

The commission adopts new §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105, 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253, concerning public notice of proceedings. The commission is withdrawing the proposed §39.51.

Sections 39.1, 39.5, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.23, 39.101, 39.103, 39.105, 39.107, 39.109, 39.151, 39.251, and 39.253 are adopted with changes to the proposed text as published in the June 18, 1996, issue of the *Texas Register* (21 TexReg 5539). Sections 39.3, 39.7, 39.21, 39.25, and 39.201 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULES

This is part of the second phase (Phase II) of an ongoing project to reorganize, clarify, and consolidate the procedural rules of the commission. As part of Phase II, the commission adopted new procedural rules 30 TAC Chapters 1, 3, 5, 10, 20, 40, 50, 55, 70, 80, and 86, and amendments to 30 TAC Chapter 340 (see the May 28, 1996, issue of the *Texas Register* (21 TexReg 4689)). New Chapter 39 replaces several sections of 30 TAC Chapter 305, Subchapter E. The commission's adoption of the Phase II rules noted in this paragraph included the repeal of several sections of Chapter 305, Subchapter E. This edition of the *Texas Register* contains the repeal of most of the remaining sections of Chapter 305, Subchapter E. Accordingly, Chapter 305, Subchapter E has been repealed in its entirety with the exception of §305.106.

The adopted Chapter 39 is intended to organize and clarify the required public notice for several types of applications. The chapter is organized so that virtually all of the notice requirements for a specific

type of application are located in one section, and each section states the requirements generally in the order in which they must be satisfied. Chapter 39 replaces the public notice rules found in Chapter 305, Subchapter E, and so generally speaking, the requirements in Chapter 39 concern only the types of applications formerly under Chapter 305, Subchapter E, including applications for permits for: municipal solid waste, industrial solid waste, and hazardous waste facilities; wastewater discharges; and injection wells. However, Chapter 39 also contains provisions on notice of hearing concerning an application under 30 TAC Chapter 116 (air quality permits) and notice of hearing concerning a contested enforcement case. The notice requirements for additional types of applications may be placed in Chapter 39 in the future.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to clarify and recodify the commission's rules on public notice of proceedings. The rules will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because it concerns public notice of proceedings. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to these rules: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

HEARING AND COMMENTERS

A public hearing was held concerning the proposed rules on July 18, 1996, in Austin. No persons submitted comments during the hearing. The comment period closed July 18, 1996.

Written comments were received from Browning-Ferris Industries (BFI); Henry, Lowerre, Johnson, Hess & Frederick (Henry, Lowerre); Kelly, Hart & Hallman; and the League of Women Voters of Texas (League of Women Voters). The League of Women Voters and Kelly, Hart & Hallman generally supported the adoption of the new rules. BFI generally opposed the adoption of the new rules and requested that the commission instead form an ad hoc group to continue work on developing public notice rules. Henry, Lowerre argued that there are a number of major problems with the rules.

The League of Women Voters observed that public notice should be made so that there is actual notice given to the affected public. It also urged the commission to adopt a consistent approach on who should satisfy requirements to publish notice, and on dealing with the public.

The commission agrees that public notice should be targeted to the public affected by an application; the relevant statutes and current commission rules require notice with that goal in mind. Chapter 39 does not change those requirements, but makes the requirements easier to understand, and therefore, compliance (and actual notice) more likely. With respect to consistent approach, the commission responds that the adopted rules call for the applicant to complete any requirement to publish notice. Concerning dealing with the public on applications for permits, the commission recently created the Office of Public Assistance, whose job it is to respond to

inquiries by the public on applications and permitting processes, and provides the public a single point of contact with the agency.

Henry, Lowerre suggested a general requirement that all notice of opportunity to submit comment or a hearing request concerning an application should be issued only after agency staff has prepared the draft permit, claiming that this requirement would allow for meaningful participation by the public because the public could first review the draft permit.

The commission has made no changes in response to the comment. The proposed rules in most instances already contain this requirement; under most sections the “notice of draft permit” requires public notice after the draft permit is prepared. The exception is the rules on modifications of solid waste permits, which do not change notice requirements compared to the repealed rules, and are closely modeled on United States Environmental Protection Agency (EPA) requirements. The commission believes the comment relates to the agency’s program on air quality permits, however, the scope of this rulemaking project includes the air program only to the extent of proposing rules on notice of hearing. The notice requirements the commenter speaks of are in Chapter 116.

Henry, Lowerre suggested the commission adopt rules on required reissuance of notice when the draft permit is subsequently changed, or when there is an error in the original notice. The commenter gave as an example a specific application for an air quality permit, and a change to the application after notice of the application was issued.

While 30 TAC §281.23 prohibits changes to an application which would constitute a major amendment after issuance of notice of the application and draft permit, the commission acknowledges that this rule does not apply to the air program. However, the scope of this rules project is limited concerning the air program and concerns only the notice of hearing. Concerning the commenter's second issue on errors in public notice, the commission does not believe an additional rule is necessary, because the adopted rules specify the notice requirements that must be met.

The League of Women Voters argued that Chapter 39 should not use the term "person affected" until the commission adopts additional rules on this subject. Henry, Lowerre had similar concerns relating to public meetings.

The commission believes that this is a reference to several sections of the chapter concerning the requirement to hold a public meeting concerning an application if requested by a person affected. The commission has made no changes in response to the comments, because the term "person affected" is taken from Health and Safety Code, §361.0791, concerning public meetings. The commission, however, wishes to point out to the commenters that the commission's rules in 30 TAC §§55.1 et seq. on evaluating requests for contested case hearings do not apply to the evaluation of requests for public meetings. A "public meeting" is an informal meeting often held in the locality of the applicant's facility, while a "contested case hearing" is a formal evidentiary hearing held under the Administrative Procedure Act. The commission's resolution issued on October 8, 1996, directs the new Office of Public Assistance to hold public meetings on

applications when appropriate, and specifies relevant factors on determining when to hold a meeting. The factors which the Office of Public Assistance considers are similar to those proposed by Henry, Lowerre.

BFI cited case law that specifies that an agency's rules must be within the agency's authority to promulgate, and must be clear.

The commission believes that the adopted rules meet these requirements.

The League of Women Voters and Henry, Lowerre proposed that §39.1 should be amended so that the scope of Chapter 39 includes applications concerning the disposal of radioactive waste.

The commission has made no changes in response to these comments as they are beyond the scope of this rulemaking project. The commission notes, however, that in the near future the commission will consider publishing a proposed new subchapter to be added to Chapter 39 on notice of applications concerning radioactive substances.

Henry, Lowerre suggested adding to this chapter notice requirements concerning the commission's air program.

The commission has made no changes in response to the comment. While the adopted rules contain §39.201 on notice of hearing for a preconstruction permit, the air program is otherwise outside the scope of this rulemaking project.

The commission has revised §39.1(3) to clarify that the requirements of this chapter apply to applications for underground injection well permits, whether the applications are under the Water Code or the Health and Safety Code. Some applications for underground injection well permits are filed pursuant to the Water Code, Chapter 27 but not the Health and Safety Code, Chapter 361, such as applications for the disposal of radioactive substances.

Henry, Lowerre argued that §39.5(c) (specifying mailed notice is complete upon deposit with the United States Post Office) creates serious problems for responding to notice. As an example, they noted two other sections of Chapter 39 which provide for ten day's mailed notice.

The commission has made no changes in response to this comment. The section codifies what is already commission practice. For example, the commission rule on service of documents contains a similar provision, which is essentially the “mail-box rule” taken from the Texas Rules of Civil Procedure. See 30 TAC §1.11(d).

The League of Women Voters suggested that applicants should be required to submit proof of publication of notice.

The proposed rules contained this requirement; however, the adopted rules have been revised so that this requirement is located in one place, in §39.5(f), rather than in several sections in the chapter. The applicable statutes state in many instances that “acceptance” of the affidavit creates a rebuttable presumption of compliance with the requirements. The adopted rule specifies that “filing an affidavit certifying facts that constitute compliance with the notice requirements” creates the presumption, in order to clarify what act triggers the presumption. This clarification has been made to other rules, too.

Henry, Lowerre suggested that the rules state that if there is a deadline for public comment, protests, and hearing requests that are a certain number of days after publication, the deadline is counted from the last publication. It also suggested adding a rule which would allow for requesting and granting extensions of the deadline.

The commission will consider this suggestion when it considers for adoption recently proposed changes to 30 TAC Chapter 55, concerning hearing requests (see the October 25, 1996, issue of the *Texas Register* (21 TexReg 10503)). If the commission were to adopt this suggestion, the most logical placement of the new provision would be in §55.21(d), concerning the calculation of the deadline for a hearing request. With respect to extensions of the deadline, §55.21(e) already allows for the commission to extend the deadline.

Additional changes were made to §39.5. The commission added §39.5(g) and (h) as general requirements concerning publishing notice and broadcasting notice. Other rules now cross-reference

these subsections, avoiding the repetitive statement of the same provision. The commission added a provision to §39.5(g) to clarify the requirement for certain applications when notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located. The commission clarified that one publication may satisfy this requirement if the publishing newspaper meets both circulation requirements.

BFI criticized the provisions of §39.7, concerning mailing lists, asserting that the commission does not have the authority to adopt the rule.

The commission responds that this section is substantially the same as the repealed §305.103(b)(9), except the proposed rule is more clear, and its requirements are easier to identify due to the reorganization of the rules. Therefore, the commission has made no changes in response to the comment.

The League of Women Voters and Henry, Lowerre suggested changes to §39.9. Both suggested that the term “protest” should be defined, with one suggesting that “protest” is often confused with a “request for hearing.”

The commission has deleted the words “protest or” from §39.9 (and from other sections) based on anticipated changes to other commission rules in the near future. The commission recently proposed changes to 30 TAC Chapter 50 to delete the requirement that the filing of a “protest”

would prevent the executive director from issuing final approval of the protested application.

(The commission proposes no change to the commission rule that the filing of a hearing request prevents the executive director from issuing final approval of the application. See the October 25, 1996, issue of the *Texas Register* (21 TexReg 10501)). The commission has revised Chapter 39 now so that notice requirements are not misleading upon the adoption of the changes to Chapter 50. Until the changes to Chapter 50 are adopted, the commission will continue to issue notice that explains that the filing of a protest will prevent the executive director from issuing final approval of the protested application, even though this is not required by the adopted Chapter 39. The commission believes that the commenters' concerns relate to the processing of letters filed with the chief clerk in response to public notice, and the fact that each letter is unique in tone and content. Namely, it is sometimes difficult to discern if a letter that clearly protests the application also constitutes a hearing request. With respect to distinguishing a protest letter from a hearing request, the commission believes that its notices are clear, as they direct a person who wants a hearing to file the written statement, "I request a hearing."

The League of Women Voters, and Henry, Lowerre suggested changes to the rules concerning the text of public notice and the description of the deadline for filing public comment, protests, and, if applicable, hearing requests. The League of Women Voters suggested with respect to §39.9 that the text of public notice should describe the deadline by specifying an exact date.

Currently, commission notices specify that the deadline is a certain number of days after the notice is published in a newspaper. The commission responds that it believes there are two

options for implementing the commenter's idea, but that neither option is reasonable given the realities of publishing notice. The commission cannot specify an exact date so many days after publishing notice because often neither the commission nor the applicant know in advance when notice will be published. The chief clerk prepares the text of notice and forwards the notice to the applicant who then submits the notice to a publisher, who publishes it. Given that publication of notice depends on the actions of several entities, it is extremely difficult to predict exactly when notice will be published. The commission could take one of two actions. The commission could specify a date certain in notices that leaves ample time for notice to be published in the interim and satisfies statutory requirements (usually publication must be at least 30 days before the deadline to request a hearing). However, this would leave the commission with selecting a date certain that would substantially delay the processing of an application. The commission could alternatively select an earlier date and risk publication of notice that does not allow sufficient time for the public to respond, requiring the republication of notice. The commission has made no changes in response to the comments.

Henry, Lowerre argued that the rules do not require that mailed notice specify the deadline, using §39.101(c)(2) as an example.

The commission has made no change in response to the comment. Section 39.11(10) does require that mailed notice specify the deadline.

Henry, Lowerre suggested that §39.11, regarding the text of public notice, should apply not only to notice issued under the requirements of Chapter 39, but also to other notices.

The commission has made no change in response to the comment because, among other reasons, the proposal is not consistent with the commission's regulatory reform efforts to organize regulatory requirements in a clear and understandable manner.

The League of Women Voters suggested that §39.11 should require the text of notice to specify the county in which a facility is located.

The commission has made no changes in response to the comment. Chapter 39 is intended to organize current notice requirements, which does not include the commenter's suggested requirement. Also, the commission notes that the text of notice requires the address of the applicant, and if different, the location of the facility. Given that notice is generally limited to the county of the facility, the current requirements should be sufficient.

The League of Women Voters suggested that §39.11 should require the text of notice to include information about the opportunity to submit comments, ask questions, protest, or request a hearing. It also suggested that the text include the contact telephone number for the Public Interest Counsel or the Office of Public Assistance. Henry, Lowerre made similar suggestions on providing a single agency contact.

The commission has made no changes in response to the comments. Section 39.11(5) already requires a brief description of public comment procedures. Also, §39.11(10) already requires the text to include the deadline for filing hearing requests. This latter requirement applies if there is a right to hearing concerning the particular type of application and if the particular notice is issued under a requirement to give notice of opportunity for hearing. Concerning the second issue, the commission issued a resolution on October 8, 1996, concerning the new Office of Public Assistance. The resolution calls for all notices issued by the chief clerk and by applicants to list the Office of Public Assistance (and its toll-free telephone number) as the contact for further information. While §39.11(4) calls for the text of notice to include an agency contact person, the commission believes the identification of the specific contact office is best handled by resolution rather than by rule.

BFI criticized the provisions of §39.11, arguing that the commission acts beyond its authority if it adopts standards for text of notice.

The commission responds that this section is substantially the same as the repealed §305.100(a), except the proposed rule is more clear and its requirements are easier to identify due to the reorganization of the rules. While the proposed rules do not change notice requirements compared to the repealed rules, the commission notes that Texas Water Code, §5.103(b) requires the commission to adopt reasonable procedural rules to be followed in a commission hearing.

The commission has deleted the proposed §39.11(7), concerning notice of wastewater discharge permits because this provision duplicates the provision in §39.151. The subsequent subsections in §39.11 have been renumbered.

The commission has deleted the words “protest or” from §39.11(10), for the same reasons as explained previously concerning the changes to §39.9.

The commission has revised §39.11 and §39.13 to clarify that notice must comply with the requirements of the Coastal Management Program if applicable. The notice requirements are based on 30 TAC §281.44.

The League of Women Voters suggested that §39.13, concerning mailed notice, should include persons who filed comments or questions concerning an application.

The commission responds that paragraph (12) already provides for mailing notice to other persons designated by the chief clerk, and that in practice the chief clerk has mailed notice to persons who filed public comment or hearing requests concerning an application. However, the commission has made the recommended change by adding paragraph (14).

BFI criticized the provisions of §39.13, concerning mailed notice, arguing that the commission acts beyond its authority if it adopts standards for persons to whom notice should be mailed.

The commission has made no change in response to the comment. The section is substantially the same as the repealed §305.103(b), except the proposed rule is more clear and its requirements are easier to identify due to the reorganization of the rules. While the proposed rules do not change notice requirements compared to the repealed rules, the commission notes that Texas Water Code, §5.103(b) requires the commission to adopt reasonable procedural rules to be followed in a commission hearing.

The League of Women Voters argued that applications for “corrections” of permits should be defined in §39.15(a).

The commission has made no change in response to this comment. This subsection specifically applies only to applications under §305.65, which lists the types of permit changes that are “corrections.”

Henry, Lowerre argued that §39.15, concerning notice is not required for certain applications is too broad, and contrary to EPA requirements.

The commission responds that the section to a large extent clarifies and reorganizes current rules, including the repealed §305.97, and reflects current agency practice. Further, the commission believes the section is consistent with EPA requirements. The commission has, however, added the word “public” in two instances to §39.15 to clarify that the rule relates to public notice. The rule does not affect any requirement for a permittee to give notice to the executive director of the

transfer of a permit. The commission has revised §39.15(b), concerning the transfer of a permit to clarify that when an applicant seeks to transfer a permit and the executive director determines that changes to the permit in addition to the transfer are necessary, other notice requirements may apply. The commission has also revised the rule concerning the transfer of a permit for an underground injection well to reflect current agency practice.

The League of Women Voters argued that applications for “minor amendments” of permits should be defined in §39.17. It also questioned whether ten days notice is sufficient notice of an application for a minor amendment.

The commission has made no changes in response to these comments. The rule applies only to applications for minor amendments under Chapter 305, Subchapter D, and Subchapter D defines “minor amendment” in §305.62(c). With respect to the second comment, no change was made because the purpose of this rulemaking project is to restate and clarify existing notice requirements.

The commission has clarified §39.19, concerning notice of executive director’s recommendation to deny the application. The added provision clarifies that this section does not apply if notice of draft permit has been issued already. For example, if the executive director were to change his position at hearing and recommend to deny the application, this would not trigger any requirement to publish notice of the change.

The League of Women Voters suggested that notice of a commission meeting to evaluate a hearing request on an application should be given so that there is sufficient time to prepare for the commission meeting.

The commission has made no change in response to the comment. The comment related to an earlier draft of §39.21 which was distributed by the commission on an informal basis. The earlier draft allowed for 20 day's notice; this requirement, however, was increased to 30 day's notice in the version proposed in the *Texas Register*. The commission believes that 30 day's notice is adequate.

Henry, Lowerre argued that notice of a hearing held by the State Office of Administrative Hearings (SOAH) on an application should be mailed to persons who requested a hearing, filed a protest, or submitted comments. The commenter also criticized the provisions of §39.23(b), concerning notice of a hearing by SOAH to evaluate the validity of a hearing request, arguing that such hearing constitutes the beginning of the hearing on the application, and, therefore, the notice of hearing requirements concerning the particular type of application apply.

The commission responds that §39.23(a) already requires mailed notice to persons who filed timely public comment or hearing requests. The commission has revised subsection (a) to clarify that the chief clerk may combine the mailed notice required by this section with other required mailed notice of the hearing. Concerning §39.23(b), the commission disagrees with the commenter because notice of hearing requirements concern the hearing on the application, not a hearing on

hearing requests. “Limited referrals” to SOAH are really an extension of the process by which the commission considers hearing requests during its regular public meetings. The commission should not impose notice requirements for the commission’s consideration of a hearing request in public meeting in addition to the requirements specified in §39.21. The commission concludes that notice of hearing requirements should not be imposed because the commission has requested SOAH’s assistance in making a decision on a hearing request, and declines to change the rules. The commission has amended subsection (c) to clarify that once the first prehearing conference is held, notice to the parties of subsequent prehearing conferences and the hearing is mandatory, not discretionary.

Henry, Lowerre and BFI commented on the provisions of proposed §39.51, concerning the commission’s response to public comment.

The commission concludes that these provisions are best located in Chapter 55, and so the commission has not adopted §39.51. The commission has proposed revisions to Chapter 55, including new provisions on responding to public comment, and so the commission will consider providing for the requirements in the proposed §39.51 in that chapter (see the October 25, 1996, issue of the *Texas Register* (21 TexReg 10502)). The commission will respond to the comments by Henry, Lowerre and BFI at that time. Given that Chapter 39, Subchapter B contained the proposed §39.51 and no other provisions, the proposed Subchapter B on Public Comment has been deleted and the subsequent subchapters relettered.

BFI criticized the provisions of §39.101(a), concerning the preapplication local review committee process, arguing that the applicable Health and Safety Code provision applies only to hazardous waste facilities and not municipal solid waste facilities.

The commission has made no changes in response to the comment. The commission believes that Health and Safety Code, §361.063(a) applies to “solid waste facilities or for hazardous waste management facilities.” The commission acknowledges that the statute could be more clear given that subsection (c) on the details of the local review committee process only refers to hazardous waste management facilities. The commission notes, however, that the process is optional and that it does no harm to applicants for municipal solid waste facilities to offer them this option to work with the local community and identify issues early on.

BFI pointed out that the statute calls for “delivering” notice to certain persons, yet the proposed rule calls for “mailing” notice.

The commission responds that it has chosen to use “mailing” as this is the method most often used in other statutes for giving notice to a specific person. Also, §39.5(c) allows for “mailing” by hand delivery. The commission has made some minor revisions to this section to make it consistent with 30 TAC §330.50, concerning the pre-application review process for municipal solid waste applications.

Kelly, Hart & Hallman suggested that language be added to proposed §39.101 and §39.103 to make it clear that the sections apply only to new permits, renewals, and amendments, and that proposed §§39.105-39.109 apply to Class 1, 2, and 3 modifications.

The commission has made no changes in response to the comment. Section 39.5(d), concerning general provisions, specifies that if the chapter provides requirements for a particular type of application, those requirements apply, and the general rule (that notice requirements apply to initial permits, or applications for the amendment, modification, or renewal of permits) does not apply. The inclusion of §§39.105-39.109, which apply to Class 1, 2, and 3 modifications in the proposed rules makes it clear that §39.101 and §39.103 do not apply to modifications.

BFI criticized the provisions of §39.101(d)(1), concerning public meetings on applications for municipal solid waste facilities, arguing that this requirement should apply only to applications for new facilities, not on applications for amendments. BFI made similar comments on §39.101(d)(2), concerning the requirements for published notice of the public meeting.

The commission has revised §39.101(d)(1) in response to the comment, because Health and Safety Code, §361.088(d) on amendments, extensions, and renewal of permits, does not give clear authority on holding a public meeting on an application to amend a municipal solid waste permit. The commission did not revise §39.101(d)(2) in response to this comment concerning the requirements for published notice of a public meeting. If the executive director holds a public meeting, the publication requirements apply.

BFI criticized §39.101(d)(2), concerning published notice of a public meeting on an application for a municipal solid waste permit. The commenter questioned the commission's authority to adopt the provision allowing the executive director to require published notice in adjacent counties if a facility is located within 20 miles of a county border. The commenter also criticized the rule because the rule could conceivably require publication in another state.

The commission has revised the rule in response to this comment because the purpose of this rulemaking project is to clarify and organize current notice requirements, which does not include this provision. This provision has been deleted here and in other rules in the chapter.

BFI criticized the provisions of §39.101(e), concerning notice of hearing concerning an application for a municipal solid waste permit, arguing that the commission is without authority to impose the specified requirements for notice of a permit amendment application. BFI also commented that this section should not require an applicant to certify compliance with notice requirements.

The commission has made no change in response to the comment. Health and Safety Code, §361.088(c), requires the commission "to provide an opportunity for a hearing to the applicant and persons affected." This rulemaking project is intended to clarify and organize existing notice requirements; the proposed rules do not create new requirements. With respect to the second comment, Health and Safety Code, §361.081(b), states the applicant "must certify" completion of mailed notice.

The commission added §39.101(e)(4) to clarify the deadline for issuing notice of the hearing on an application for a municipal solid waste permit.

An additional change was made to §39.103(a), concerning notice of the local review committee process for industrial solid waste and hazardous waste applications. The amendment makes the section consistent with 30 TAC §335.391(c). The commission also added §39.103(g) to clarify that this section does not apply to applications for an injection well permit. Such applications are under §39.251.

BFI criticized the provisions of §39.105, concerning Class 1 modifications of municipal solid waste permits.

In response to this comment, the commission has revised this section to clarify the requirements for modifications of municipal solid waste permits and the requirements for industrial solid waste and hazardous waste permits.

Kelly, Hart & Hallman suggested that a reference to Texas Health and Safety Code, §361.0791, be added to proposed §39.109(b)(1) to make it clear that the proposed section applies to public meetings authorized under that section of the Code.

The commission agrees, and has added the clarifying reference.

Henry, Lowerre criticized the provisions of §39.151, which provide that mailed notice to adjacent and downstream landowners is not required for applications on the renewal of a wastewater discharge permit, arguing that the provision is inconsistent with state law, commission practice, and requirements for delegation of the National Pollutant Discharge Elimination System (NPDES) program.

The commission disagrees with the commenter because this provision codifies current commission practice, and is consistent with Texas Water Code, §26.028(a) and (d)(2) which provide that the commission shall give notice to persons “who in the judgment of the commission may be affected.” Concerning delegation of the federal program, the commission notes that its practice is consistent with NPDES delegation requirements. The commission declines to make changes to the rule.

The commission has revised §39.251(f), concerning notice of hearing on an application for an underground injection well permit. The revisions clarify and consolidate the requirements.

The commission has also made several changes to the rules to correct grammatical errors and to eliminate redundant language.

STATEMENT OF STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the commission

to adopt any rules necessary to carry out its powers and duties under the Water Code, the Health and Safety Code, and other laws of Texas and to establish and approve all general policy of the commission.

SUBCHAPTER A : APPLICABILITY AND GENERAL PROVISIONS

§§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, and 39.25

§39.1. Applicability.

This chapter applies to:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code, Chapter 26.

(A) This paragraph includes:

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

(ii) applications for permits under Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations).

(B) This paragraph does not include:

(i) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), other than applications under Subchapter B of this chapter;

(ii) applications for authorizations under Chapter 312 of this title, except applications for a permit under the chapter; and

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

(3) applications for underground injection well permits under Texas Water Code, Chapter 27, or under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

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

(5) hearings under Chapter 80 of this title (relating to Contested Case Hearings) concerning applications for air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(6) hearings on contested enforcement cases under Chapter 80 of this title.

§39.3. Purpose.

This chapter specifies notice requirements for applications, hearings on applications, and hearings on contested enforcement cases, including requirements derived from statutes.

§39.5. General Provisions.

(a) If the chief clerk prepares a newspaper notice that is required by this chapter and the applicant does not cause the notice to be published within 30 days of receipt of the notice from the chief clerk, the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication within 30 days of publication.

(b) The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) When this chapter requires notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Unless otherwise provided in this chapter, public notice requirements apply to applications for initial permits or applications for the amendment, modification, or renewal of permits.

(e) If an applicant submits more than one application for a facility, notice may be combined to satisfy more than one section of this chapter.

(f) When this chapter requires an applicant to publish notice, the applicant must file an affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file the affidavit is the day of the public meeting for notice of public meeting, two days before a public hearing for notice of a public hearing, and 30 days after the last publication for other published notices. For notice of a public meeting, the applicant must also submit the affidavit to the executive director no later than the day of the public meeting. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice.

(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a

newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements.

(h) When this chapter requires notice be broadcast according to this subsection, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

§39.7. Mailing Lists.

The chief clerk shall maintain mailing lists of persons requesting public notice of certain applications. Persons, including participants in past commission permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to remain on the list, and may delete from the list the name of any person who fails to respond to such request.

§39.9. Deadline for Public Comment and Hearing Requests.

Notice under this chapter will specify a deadline to file public comment and if applicable, hearing requests. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications).

§39.11. Text of Public Notice.

When notice by publication or by mail is required by this chapter, the text of the notice must include:

- (1) the name and address of the agency;
- (2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;
- (3) a brief description of the business conducted at the facility or activity described in the application or the draft permit;
- (4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;
- (5) a brief description of public comment procedures, and the time and place of any public meeting or public hearing;

(6) a statement of procedures by which the public may participate in the final permit decision and, if applicable, how to request a hearing, or a statement that later notice will describe procedures for public participation;

(7) for notices of public meetings or hearings, the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures;

(8) the application or permit number;

(9) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless there is a (if applicable) request for hearing filed with the chief clerk;

(10) if applicable, the deadline to file comments and, if applicable, hearing requests;

(11) a statement of whether the executive director has prepared a draft permit; and

(12) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies.

§39.13. Mailed Notice.

When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

- (1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;
- (2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;
- (3) the county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;
- (4) the Texas Department of Health;
- (5) the Texas Parks and Wildlife Department;
- (6) the Texas Railroad Commission;
- (7) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations, §124.10(c);

(8) if applicable, persons on a mailing list developed and maintained in accordance with 40 Code of Federal Regulations, §124.10(c)(1)(ix);

(9) the applicant;

(10) if the application concerns an injection well, the Water Well Drillers Advisory Council;

(11) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists);

(12) any other person the executive director or chief clerk may elect to include;

(13) if applicable, the secretary of the Coastal Coordination Council; and

(14) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests.

§39.15. Public Notice Not Required for Certain Types of Applications.

(a) Public notice is not required for the following:

(1) applications for the correction or endorsement of permits under §305.65 of this title (relating to Corrections of Permits);

(2) permittees' voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(3) Texas pollutant discharge elimination system minor amendments under Texas Water Code, Chapter 26;

(4) applications for transportation route special permits under §330.32 of this title (relating to Collection and Transportation Requirements).

(b) For the voluntary transfer of permits, no public notice shall be required, except that:

(1) except as provided in paragraph (2) of this subsection, notice of applications for the voluntary transfer of permits concerning hazardous waste facilities shall be made under §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit);

(2) for notice of applications for the voluntary transfer of permits concerning underground injection wells (including injection wells for the disposal of hazardous waste), the chief

clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice) and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions). The deadline to file public comment is ten days after mailing; and

(3) if the executive director determines that changes to the permit in addition to the transfer are necessary, other notice requirements may apply.

§39.17. Notice of Minor Amendment.

(a) The only required notice for applications seeking a minor amendment of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits) is that the chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice). The deadline to file public comment is ten days after mailing.

(b) Subsection (a) of this section does not apply to applications seeking a minor amendment of a wastewater discharge permit. For such applications, the notice requirements are in §39.151(c) of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).

§39.19. Notice of Executive Director's Recommendation to Deny Application.

If the executive director recommends denial of an application, the notice of that recommendation shall be given under the requirements for notice of draft permit for that type of application. This section does not apply if notice of the draft permit has been issued already.

§39.21. Notice of Commission Meeting to Evaluate a Hearing Request on an Application.

If, under Chapter 55 of this title (relating to Request for Contested Case Hearings), a hearing request on an application is set for consideration during a commission meeting, the chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making the request no later than 30 days before the first meeting at which the commission considers the hearing request.

§39.23. Notice of Hearing Held by SOAH, Including Hearing on Hearing Requests.

(a) The chief clerk shall mail notice to the applicant, executive director, and public interest counsel. The chief clerk shall also mail notice to persons who filed public comment or hearing requests concerning the application on or before the deadline specified under §39.9 of this title (relating to Deadline for Public Comment and Hearing Requests). The notice shall be mailed no less than ten days before the hearing. The chief clerk may combine the mailed notice required by this section with other mailed notice of hearing required by this chapter.

(b) Other requirements in this chapter concerning notice of hearing apply. However, if the commission refers an application to SOAH and requests the judge to submit a written recommendation on the sole question of whether hearing requests meet the requirements of Chapter 55, Subchapter B of this title (relating to Hearing Requests), the only notice shall be as required in subsection (a) of this section.

(c) After an initial preliminary hearing, the judge shall give reasonable notice of subsequent prehearing conferences or the evidentiary hearing by making a statement on the record in a prehearing conference or by written notice to the parties.

§39.25. Notice of Contested Enforcement Case Hearing.

For any contested enforcement case hearing, the chief clerk shall give notice to the parties in accordance with the APA, §2001.052. In addition, public notice and opportunity for comment before the commission regarding a proposed enforcement action shall be given under Chapter 10 of this title (relating to Commission Meetings).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on December 17, 1996.

SUBCHAPTER B : PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§§39.101, 39.103, 39.105, 39.107, and 39.109

The new sections are adopted under Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§39.101. Application for Municipal Solid Waste Permit.

(a) 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 must submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing shall be by certified mail.

(b) Notice of intent to obtain a 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, the following actions shall be taken.

(A) The applicant shall publish notice of intent to obtain a permit at least once under §39.5(g) of this title (relating to General Provisions).

(B) The chief clerk shall publish notice of the application in the *Texas Register*.

(C) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(D) The executive director shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(c) Notice of draft permit.

(1) The applicant shall publish notice at least once under §39.5(g) of this title.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(3) The notice shall specify the deadline to file public comment or hearing requests, which shall be not less than 30 days after newspaper publication.

(d) Notice of public meeting.

(1) If the application proposes a new facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. A public meeting is not a contested case proceeding under the APA. 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 under this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(e) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH 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 §39.5(g) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within ½ mile of the facility and to each owner of real property located within ½ mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file an affidavit certifying compliance with this paragraph with the chief clerk. Filing an affidavit certifying facts that constitute compliance with the notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes an amendment of a permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

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

§39.103. Application for Industrial or Hazardous Waste Facility Permit.

(a) 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 must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality. Mailed notice shall be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(b) Notice of receipt of application. When the executive director receives an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice).

(c) Review of permit application by other governmental agencies. After the executive director determines that the application is administratively complete, the executive director shall 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. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.

(d) Notice of draft permit.

(1) 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 which is adjacent or contiguous to each county in which the proposed facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title (relating to General Provisions).

(4) The notice shall specify the deadline to file public comment or hearing requests. For industrial solid waste applications, the deadline shall 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 the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. 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 under this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting. The applicant shall publish notice under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f) Notice of hearing.

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

(2) Newspaper notice.

(A) If the application concerns an industrial solid 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 which is adjacent or contiguous to each county in which the proposed facility is located.

(B) 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 §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall 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) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within ½ mile of the facility and to each owner of real property located within ½ mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.13 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1)

of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under §39.5(h) of this title.

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

(g) This section does not apply to applications for an injection well permit.

§39.105. Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit.

(a) Notice requirements for Class 1 modifications are in:

(1) §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits; or

(2) §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) for municipal solid waste permits.

(b) The text of required notice shall follow the requirements of §39.11 of this title (relating to Text of Public Notice). If the application is for modification of an industrial solid waste or hazardous waste permit, the additional requirements in §305.69 of this title apply.

(c) When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

§39.107. Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit.

The notice requirements for Class 2 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), except that the text of notice shall comply with §305.69 of this title and §39.11 of this title (relating to Text of Public Notice). The notice shall specify the deadline to file with the chief clerk public comment. The deadline is specified in §305.69 of this title. When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

§39.109. Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit.

(a) Notice requirements in other commission rules. The notice requirements for Class 3 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), except that the text of notice shall follow the requirements of §305.69 of this title and §39.11 of this title (relating to Text of Public Notice). The notice shall specify the deadline to file public comment or hearing requests. The deadline is specified in §305.69 of this title. When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(b) Notice of public meeting.

(1) In accordance with Texas Health and Safety Code, §361.0791, the executive director shall hold a public meeting on request of a person affected concerning a hazardous waste permit that is filed on or before the deadline to file public comment or hearing requests. The public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under Health and Safety Code, §361.063 complies with this subsection if public notice is provided in accordance with this subsection. This subsection does not apply to a public meeting held by an applicant under §305.69 of this title.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title (relating to General Provisions).

The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(c) Notice of hearing.

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

(2) Newspaper notice.

(A) If the application concerns an industrial solid 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 which is adjacent or contiguous to each county wherein the proposed facility is located.

(B) If the application concerns a hazardous solid 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 §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under §39.5(h) of this title.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on December 17, 1996.

SUBCHAPTER C : PUBLIC NOTICE OF WATER QUALITY APPLICATIONS

§39.151

The new section is adopted under Texas Water Code, §§5.103, 5.105, 26.011, 27.019 which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§39.151. Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

(a) Notice of administratively complete application. The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115 apply concerning an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(b) Notice of application and draft permit.

(1) The applicant shall publish notice that the executive director has prepared a draft permit at least once in a newspaper regularly published or circulated within each county where the

proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit. For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.13 of this title, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(3) The notice must set a deadline to file public comment or hearing requests with the chief clerk that is not less than 30 days after newspaper publication. However, the notice may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment or hearing requests.

(4) For Texas pollutant discharge elimination system (TPDES) permits, the text of the notice shall include:

(A) in addition to the requirements in §39.11 of this title (relating to Text of Public Notice), a general description of the location of each existing or proposed discharge point and the name of the receiving water;

(B) for applications concerning the disposal of sludge, use and disposal practice(s) and the location of the sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application.

(c) Limited notice for certain applications. Subsections (a) and (b) of this section do not apply if an application is described in one of the following paragraphs and the described notice requirements, if any, are completed:

(1) the application is a minor amendment of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits). In such instances, the chief clerk shall mail notice that the executive director has determined the application is technically complete to the mayor and health authorities for the city or town, and to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment, which shall end no earlier than ten days after mailing notice;

(2) the application proposes the renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, and the applicant does not propose to

discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal.

(d) Notice of hearing.

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

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) in addition to the requirements in §39.11 of this title, a general description of the location of each existing or proposed discharge point and the name of the receiving water;

(B) for applications concerning the disposal of sludge, the sludge use and disposal practice(s) and the location of the sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application.

(e) Notice concerning discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 Code of Federal Regulations (CFR) Part 124, Subpart D, §124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the library of the agency, Park 35, 12015 North Interstate 35, Austin.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on December 17, 1996.

SUBCHAPTER D : PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

§39.201

The new section is adopted under Texas Water Code §§5.103 and 5.105, and Texas Health and Safety Code, §382.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§39.201. Application for a Preconstruction Permit.

(a) Applicability. This section applies to:

(1) hearings under Chapter 80 of this title (relating to Contested Case Hearings) on applications for permits, permit amendments or permit renewals under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(2) hearings under Chapter 80 of this title on applications for a registration for a standard exemption required to provide public notice under Chapter 116 of this title.

(b) Notice of hearing. The applicant shall publish notice of the hearing in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in

the municipality nearest to the location or proposed location of the facility. The notice must be published not less than 30 days before the hearing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on December 17, 1996.

SUBCHAPTER E : PUBLIC NOTICE OF OTHER SPECIFIC APPLICATIONS

§39.251 and §39.253

The new sections are adopted under Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, and 361.024, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, and 361.024.

§39.251. Application for Injection Well Permit.

(a) 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 must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. 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 shall be mailed to the mayor of the municipality.

(b) Notice of receipt of application. When the executive director receives an application for, 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.

(c) Notice of administratively complete application.

(1) The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115 apply concerning an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(2) After the executive director determines that the application is administratively complete, the executive director shall 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. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.

(d) Notice of draft permit.

(1) 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 which is adjacent or contiguous to each county in which the proposed facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title, and to local governments located in the county of the facility. “Local governments” shall have the meaning provided for that term in Texas Water Code, Chapter 26.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title (relating to General Provisions).

(4) The notice shall specify the deadline to file public comment or hearing requests. The deadline shall 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 the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with

the chief clerk a request for public meeting concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. 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.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH 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 which is adjacent or contiguous to each county wherein the proposed facility is located.

(B) 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 §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall 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 §39.13 of this title, and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(B) 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 ½ mile of the facility and to each owner of real property located within ½ mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property

appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subsection.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title.

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

§39.253. 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 administratively complete application. The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(c) Notice of executive director's preparation of draft production area authorization. The chief clerk shall mail notice to the persons listed in §39.13 of this title. The notice shall specify the deadline to file with the chief clerk public comment, which is 30 days after mailing.

(d) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH 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 §39.5(g) of this title.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas on December 17, 1996.