

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §39.15, Public Notice Not Required for Certain Types of Applications; §39.251, Application for Injection Well Permit; and §39.651, Application for Injection Well Permit. Sections 39.15, 39.251, and 39.651 are adopted *without changes* to the proposed text as published in the August 11, 2000 issue of the *Texas Register* (25 TexReg 7485) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On September 29, 1999, the executive director received a petition for rulemaking from the Texas Chemical Council (TCC) requesting a change to §39.251 that would amend the mailed notice requirement for new permits, major amendments, renewal applications, and public hearings to owners of mineral rights near permitted Class I underground injection wells. The petition requested that the current notice requirement for mailed notice to mineral rights owners within the cone of influence be changed to require mailed notice only to those persons who own mineral rights which underlie the existing or proposed injection well facility and which underlie the tracts of land adjacent to the well facility. In addition to §39.251, staff identified two additional sections, §39.15 and §39.651, that would require conforming modification.

In response to this petition, the commission's staff held two stakeholder meetings to receive input regarding how to best amend §§39.15, 39.251, and 39.651. Representatives from industry, environmental organizations, and the commission's office of Public Interest Counsel were invited to participate. As a result of the input received during this process, the adopted rules will change not only the mailed notice requirements but also the published notice requirements for Class I underground

injection wells. The adopted amendments do not apply to mailed or published notice requirements for Class III injection wells or for permitted Class V injection wells.

The existing rules for Class I underground injection wells require notice to be mailed to mineral rights owners who own mineral rights within the cone of influence of an injection well. The adopted rules will require notice of applications for new permits, major amendments, renewal applications, and public hearings to mineral rights owners beneath the injection well site and beneath the adjacent properties near permitted Class I underground injection wells. The adopted rules clarify and make explicit the existing requirement that mailed notice be sent to owners of the property on which the injection well is located, if different from the applicant, as well as to owners of land adjacent to the property on which the injection well is located. The existing notice requirements for Class I underground injection control (UIC) permit applications do not specify the size of the notices or the location of the notices in the newspaper. The adopted provisions require that the notice be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and be located in the section of the newspaper containing state or local news items.

Chapter 39, Public Notice, provides the procedural requirements for issuance of public notice of environmental permitting actions pending before the commission. The adopted amendments alter the mailed and published notice requirements to mineral rights owners for Class I underground injection well permit applications and hearings. The previously existing rules require the commission's chief clerk to mail notice of UIC permit applications and hearings to mineral rights owners within the cone of influence of the injection well. When the current rules were originally adopted (See 21 TexReg 12550,

December 27, 1996) it was the first time that the cone of influence definition was used in the rules in the context of determining what mineral rights might be impaired by an injection well.

An injection well is used for the subsurface emplacement of fluids. The cone of influence is defined as the potentiometric surface area around the injection well within which increased injection zone pressures caused by injection of wastes would be sufficient to drive fluids into an underground source of drinking water (USDW) or freshwater aquifer. The Texas Water Code (TWC), §27.015 provides extensive procedures to assure that known oil or gas reserves are not endangered and that water supplies are not contaminated by the operation of an injection well.

Depending on the geology of the subsurface injection zone and the volume of waste to be injected, the cone of influence may extend several miles from the well bore. The commission now believes that the term was improperly applied and created too great of a financial burden on the commission and on the regulated community in cases where there are large cones of influence. It was not evident at the time of enactment of the previously existing rules that the provision had the potential to require that notice be mailed to thousands of individuals within the cone of influence of an injection well. The adopted rules are more effective in providing notice to the mineral interests most likely to be affected by an injection well; that is, mineral interests underlying or adjacent to the injection well facility.

There is no requirement to provide notice to mineral rights owners near the injection wells under federal law. However, there are state law requirements under TWC, §27.018 and §27.051, which provide notice to persons affected by underground injection disposal wells. This would include mineral

rights owners if their mineral rights would be impaired. Notice by publication is a more efficient method of notifying thousands of potentially affected persons of a permit application.

Providing mailed notice to all mineral rights owners within the cone of influence has presented a financial burden for some applicants where a large cone of influence is associated with the injection well. The applicant must currently research the deed records for every land owner adjacent to the injection well facility and every mineral rights owner within the cone of influence of the injection well. The applicant must then provide the landowner and mineral rights owner lists to the commission for each new UIC permit application, major amendment, permit renewal application, or public hearing. For injection well applicants with a large cone of influence associated with the injection well, applicants have reported costs ranging from \$20,000 to \$110,000 to research and identify mineral rights owners within the cone of influence of their injection wells. Applicants for UIC permits have reported finding up to 20,000 mineral rights owners requiring notification for a single injection well facility.

The commission's UIC permitting program and the chief clerk's office are also burdened when thousands of people are to receive mailed notice. The UIC permitting program must assure that the mailing lists are correctly formatted, that is, each name and address must be typed in a format that meets the United States Postal Service requirements for machine readability. Additionally, the chief clerk is required to process the mailings. The \$50 notice fee received from the applicant is often grossly inadequate to cover the commission's expenses for processing and mailing the notice required under the existing rules.

For an injection well applicant where there is a small cone of influence associated with the injection well, the adopted rules may require the applicant to research and identify more mineral rights owners than required under the existing rules. In this case, the commission would have to process more notices than are currently required. The commission adopts the rule amendments because they are a good compromise between the injection well applications involving large and small cones of influence, and are still protective of human health and safety and the environment. Overall, the amended rules, as adopted, will still provide adequate notice to interested persons while reducing the administrative and financial burden on the regulated community and the commission.

The commission may not issue underground injection well permits unless the Railroad Commission of Texas (RRC) has determined that the well will not impair oil and gas interests. Texas Water Code, §27.015, requires an applicant to obtain a letter from the RRC stating that drilling or using the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any known oil or gas reservoir. The executive director does not declare an application to be technically complete until the RRC letter has been filed.

This rulemaking is not intended to decrease the opportunity for public participation. The adopted rules require more visible and accessible published notices. For hazardous waste facilities, the current rules require notice by radio broadcast as well. These methods of providing notice to very large numbers of people are considered to be more efficient and economical for the regulated community and for the commission. The adopted rules specify an enhanced newspaper publication of notice which requires the applicant to publish notice that is at least 15 square inches (96.8 square centimeters) with a shortest

dimension of at least three inches (7.6 centimeters) and in the section of the newspaper containing state or local news items. This enhanced publication requirement will significantly increase the visibility of the notice, thereby providing a better opportunity for public participation.

Under the Chapter 39 amendments adopted recently to implement House Bill 801, 76th Texas Legislature, 1999, which was effective September 1, 1999, applicants are required to publish an additional notice earlier in the application process which was not previously required. Additionally, any person may ask to be added to the mailing list for a permit application. Any person may also request to be placed on a county-wide mailing list to receive notice of any permit application in a particular county.

#### SECTION BY SECTION DISCUSSION

Section 39.15, Public Notice Not Required for Certain Types of Applications, is amended. These adopted amendments provide that for voluntary transfers of Class I UIC permits, the chief clerk shall mail notice to persons who own mineral rights underlying the existing or proposed injection well facility and underlying the tracts of land adjacent to the property on which the injection well facility is located, rather than to all mineral rights owners within the cone of influence. The adopted rules also clarify and make explicit the existing requirement that mailed notice be sent to owners of the property on which the injection well is located, if different from the applicant, as well as to owners of land adjacent to the property on which the injection well is located.

Section 39.251, Application for Injection Well Permit, is amended. In §39.251(a), the word “well” is adopted to be substituted for “will” to correct a typographical error. Subsections (d), (e), and (g) concern notices regarding administratively complete applications, draft permits, and hearings. These adopted amendments provide that for Class I underground injection wells, the chief clerk shall mail notice to persons who own mineral rights underlying the existing or proposed injection well facility, and underlying the tracts of land adjacent to the property on which the injection well facility is or will be located, rather than to all mineral rights owners within the cone of influence. Additionally, the adopted rules clarify and make explicit the existing requirement that mailed notice be sent to owners of the property on which the injection well is located, if different from the applicant, as well as to owners of land adjacent to the property on which the injection well is located. Section 39.251(e) and (g) is also amended to specify that the published notice be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and that the notice appear in the section of the newspaper containing state or local news items. The amended language includes appropriate grammatical changes. In addition, §39.251 is amended to clarify existing requirements that published notices must be in a form approved by the executive director and that approval must be obtained prior to the publication.

Section 39.651, Application for Injection Well Permit, is amended. Subsections (c), (d), and (f) concern notices regarding receipt of application and intent to obtain permit, application and preliminary decision, and notice of contested case hearing. These amendments provide that for Class I underground injection wells, the chief clerk shall mail notice to persons who own mineral rights underlying the existing or proposed injection well facility, and underlying the tracts of land adjacent to the property on

which the injection well facility is or will be located, rather than to all mineral rights owners within the cone of influence. Additionally, the adopted rules clarify and make explicit the existing requirement that mailed notice be sent to owners of the property on which the injection well is located, if different from the applicant, as well as to owners of land adjacent to the property on which the injection well is located. New §39.651(c)(6) is added, and subsections (d)(1) and (f)(2) are amended to specify that, in addition to existing notice requirements, for Class I wells, the published notice be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and that the notice appear in the section of the newspaper containing state or local news items. Subsection (f)(2)(A) is also amended to specify that this subsection concerns facilities other than hazardous waste facilities. In addition, §39.651 is amended to clarify existing requirements that published notices must be in a form approved by the executive director and that approval must be obtained prior to the publication.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute.

“Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules change the cost of providing notice, increasing the cost to some applicants and reducing the cost to others. The adopted amendments are not anticipated to

adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs in the state or a sector of the state. In addition, §2001.0225 applies only to a major environmental rule, the result of which is to exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of Texas Government Code, §2001.0225(a)(1) - (4). There is a state law requirement to provide notice to persons affected by underground injection disposal wells. This would include mineral rights owners if their mineral rights would be impaired. The adopted amendments do not exceed a standard set by federal law nor exceed an express requirement of state law. There is no requirement to provide notice to mineral rights owners near the injection wells under federal law. There is a state law requirement to provide notice to persons affected by underground injection disposal wells. However, the adopted rules do not exceed this state requirement. In addition, the adopted amendments do not exceed a requirement of a delegation agreement nor are the rules proposed solely under the general powers of the agency, rather they implement TWC, §§27.018(b), 27.019, and 27.051.

#### 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. This action does not

create a burden on private real property. The specific purpose of the rules is to change mailed notice requirements that have proven to be burdensome and unworkable both to the commission and to the regulated community. The existing requirement to mail notice to mineral rights owners within the cone of influence of an injection well is not based on any federal requirement. However, state statute TWC, §27.018, requires affected persons to be notified and this could include mineral rights owners if their mineral rights would be impaired. Texas Water Code, §27.051(a)(2), also requires that mineral rights not be impaired. The commission adopts amendments to §§39.15, 39.251, and 39.651. This will modify the mailed and published notice requirements for UIC permit applications and mailed notice of hearings. The adopted provisions will require mailed notice to persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant, land owners adjacent to the property on which the existing or proposed injection well facility is or will be located, persons who own mineral rights underlying the existing or proposed injection well facility, and persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

The adopted notice amendments require that the published notice be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and be located in the section of the newspaper containing state or local news items. The existing published notice requirements for UIC applications do not specify the size and location of the notice, therefore, the adopted rules will likely result in more potentially affected persons receiving notice.

Promulgation and enforcement of these rules will not burden private real property because the adopted rules only involve changes to notice requirements. The adopted amendments change the notice requirements but the result is not less stringent because the proposed provisions sometimes increase and sometimes decrease the number of mineral rights owners who receive mailed notice. The existing requirement to mail notice to mineral rights owners within the cone of influence of an injection well is not based on any federal requirement. However, state statute requires mineral rights not be impaired by injection well operations. No other exemption in Private Real Property Rights Preservation Act under Texas Government Code, Chapter 2007, applies to this rulemaking.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that the rules are not identified in Coastal Coordination Act, Texas Natural Resources Code, §33.2053(f). Therefore, the rulemaking is not subject to the Texas Coastal Management Program.

#### PUBLIC HEARING AND COMMENTERS

A public hearing on the proposed amendments was scheduled for September 6, 2000 and the opportunity to present an oral statement was afforded on that date. However, no one requested to make a statement and the hearing was not convened. The comment period for this rulemaking was closed on September 11, 2000.

The following commenters submitted written comments in general support of this rulemaking: B P Amoco, Huntsman Polymers Corporation, International Specialty Products, Sterling Chemicals, Subsurface Technology Inc., TCC, and the United States Environmental Protection Agency (EPA).

#### ANALYSIS OF TESTIMONY

B P Amoco, Huntsman Polymers Corporation, International Specialty Products, Sterling Chemicals, Subsurface Technology Inc., and the TCC were all in general support of these rule amendments.

**The commission appreciates the general support shown for these amendments by the regulated community. No changes to the rules were proposed by these commenters. No changes were made to the rules based on these comments.**

The EPA commented that the rule amendments will not reduce public participation requirements below those required by federal regulation and would constitute a nonsubstantial revision to the approved UIC program.

**The commission appreciates the comments by the EPA. No changes were made to the rules based on these comments.**

#### STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105,

which authorizes the commission to establish and approve all general policy of the commission by rule; §27.018(b), which requires the commission by rule to provide notice of the opportunity to request a public hearing on an injection well permit application which includes defining who is an “affected person”; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.051, which requires the commission, when issuing an injection well permit, to find that no existing rights including, but not limited to, mineral rights be impaired; and Texas Health and Safety Code, §361.024, which provides the commission the authority to adopt rules and establish minimum standards of operation for the management and control of solid waste under this chapter.

**SUBCHAPTER A: APPLICABILITY AND GENERAL PROVISIONS**

**§39.15**

**§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) 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).

(3) for notice of applications for the voluntary transfer of permits concerning Class I underground injection wells, the chief clerk shall also mail notice to:

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

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

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

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

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

(c) The deadline to file public comment for the voluntary transfer of underground injection wells is ten days after mailing.

## **SUBCHAPTER E: PUBLIC NOTICE OF OTHER SPECIFIC APPLICATIONS**

### **§39.251**

#### **STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.018(b), which requires the commission by rule to provide notice of the opportunity to request a public hearing on an injection well permit application which includes defining who is an “affected person”; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.051, which requires the commission, when issuing an injection well permit, to find that no existing rights including, but not limited to, mineral rights be impaired.

#### **§39.251. Application for Injection Well Permit.**

(a) **Applicability.** This section applies to applications for injection well permits that are declared administratively complete before September 1, 1999. Any permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapter L of this chapter (relating to Public Notice of Injection Well and Other Specific Applications).

(b) **Preapplication local review committee process.** If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant 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.

(c) 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.

(d) 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).

(2) For notice of administratively complete applications concerning Class I underground injection wells, the chief clerk shall also mail notice to:

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

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

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

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

(3) 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.

(e) 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 facility is located.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters) and the notice shall appear in the section of the newspaper containing state or local news items.

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

(4) For notice of draft permits concerning Class I underground injection wells, the chief clerk shall also mail notice to:

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

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

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

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

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

(6) 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.

(f) 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 (b) 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.

(g) 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) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters) and the notice shall appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.5(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 notice shall appear in the section of the newspaper containing state or local news items. 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.

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

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

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

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

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

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice 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.

(h) All published notices required by this section shall be in a form approved by the executive director prior to publication.

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

**§39.651**

**STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.018(b), which requires the commission by rule to provide notice of the opportunity to request a public hearing on an injection well permit application which includes defining who is an “affected person”; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.051, which requires the commission, when issuing an injection well permit, to find that no existing rights, including but not limited to, mineral rights be impaired.

**§39.651. Application for Injection Well Permit.**

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

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant 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.

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

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

(2) After the executive director determines that the application is administratively complete, notice shall be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (12) of this title (relating to Text of Public Notice). Notice under §38.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice shall be given to: the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice shall be in the form required by Texas Water Code, §5.115(c).

(4) For notice of receipt of application and intent to obtain permit concerning Class I underground injection wells, the chief clerk shall also mail notice to:

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

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

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

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

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

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters) and the notice shall appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Application and Preliminary Decision) shall be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.419 of this title, the following requirements apply:

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

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters) and the notice shall appear in the section of the newspaper containing state or local news items.

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

(4) For notice of application and preliminary decision concerning Class I underground injection wells, the chief clerk shall also mail notice to:

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

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

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

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

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

(6) The deadline for public comments on industrial solid waste applications 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 requests for reconsideration or hearing. 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 §39.405(f)(2) of this title. The published notice shall be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters).

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

(f) Notice of contested case 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) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters) and the notice shall appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice shall be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters). The notice shall appear in the section of the newspaper

containing state or local news items. 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 §39.413 of this title.

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

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

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

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

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

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice 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 contested case 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.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

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

(g) All published notices required by this section shall be in a form approved by the executive director prior to publication.