

The commission proposes 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, 39.51, 39.101, 39.103, 39.105, 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253, concerning public notice of proceedings.

This proposal 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 recently adopted new procedural rules Chapters 1, 3, 5, 10, 20, 40, 50, 55, 70, 80, and 86, and amendments to Chapter 340 (see the May 28, 1996, issue of the *Texas Register* (21 TexReg 4689)).

Proposed new Chapter 39 is intended to replace several sections of Chapter 305, Subchapter E. The commission's adoption of the Phase II rules noted in the prior paragraph included the repeal of several sections of Chapter 305, Subchapter E. The commission plans to propose the repeal of the remaining sections of Chapter 305, Subchapter E, in the near future. Accordingly, if the proposals are ultimately adopted, Chapter 305, Subchapter E will be repealed in its entirety.

The proposed Chapter 39 is intended to address the numerous reports from staff, the regulated community, and citizens that the current rules on public notice are confusing. This confusion can lead to notice not being given as required as well as delays in the processing of applications. The proposed rules are intended to organize and clarify the required public notice for several types of applications; they are not intended to change the requirements. 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 in the order in which they must be satisfied. Chapter 39 would replace the current

public notice rules found in Chapter 305, Subchapter E, and so generally speaking the requirements in Chapter 39 concern only the types of applications currently under Chapter 305, Subchapter E, including applications for permits for: municipal solid waste, industrial waste, and hazardous waste facilities; wastewater discharges; and injection wells. However, the proposed Chapter 39 also contains provisions on notice of hearing concerning an application under Chapter 116 (air quality permits) and notice of hearing concerning a contested enforcement case. The organization of Chapter 39, with its numerous undesignated sections, leaves “room to grow” so that the notice requirements for additional types of applications may be placed here in the future.

Persons seeking help in comparing this rule proposal and recodification to the existing rules, can obtain a marked version of this package showing the current statutory and rule requirements that are the basis for the public notice requirements, and a disposition/derivation table from the commission. Please contact Richard O’Connell at (512) 239-5528 for a copy of this information.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect there will be no significant fiscal implications for state or local government as a result of enforcement or administration of the sections.

Mr. Minick also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be clarification of public notice requirements and procedures, greater consistency in notices issued to the public concerning applications before the commission, and the avoidance of unnecessary costs and

delays in the application process. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

The proposed rules are intended to clarify and recodify the commission's rules on public notice of proceedings. The commission prepared a takings impact assessment of these rules and determined that the proposal will not create any burden on private real property rights.

A public hearing on the proposal will be held July 18, 1996, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. 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 within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rules Tracking Log Number 96124-039-AD. Comments must be received by 5:00 p.m., July 18, 1996. For further information, please contact Richard O'Connell at (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new sections are proposed 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.

The proposed new sections implement 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.

CHAPTER 39

PUBLIC NOTICE

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, 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, and 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 postpaid, 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 concerning a facility, notice may be combined to satisfy the requirements of more than one section of this chapter.

§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, Protests, and Hearing Requests.

Notice under this chapter will specify a deadline to file public comment, protests, 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 the 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 wastewater discharge permits, a general description of the location of each existing or proposed discharge point and the name of the receiving water;

(8) 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;

(9) the application or permit number;

(10) 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 protest or (if applicable) request for hearing filed with the chief clerk;

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

(12) a statement of whether the executive director has prepared a draft permit.

§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 Committee;

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

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

§39.15. 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 notice shall be required, except that notice of applications for the voluntary transfer of permits concerning hazardous waste facilities shall be made under the requirements of §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) that relate to hazardous waste facilities. However, if an application concerns the voluntary transfer of an underground injection well permit, there are no notice requirements.

§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 or protests 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 specified 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.

§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 protests or hearing requests concerning the application on or before the deadline specified under §39.9 of this title (relating to Deadline for Public Comment, Protests, and Hearing Requests). The notice shall be mailed no less than ten days before the hearing.

(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, reasonable notice of subsequent prehearing conferences or the evidentiary hearing may be provided 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 proposal has been reviewed by legal counsel and found to be
within the agency's authority to adopt.

Issued in Austin, Texas, on May 29, 1996.

SUBCHAPTER B : PUBLIC COMMENT

§39.51

The new section is proposed 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.

The proposed new section implements 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.

§39.51. Response to Comments.

(a) This section applies to applications for a Texas pollutant discharge elimination system permit and applications under §305.69(c) and (d) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(b) The executive director shall file with the chief clerk all comments on an application that are received on or before the deadline to file public comment, protests, or hearing requests, or which are received during the comment period in accordance with the provisions of §305.69(c) and (d) of this title. This requirement does not apply when comments are filed by the commenters with the chief clerk.

(c) The executive director shall prepare a response to significant comments and make such response available to the public upon request. The response shall specify which provisions of the proposed action, if any, have been changed in response to comments and the reasons for the change. The executive director may make the response that is required by this section as part of the executive director's response to any hearing requests made under §55.25 of this title (relating to Hearing Request Processing). However, if an application is referred to SOAH for a hearing under Chapter 80 of this title (relating to Contested Case Hearings), the commission's final order satisfies the requirements of this subsection, and the executive director is not required to prepare a response.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 29, 1996.

SUBCHAPTER C : PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§§39.101, 39.103, 39.105, 39.107, 39.109

The new sections are proposed 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.

The proposed new sections implement 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.

§39.101. Application for Municipal Solid Waste Permit.

(a) Preapplication local review committee process. An applicant may decide to participate in a local review committee process under Texas Health and Safety Code, §361.063. If the applicant elects to enter the local review committee process, 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 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.

(b) Notice of intent to obtain a permit.

(1) On the executive director's receipt of 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.

(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 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 and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located.

(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 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 and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located.

(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, protests, 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. If the application proposes to amend an existing permit, the requirements of this subsection

apply if a person affected files a request for public meeting concerning the application with the chief clerk before the deadline to file public comment, protests, and 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 in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. 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. If the facility is located within 20 miles of a county border, the executive director may require the applicant to meet the requirements of this paragraph in the adjacent counties also. No later than the date of the public meeting, the applicant must submit an affidavit certifying compliance with this paragraph to the executive director. The applicant must also file the affidavit with the chief clerk. Acceptance of the affidavit creates a rebuttable presumption of compliance with this paragraph.

(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 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 and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located.

(3) Mail 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 $\frac{1}{2}$ mile of the facility and to each owner of real property located within $\frac{1}{2}$ mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice 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. Acceptance of the affidavit creates a rebuttable presumption of compliance with this paragraph.

(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.

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

(a) Preapplication local review committee process. An applicant may decide to participate in a local review committee process under Texas Health and Safety Code, §361.063. If the applicant elects to enter the local review committee process, 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.

(b) Notice of receipt of application. 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, 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 each county and area which is adjacent or contiguous to each county wherein 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 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.

(4) The notice shall specify the deadline to file public comment, protests, or hearing requests. For industrial 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, the requirements of this subsection apply if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment, protests, 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. The applicant shall publish notice in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. 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. If the facility is located within 20 miles of a county border, the executive director may require the applicant to meet the requirements of this paragraph in the adjacent counties also. No later than the day of the public meeting, the applicant must submit an affidavit certifying compliance with this paragraph to the executive director. The applicant must also file the affidavit with the chief clerk. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subsection.

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

(f) Notice of hearing.

(1) The requirements of this subsection apply 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 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 in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. 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. No

later than two days before the hearing, the applicant must file with the chief clerk an affidavit certifying compliance with this paragraph. Acceptance of the affidavit creates a rebuttable presumption of compliance with this paragraph.

(3) Mail 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 $\frac{1}{2}$ mile of the facility and to each owner of real property located within $\frac{1}{2}$ mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice 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 subsection (a) 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. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subsection.

(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 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.

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

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

The notice requirements for Class 1 modifications are in §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 §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) for municipal solid waste permits, except that the text of required notice shall follow the requirements of §305.69 of this title (for industrial solid waste or hazardous waste permits) and §39.11 of this title (relating to Text of Public Notice). 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 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 with the chief clerk public comment or protests. 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, protests, 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) 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, protests, or hearing requests. If a public meeting is held, the requirements of this subsection apply. 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 meets the requirements of 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 in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. 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. If the facility is located within 20 miles of a county border, the executive director may require the applicant to also meet the requirements of this paragraph in the adjacent counties. No later than the date of the public meeting, the applicant must submit an affidavit certifying compliance with this paragraph to the executive director. The applicant shall also file the affidavit with the chief clerk. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subsection.

(c) Notice of hearing.

(1) The requirements of this subsection apply 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 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 industrial 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 in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. 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. The applicant shall file with the chief clerk an affidavit certifying compliance with this subparagraph. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subparagraph.

(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 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.

(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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 29, 1996.

SUBCHAPTER D : PUBLIC NOTICE OF WATER QUALITY APPLICATIONS

§39.151

The new section is proposed 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.

The proposed new section implements 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.

§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, 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, protests, 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, protests, 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. The requirements in 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 or protests, 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) The requirements of this subsection apply 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 29, 1996.

SUBCHAPTER E : PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

§39.201

The new section is proposed 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.

The proposed new section implements 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.

§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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 29, 1996.

SUBCHAPTER F : PUBLIC NOTICE OF OTHER SPECIFIC APPLICATIONS

§39.251, §39.253

The new sections are proposed 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.

The proposed new sections implement 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.

§39.251. Application for Injection Well Permit.

(a) Preapplication local review committee process. An applicant may decide to participate in a local review committee process under Texas Health and Safety Code, §361.063. If the applicant elects to enter the local review committee process, 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. On the executive director's receipt of 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 each county and area which is adjacent or contiguous to each county wherein 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 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.

(4) The notice shall specify the deadline to file public comment, protests, 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, protests, 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. The applicant shall publish notice in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. 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. If the facility is located within 20 miles of a county border, the executive director may require the applicant to meet the requirements of this paragraph in the adjacent counties also. No later than the date of the public meeting, the applicant shall submit an affidavit certifying compliance with this paragraph to the executive director. The applicant shall also file the affidavit with the chief clerk. Acceptance of the affidavit creates a rebuttable presumption of compliance with this paragraph.

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

(f) Notice of hearing.

(1) The requirements of this subsection apply 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 for the disposal of waste other than hazardous waste, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and 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 in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. 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. No later than two days before the hearing, the applicant must file with the chief clerk an affidavit certifying

compliance with this subparagraph. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subparagraph.

(3) Mail 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 subsection (a) of that section. The chief clerk shall also mail notice to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title. 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. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subsection.

(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, and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing 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.

(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 or protests, which is 30 days after mailing.

(d) Notice of hearing.

(1) The requirements of this subsection apply 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 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.

(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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 29, 1996.