

The Texas Commission on Environmental Quality (commission) proposes amendments to §55.101 and §55.201.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking implements House Bill (HB) 2654, 80th Legislature, 2007. HB 2654 amended Texas Water Code (TWC), §27.021 and added new TWC, §27.023 to allow the commission to issue a general permit authorizing the use of a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals. These legislative changes are intended to promote desalination technology and address the need for public water supply systems to dispose of drinking water treatment residuals. To implement HB 2654, this rulemaking amends §55.101(f) and §55.201(i).

The amended rules add two new types of applications and actions to a listing of applications that the commission may act on without holding a contested case hearing. This listing is in §55.101(f). There are two paragraphs under §55.101(f) that are affected by the proposed amendments. First, the proposed amendment to §55.101(f)(4) will update the list of applications that are not subject to a contested case hearing by adding an application for a Class I injection well used only for the disposal of nonhazardous drinking water treatment residuals. This exception is in addition to the exception for applications for disposal of desalination brine which was added by a previous rulemaking in the September 10, 2004 issue of the *Texas Register* (29 TexReg 8817). Amendment of §55.101(f)(4) also includes updates to reflect use of the term "nonhazardous brine from a desalination operation" instead of "desalination brine," and inserts the word "injection" into the phrase "Class I injection wells," to achieve consistency with the title of TWC, §27.021 as amended by HB 2654.

Second, a new paragraph has been inserted as §55.101(f)(5) with renumbering of the subsequent paragraph. The new paragraph implements part of TWC, §27.023 in HB 2654 that allows the commission to issue a general permit authorizing a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals, without providing the opportunity for a contested case hearing, as long as all requirements for a Class I injection well permit are met. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking. Removing the opportunity for a contested case hearing may expedite the approval of Class I injection well permits for the disposal of nonhazardous desalination brine and nonhazardous drinking water treatment residuals. The commission's ability to hold a discretionary hearing under the provisions of TWC, §5.102(b) was not amended by HB 2654.

Changes to 30 TAC Chapters 50, 305 and 331 are also proposed in this issue of the *Texas Register* to implement HB 2654 and to incorporate other changes to facilitate disposal of nonhazardous desalination brine and nonhazardous drinking water treatment residuals.

SECTION BY SECTION DISCUSSION

§55.101. Applicability.

The proposal would amend §55.101(f)(4) by adding a permit application for a Class I injection well used only for the disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals to the list of applications upon which the commission may act without holding a contested case hearing. The proposal would add §55.101(f)(5) to include the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit, or the authorization for the use of an injection well under a

general permit in the list of items upon which the commission may act without holding a contested case hearing. Current paragraph §55.101(f)(5) will be renumbered as paragraph (6). Proposed §55.101(f)(5) implements part of TWC, §27.023 in HB 2654 that allows the commission to issue a general permit authorizing a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals, without providing the opportunity for a contested case hearing.

§55.201. Subchapter F, Requests for Reconsideration or Contested Case Hearing.

The proposal would amend §55.201(i)(6) by adding a permit application for a Class I injection well used only for the disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals to the list of applications for which there is no right to a contested case hearing. The proposal would add §55.201(i)(7) to include the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit, or the authorization for the use of an injection well under a general permit in the list of items for which there is no right to a contested case hearing. Current paragraphs (7) - (9) will be renumbered as paragraphs (8) - (10), respectively.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant 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. The agency will utilize existing resources to develop rules and guidelines for a general permit to authorize the use of Class I injection wells for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

HB 2654, 80th Legislature, Regular Session allows the commission to issue a general permit to authorize the use of a Class I injection well for disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals and authorizes the use of these wastes as appropriate injection fluids for enhanced oil and gas recovery purposes without obtaining a permit. HB 2654 requires the agency to issue rules governing the issuance of the general permit and establish the requirement for a notice of intent covered by the general permit. In addition, HB 2654 specifies that the general permit is not subject to the requirements of a contested case hearing. The proposed rulemaking is part of the agency's effort to establish a general permit program authorizing the use of Class I injection wells as specified by the legislation. In addition to this rulemaking, amendments are also proposed for appropriate sections of Chapters 50, 305, and 331. This fiscal note addresses only the fiscal implication of proposed changes to Chapter 55. The fiscal implications for needed amendments to other chapters are addressed in separate fiscal notes.

The proposed rules would comply with the notice of intent and contested case hearing requirements of HB 2654. These administrative changes allow the agency to authorize disposal of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals under a general permit without holding a contested case hearing if all permit requirements are met.

Local governments and state agencies that are suppliers of public drinking water are not expected to experience significant fiscal implications because of the proposed rules. Governmental entities supplying public drinking water are expected to choose the most economical method of disposal of nonhazardous desalination and drinking water residual wastes, and disposal of these wastes in these injection wells is

one option among various options available to suppliers of public drinking water regarding waste disposal.

If a local government or state agency chooses to own or operate a Class I injection well qualifying for authorization under the proposed general permit, the proposed rules could streamline the process for the governmental entity by not subjecting it to a requirement for contested case hearings, public notice, and public meetings. Savings generated by not holding contested case hearings could be as much as \$500,000 although a contested case hearing would likely cost less. Not being required to publish public notices required by individual permits could save as much as \$1,000 to \$3,000 depending on the circulation size of the newspapers used. Savings generated by not being required to hold a public meeting, if an application had generated sufficient public interest for the agency to require one for an individual permit, could range from \$1,700 to \$4,700 depending on the cost of notices and the price for renting a meeting place.

PUBLIC BENEFITS AND COSTS

Nina 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 to allow desalination projects and operations requiring the disposal of nonhazardous drinking water treatment residuals to come on line in a shorter time frame thus providing an increased supply of public drinking water while continuing to safeguard public health and the environment.

Individuals and business entities that are suppliers of public drinking water are not expected to experience significant fiscal implications because of the proposed rules. Suppliers of public drinking water are

expected to choose the most economic method of disposal of nonhazardous desalination concentrate and drinking water treatment residuals, and disposal of these wastes in these injection wells is one option among various options available to suppliers of public drinking water regarding waste disposal.

Large businesses that own or operate these types of injection wells could possibly save both time and money since the proposed rules do not subject them to contested case hearings, requirements of public notice, and requirements for public meetings that would be required under an individual permit. Savings generated by not holding contested case hearings could be as much as \$500,000 although a contested case hearing would likely cost less. Public notices required for individual permits could cost as much as \$1,000 to \$3,000 depending on the circulation size of the newspapers used. If applying for authorization under a general permit, applicants could be expected to save this expense. Applicants for authorization under this general permit could also save on the public meeting costs incurred for individual notices if an application would have had a public meeting under the requirements for an individual permit. These costs could range from \$1,700 to \$4,700 depending on the number of notices of public meeting that would have been required and the price of rentals for meeting places in the area.

Oil and gas businesses that might utilize enhanced recovery methods by injecting nonhazardous desalination concentrate or drinking water treatment residuals are expected to experience the same cost savings regarding contested case hearings, public notice and public meetings as those experienced by suppliers of public drinking water.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Staff knows of no small or micro-businesses that are owners of Class I wells. The proposed rules establish that wells authorized under the general permit for Class I injection wells disposing of nonhazardous desalination and drinking water treatment residual wastes are not subject to the requirements of a contested case hearing, requirements of public notice, and requirements of public meetings as are those required by individual permits. If a small or micro-business decides to request authorization under a general permit to own or operate a Class I injection well for nonhazardous desalination concentrate or drinking water treatment residual waste disposal, it should experience the same cost savings associated with contested case hearings, public notices, and public meetings as those experienced by large businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are needed to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

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 do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined by that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not intended to reduce risks to human health from environmental exposure, nor does it 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 intent of the proposed rulemaking is to implement HB 2654, passed during the 80th Legislature, 2007, and to revise criteria for authorizing Class I nonhazardous wells injecting desalination concentrate and other water treatment residuals from public water systems so that the state's rules are no more stringent than federal Class I nonhazardous injection well regulations. The specific intent of the proposed amendments to Chapter 55 is to address certain procedural rights regarding applications for Class I injection well permits used only for the disposal of drinking water treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well authorized to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals. The rule substantially advances this purpose by adding notices of intent submitted under §331.203 to the applicability of Chapter 55, Subchapters D - G and by adding to the list of actions for which there is no right to a contested case hearing applications for a Class I injection well permit used only for the disposal of drinking water

treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well used only for the disposal of nonhazardous brine from desalination operations or drinking water treatment residuals.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendments would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed amendment will be significant with respect to the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, this rulemaking 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. This rulemaking does not meet any of these four applicability requirements because this rulemaking does not exceed any standard set by federal law but rather amends the rules so that they are no more stringent or restrictive than the federal regulations. The rules proposed do not exceed the requirements of state law under TWC, Chapter 27. Further, the rules proposed do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of

the federal government to implement any state and federal program. Finally, the rule is not proposed solely under the general powers of the agency, but rather specifically under TWC, §27.023(m), which allows the commission to adopt rules to implement the general permit authorizing use of a Class I injection well to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals and TWC, §27.109, which authorizes the commission to adopt rules to implement TWC, Chapter 27, as well as the other general powers of the agency.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKING IMPACT ASSESSMENT

The commission evaluated the proposed amendments to Chapter 55 and performed a preliminary assessment of whether the amendments would constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed amendments is to implement HB 2654, authorizing use of a general permit for Class I injection wells injecting only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. The proposed amendments would substantially advance this purpose by amending §55.201 to add to the list of actions for which there is no right to a contested case hearing applications for a Class I injection well permit used only for the disposal of drinking water treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well used only for the disposal of nonhazardous brine from desalination operations or drinking water treatment residuals.

Promulgation and enforcement of the proposed amendments would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rulemaking because the proposed amendments neither relate to, nor have any impact on the use or enjoyment of private real property, and there would be no reduction in property value as a result of this rulemaking. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

The commission has no reasonable alternative that could accomplish the specific purpose of addressing certain procedural rights regarding applications for Class I injection well permits used only for the disposal of nonhazardous desalination concentrate or drinking water treatment residuals and the issuance, amendment, renewal, suspension, revocation or cancellation of a general permit or authorization under a general permit for a Class I injection well authorized to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals. These procedural issues regarding permit applications and notices of intent can only be affected through amendments to the commission's rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 8, 2008 at 10:00 a.m. in Building E Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Kristin Smith, 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/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-030-331-PR. The comment period closes April 14, 2008. 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. For further information, please contact Ms. Kathryn Hoffman, Waste Permits Division, (512) 239-6890.

SUBCHAPTER D: APPLICABILITY AND DEFINITIONS

§55.101

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendment implements TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§55.101. Applicability.

(a) Subchapters D - G of this chapter (relating to Applicability and Definitions; Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) apply to permit applications that

are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section.

(b) Subchapters D - G of this chapter apply to public comments, public meetings, hearing requests, and requests for reconsideration.

(c) Subchapters D - F of this chapter apply only to applications filed under Texas Water Code, Chapters 26, 27, and 32 and Texas Health and Safety Code, Chapters 361 and 382.

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section and other than those filed under Texas Water Code, Chapters 26, 27, and 32 and Texas Health and Safety Code, Chapters 361 and 382.

(e) Subchapters D - F of this chapter apply to applications for amendment, modification, or renewal of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Processing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(f) Subchapters D - G of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits By Rule) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project;

(4) applications for Class I injection well permits used only for the disposal of nonhazardous [desalination] brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells; [and]

(5) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals; and

(6)[(5)] applications where the opportunity for a contested case hearing does not exist under other laws.

(g) Subchapters D - G of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(2) applications for authorization 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;

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under Texas Water Code, Chapter 13 and Texas Water Code, §§11.036, 11.041, or 12.013. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of hearing requests under standards specified by law, and may refer the application to the chief clerk for hearing processing. The maximum expected duration of a hearing on an application referred to the State Office of Administrative Hearings under this provision

shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a State Office of Administrative Hearings hearing on an application subject to this provision are all those issues that are material and relevant under the law;

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

(7) applications for initial issuance of voluntary emissions reduction permits under Texas Health and Safety Code, §382.0519;

(8) applications for initial issuance of permits for electric generating facility permits under Texas Utilities Code, §39.264;

(9) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(10) applications for multiple plant permits under Texas Health and Safety Code, §382.05194;

(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-Injection Units Registration); and

(12) applications where the opportunity for a contested case hearing does not exist under other laws.

SUBCHAPTER F: REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

§55.201

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.023, which allows the commission to adopt rules as necessary to implement and administer a general permit authorizing the use of Class I injection wells to inject nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals.

The proposed amendment implements TWC, §27.023, relating to General Permit Authorizing Use of Class I Injection Wells to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, and TWC, Chapter 27.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

- (1) the commission;
- (2) the executive director;
- (3) the applicant; and
- (4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

(e) Any person may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, and the public interest counsel, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for

Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of a voluntary emission reduction permit or an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program); or

(C) amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not

previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(a)(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous [desalination] brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(8)[(7)] an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(9)[(8)] an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018; and

(10)[(9)] other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law.