fees for applications and waste disposal in Chapter 336, amends technical requirements for injection wells and other wells for in situ uranium recovery in Chapter 331, amends financial assurance requirements in

Chapter 37, amends public participation requirements in Chapter 55, and amends application requirements in Chapter 305.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, 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. The adopted rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The commission's UIC program is authorized by the United States Environmental Protection Agency and the adopted changes to public notice for injection well permits, production area authorizations, and exempt aquifers do not exceed a standard of federal law or requirement of a

delegation agreement. The adopted rules do not exceed a federal standard and are compatible with federal law.

The adopted rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. TWC, Chapter 27, establishes requirements for the commission's UIC program and TWC, §5.553, requires the commission to establish requirements for public notice by rule. The purpose of the rulemaking is to implement public notice requirements consistent with THSC, Chapter 401 and TWC, Chapters 5 and 27.

The adopted rules are compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The adopted rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State." The commission's UIC program is authorized by the United States Environmental Protection Agency, and the public notice requirements are compatible with the state's delegation of the UIC program.

The rules are adopted under specific laws. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. TWC, §27.019 requires the commission to adopt rules reasonably required to implement the Injection Well Act, and TWC, §5.553 requires the commission to establish requirements for the form, content and manner of publication of public notice.

The commission invited public comments regarding the draft regulatory impact analysis during the public comment period. No comments were received on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these adopted rules would not constitute a taking of real property.

The purpose of these adopted rules is to provide clarifying changes to the public notice requirements for radioactive material licenses, to require public notice of injection well activities to mineral interest owners and groundwater conservation districts, and to establish public notice requirements for aquifer exemptions. The adopted rules to Chapter 39 would substantially advance this purpose by amending the commission public notice requirements.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The adopted rules amend public notice requirements for permit and license applications and do not affect real property. The adopted rules only amend specific requirements for how public notice is provided and do not establish new permitting or licensing programs. Therefore, the adopted rules do not affect real property in a manner that is different than would have been affected without these revisions.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the coastal management program.

PUBLIC COMMENT

The commission held a public hearing on September 16, 2008. The public comment period closed on October 6, 2008. The commission received comments from Blackburn Carter (BC), Kelly Hart & Hallman (KHH), Mesteña Uranium L.L.C. (Mesteña), the Lone Star Chapter of the Sierra Club (Sierra Club), Texas Mining and Reclamation Association (TMRA), and URI, Inc. (URI).

RESPONSE TO COMMENTS

General Notice Requirements

BC commented that this is the time to extend notice requirements to the exploration phase of in situ uranium mining. BC stated that the public should have information appropriate to answer questions at each step of the process and the information should be made available to groundwater conservation districts.

Because the TCEQ does not regulate the exploration process and does not issue an exploration permit, the TCEQ cannot establish public notice requirements for an exploration permit. The RRC regulates exploration. No changes were made in response to this comment.

BC commented that an application to amend restoration table values or timetables should be subject to notice and reviewed by the public.

Any application for a production area authorization is subject to public notice requirements of Chapter 39. Two notices will be issued for a production area authorization: a notice of receipt of the application and intent to obtain a permit will be issued when an application is determined to be administratively complete; and if the executive director recommends approval of the application, a Notice of Application and Preliminary Decision. An application for a production area authorization must be made available to the public in a public location in the county in which the proposed production area is located. An application is also a public record and is available under the Public Information Act at the TCEQ offices in Austin. No changes were made in response to this comment.

BC commented that the concept of a third-party expert provided in §331.108 is troublesome and should be subject to notice requirements and an opportunity to comment.

All applications for production area authorizations are subject to public notice and an opportunity to comment even if the executive director uses the recommendation of a third-party expert under the provisions of §331.108. No changes were made in response to this comment.

BC commented that notice alone is not enough, public access to information is equally important and that the adequacy and completeness of the information provided to the public at each step of the process is critical.

The commission agrees with the comment. An application for a Class III permit, an application for a production authorization, and a request to designate an exempt aquifer must be made available to the public in a public location within the county in which the proposed facility is located. An application is a public record and is available to the public under the Public Information Act at the TCEQ offices in Austin. Maintaining an application that is available to the public and an opportunity for the public to comment on the application can provide the executive director and the commission with additional information from the public that may not be reflected in the application in making a decision on whether to approve an application.

Notice to Mineral Interest Owners

KHH and TMRA commented that the rules should not require that public notice be sent to adjacent mineral rights owners for Class III injection well permit applications because the wells are not used to inject waste. TMRA and URI commented that adjacent mineral owners cannot be affected by Class III uranium recovery activities. TMRA and URI commented that proposed §39.653(b)(4) and (c)(4) should

be deleted. TMRA also commented that §39.651(c)(4) should be changed to eliminate the applicability of the provision for Class III injection wells.

The commission does not agree with the comment and intends to require that public notice be mailed to mineral rights owners underlying and adjacent to a proposed Class III permitted area and to a proposed production area. Because Class III injection operations inject fluids into a formation that is mineral bearing, adjacent mineral owners may be interested or affected by the injection operations. For example, mineral rights owners may be interested that the designation of the boundaries of a permit area or production area are appropriate to assure their rights are not affected, that the protections to assure confinement of mining fluids are adequate, and that monitor wells are appropriately established. No changes were made in response to these comments.

TMRA commented that mineral rights owners are not reflected in county tax rolls and that an applicant will not be able to comply with the "safe haven" requirements of TWC, §27.018(c).

The commission does not agree with the comment. Some taxing authorities may impose a tax on producing mineral interests, and the mineral owner could be reflected in county tax rolls. The public notice required under TWC, §27.018(c) only applies to the notice of a contested case hearing. The commission is adopting requirements to provide mailed notice for the notice of receipt of application and intent to obtain permit and for the notice of application and preliminary decision. These are notice requirements in the earlier stages of the application process. In the event of a contested case hearing on an application, the commission or other party must place evidence in the record that the notice of the hearing was mailed to the address of the affected person included in

the appropriate county tax rolls at the time of mailing. The commission has required that public notice be provided to adjacent mineral interest owners for Class I injection well permit applications for over seven years, and there has not been a problem in complying with TWC, §27.018(c) in contested case hearings on Class I injection well permit applications. TWC, §27.018(c) reflects the possibility that the owners of property can change from the time that initial notices associated with an application are provide to the time a contested case hearing is held on an application to ensure that the notice of the hearing is provided to the current property owners as reflected in the county tax rolls at the time of the mailing. To comply with TWC, §27.018(c), the applicant should check with the most current tax rolls to assure that the mailing list for the notice of the contested case hearing includes the names of the affected persons on the appropriate county tax rolls at the time of mailing. If notice is provided to additional persons that are not reflected on the appropriate tax rolls, the applicant would still be in compliance with TWC, §27.018(c). No changes were made in response to this comment.

KHH and URI commented that it is burdensome to develop a mailing list of mineral rights owners because of the large areas involved and the fragmented nature of mineral rights ownership.

The commission does not agree that providing notice to adjacent mineral rights owners is overly burdensome. Mineral interests may get fragmented, but identifying mineral rights and locating mineral rights owners is common in Texas for the oil, gas, and mineral extraction industry. Experienced land men can locate mineral deeds in county records office to identify the appropriate recipients of the notice. In fact, much of this information should already be available to a uranium mining operator as the operator may be required to enter a lease with the mineral rights owners for

the exploration and development of the uranium. In addition, all in situ uranium mining operations have a Class I injection well for waste disposal purposes, and existing notice requirements already require the identification of mineral rights owners for applications for the Class I injection well permit application. It should not be too difficult to expand the list of notice recipients for a Class I injection well permit application, if necessary, to include the mineral rights owners adjacent to a proposed Class III injection well permitted area or production area. No changes were made in response to this comment.

Sierra Club commented that the notice of applications for radioactive material licenses for uranium recovery also be sent to groundwater conservation districts and mineral rights owners.

The commission does not agree with the comment. Because the Class III injection well permit and production area authorization applications involve subsurface injection, it is appropriate to include mineral rights owners and groundwater districts on the notices associated with those applications. A radioactive material license involves the activities on the surface. Mineral interest owners and groundwater conservation districts would already be included in the injection well permit applications, and any individual or district can make a request to be included on the mailing list for a particular radioactive material license application or a county-wide mailing list for all applications within a county. No changes were made in response to this comment.

Mailed Notice Requirements

TMRA commented that the proposed language in §39.651(c)(4) is problematic because it requires notice be provided to "persons who own the property" which is overly broad and should be limited to the owners of present possessory surface interests.

The commission does not agree with the comment that the language is problematic. The existing notice rule has used the phrase "persons who own the property" for over seven years without any problems of coverage. By providing notice of the application to "persons who own the property" on which an existing or proposed facility is or will be located, the commission is attempting to give notice to any person who may be affected by the granting of the permit under TWC, §5.115(b). Because providing notice to "persons who own the property" is attempting to provide the notice to those who may be affected by the application, the commission does agree that *ownership* connotes a present possessory interest in the property and an ability to control the property in question. Therefore, an applicant would not have to identify owners of future interests in property for purposes of developing an adjacent landowner mailing list as part of the application. No changes were made to this comment.

TMRA commented that proposed §39.653(b)(1) should be deleted because there is no reason to provide notice to surface owners of a production area authorization when these same owners already were provided notice of the Class III injection well area permit application.

The commission does not agree that §39.653(b)(1) should be deleted. Although someone may have received notice of a Class III injection well area permit application, the person who owns the property on which an existing or proposed production area is located may change from the time a

permittee applies for and obtains a Class III injection well area permit to the time the permittee applies for a particular production area authorization. In addition, a Class III injection well area permit does not address all of the same issues or requirements that are addressed in a production area authorization. The owner of the property may be interested in the specific requirements of the production area authorization, such as monitor well requirements and restoration table values. No changes were made in response to this comment.

TMRA commented that proposed §39.653(b)(2) should use the term "persons who own land" instead of the term "landowners" for consistency purposes.

The commission does not agree with the comment. Although the commission does equate the phrase "person who owns the property" with the term "landowner," the rule language does not need revision for consistency sake. Existing language in §39.651(c)(4)(A) has used "persons who own the property" on which a facility is located, if different than the applicant, for Class I injection well permit applications. And, §39.651(c)(4)(B) has used "landowners" adjacent to the facility for Class I injection well permit applications. These notice requirements have been used successfully without problems in identifying the appropriate notice recipient. The commission's adopted rules carry out the same mailed notice requirements that are currently applied to Class I injection well permit applications to Class III injection well permit and production area authorization applications. No change has been made in response to this comment.

Notice to Groundwater Conservation Districts

Mesteña, Sierra Club, and TMRA expressed agreement with the inclusion of a local groundwater district as a recipient of mailed notice for Class III injection well permit applications and production area authorization applications.

The commission acknowledges the support for this requirement.

Comment period for minor amendments

Sierra Club commented that applications for minor amendments of radioactive materials licenses should be subject to a 30-day comment period after the date of *Texas Register* publication instead of a ten-day period.

The commission does not agree with the comment. A ten-day comment period is appropriate for an application for a minor amendment. The commission is adopting new requirements for establishing the types of license changes that would be considered minor amendments. Generally, minor amendments are changes that do not have any potential impact on public health and safety, worker safety, or environmental health; that enhance protection of health, safety, and the environment; or that have been previously subject to review and environmental analysis. Because of the types of license changes that can be made by a minor amendment, a ten-day comment period is appropriate. No changes have been made in response to this comment.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§39.403

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is adopted under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendment is also adopted under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which

provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendment implements Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Air Quality Applications; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - E of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications; Public Notice of Air Quality Applications; and Public Notice of Other Specific Applications). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits). The effective date of the amendment of existing §39.403, specifically with respect to subsection (c)(9) and (10) of this section, is June 3, 2002. Applications for modifications filed before this amended section becomes effective will be subject to this section as it existed prior to June 3, 2002.

(1) Explanation of applicability. Subsection (b) of this section lists all the types of applications to which Subchapters H - M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsections (d) and (e) of this section specify that only certain sections apply to applications for radioactive materials licenses or voluntary emission reduction permits.

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits, concrete batch plant air quality exemptions from permitting or permits by rule, and applications to amend, modify, or renew permits.

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

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

(4) applications for production area authorizations or exempted aquifers under Chapter 331 of this title (relating to Underground Injection Control);

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (e) of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing);

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

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

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

(C) other changes when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process; or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(9) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

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

(11) applications for voluntary emission reduction permits under THSC, §382.0519;

(12) applications for permits for electric generating facilities under Texas Utilities Code, §39.264;

(13) applications for multiple plant permits (MPPs) under THSC, §382.05194; and

(14) Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.

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

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Subchapter B of that chapter;

(2) applications for registrations and notifications under Chapter 312 of this title;

(3) applications under Chapter 332 of this title (relating to Composting);

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

(5) applications under Chapter 116, Subchapter F of this title (relating to Standard Permits);

(6) applications under Chapter 106 of this title, except for concrete batch plants specified in subsection (b)(10) of this section;

(7) applications under §39.15 of this title (relating to Public Notice Not Required for Certain Types of Applications) without regard to the date of administrative completeness;

(8) applications for minor amendments under §305.62(c)(2) of this title (relating to Amendment). Notice for minor amendments shall comply with the requirements of §39.17 of this title (relating to Notice of Minor Amendment) without regard to the date of administrative completeness;

(9) applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;

(10) applications for modifications of municipal solid waste permits and registrations under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Notice for modifications shall comply with the requirements of §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration), without regard to the date of administrative completeness;

(11) applications for Class 2 modifications of industrial or hazardous waste permits under §305.69(c) of this title. Notice for Class 2 modifications shall comply with the requirements of §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit),

without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 and §305.69(c) of this title;

(12) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee);

(13) applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title;

(14) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); or

(15) applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-Injection Units Registration).

(d) Applications for initial issuance of voluntary emission reduction permits under THSC, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this

title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply. For MPP applications filed before September 1, 2001, the initial issuance, amendment, or revocation of MPPs under THSC, §382.05194 is subject to the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits, except as otherwise provided in §116.1040 of this title (relating to Multiple Plant Permit Public Notice and Public Participation).

(e) Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title; §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice).

(f) Applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

SUBCHAPTER L: PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

§§39.651, 39.653, and 39.655

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments and new section are adopted under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendments and new section are also adopted under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal,

which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments and new section implement Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§39.651. Application for Injection Well Permit.

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

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

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must 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 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 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 or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to 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) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste or Class III injection well permit applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an application for a new hazardous waste facility is filed:

(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; but

(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; but

(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) 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) 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 the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this

title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility;

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(v) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) 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.

§39.653. Application for Production Area Authorization.

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control).

(b) Notice of Receipt of Application and Intent to Obtain Permit. After the executive director determines that the application is administratively complete, notice shall be given as required by §39.418 of this title (relating to Notice of Receipt and Intent to Obtain 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). The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed production area is or will be located;

(3) persons who own mineral rights underlying the existing or proposed production area;

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located; and

(5) any groundwater conservation district established in the county in which the existing or proposed production area is or will be located.

(c) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) shall be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. The notice shall specify the deadline to file with the chief clerk public comment, which is 30 days after mailing. The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed production area is or will be located;

(3) persons who own mineral rights underlying the existing or proposed production area;

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located; and

(5) any groundwater conservation district established in the county in which the existing or proposed production area is or will be located.

(d) Notice of contested case hearing.

(1) 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) The applicant shall publish notice at least once under §39.405(f)(2) of this title.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

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

§39.655. Aquifer Exemption.

(a) Applicability. This section applies to the designation of an exempt aquifer under §331.13 of this title (relating to Exempted Aquifer).

(b) Notice of Aquifer Exemption. Notice of Aquifer Exemption shall be published once in a newspaper or newspapers in the same manner as required for the Notice of Application and Preliminary Decision for an injection well permit application associated with the proposed aquifer exemption under §39.651(d) of this title (relating to Application for Injection Well Permit). This notice must contain the text as required by §39.411(c)(1) - (6) of this title (relating to Text of Public Notice). The chief clerk shall mail this notice to the persons who would receive the Notice of Application and Preliminary Decision for an injection well permit application associated with the proposed aquifer exemption under §39.651(d) of this title. The deadline for submitting public comments or requesting a contested case hearing on an aquifer exemption is 30 days after newspaper publication.

(c) Notice of Public Meeting on Aquifer Exemption. Notice of a Public Meeting on Aquifer Exemption shall be published in a newspaper or newspapers in the same manner as required for the Notice of Public Meeting for an injection well permit application associated with the proposed aquifer exemption under §39.651(e) of this title. This notice must contain the text as required by §39.411(d) of this title. The chief clerk shall mail this notice to the persons required to receive the Notice of Public Meeting for an injection well permit application associated with the proposed aquifer exemption under §39.651(e) of this title.

(d) Notice of Contested Case Hearing on Aquifer Exemption. This section applies if an application to designate an exempt aquifer 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). Notice of contested case hearing on Aquifer Exemption shall be published in a newspaper or newspapers in the same manner as required for the notice of contested case hearing for an injection well permit application associated with the proposed aquifer exemption under §39.651(f) of this title. This notice must contain the text as required by §39.423 of this title (relating to Notice of Contested Case Hearing). The chief clerk shall mail this notice to the persons required to receive the Notice of Contested Case Hearing for an injection well permit application associated with the proposed aquifer exemption under §39.651(f) of this title.

(e) Combined notice. Notice required under this section may be combined to satisfy other applicable sections of this subchapter.

SUBCHAPTER M: PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

§§39.702, 39.703, and 39.707

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are adopted under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendments are also adopted under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which

provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§39.702. Notice of Declaration of Administrative Completeness.

When an application for a license, major amendment, or renewal of a license under Chapter 336 of this title (relating to Radioactive Substance Rules) has been declared administratively complete, the chief clerk shall mail notice under this subchapter. The applicant shall publish the notice of declaration of administrative completeness as provided in §39.707 of this title (relating to Published Notice).

§39.703. Notice of Completion of Technical Review.

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules), notice must be mailed by the Office of the Chief Clerk and published under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For application for a minor amendment to a license issued under Chapter 336 of this title notice must be mailed by the Office of the Chief Clerk under this subchapter. The deadline to file public comment is ten days after mailing, or ten days after publication in the *Texas Register* for minor amendments to a license issued under Chapter 336, Subchapter H or M of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste; Licensing of Radioactive Substances Processing and Storage Facilities, respectively).

§39.707. Published Notice.

(a) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), Subchapter L of this title (relating to Licensing of Source Material Recovery and By-Product Material Disposal Facilities), or Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), on completion of technical review and preparation of the draft license, the commission shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice must

include a statement that the draft license is available for review on the commission's Web site and that the draft license and application materials are available for review at the offices of the commission and in a public place in the county or counties in which the proposed disposal facility site is located. Notice must be published in a newspaper of general circulation in each county in which the proposed disposal facility site is located.

(c) In addition to published notice requirements in subsection (b) of this section, for an initial notice of draft license and opportunity to comment and for any subsequent license amendment of a license under Chapter 336, Subchapter H of this title or Subchapter M of this title, the chief clerk shall publish notice once in the *Texas Register*.