

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§39.901 - 39.903.

### **Background and Summary of the Factual Basis for the Proposed Rules**

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031 and HB 4097. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater. HB 4097 addresses seawater desalination for industrial purposes.

In HB 2031, the legislature declared that: "With this state facing an ongoing drought, continuing population growth, and the need to remain economically competitive, every effort must be made to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water." The legislature also declared that: "In this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." To that end, the legislature stated the purpose of HB 2031 was to "... streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination."

In HB 2031, the legislature created new Texas Water Code (TWC), Chapter 18, to address marine seawater desalination projects. HB 2031 also amended TWC, §5.509,

Temporary or Emergency Order Relating to Discharge of Waste or Pollutants; TWC, §5.551, Permitting Procedures; Applicability; TWC, §7.302, Grounds for Revocation or Suspension of Permit; TWC, §11.0237, Water Rights for Instream Flows Dedicated to Environmental Needs or Bay and Estuary Inflows; TWC, §11.082, Unlawful Use: Civil Penalty; TWC, §11.0842, Administrative Penalty; TWC, §11.121, Permit Required; TWC, §16.053, Regional Water Plans; and, TWC, §26.0291, Water Quality Fee. In addition, HB 2031 amended Texas Health and Safety Code (THSC), Chapter 341, Subchapter C, by adding THSC, §341.0316, Desalination of Marine Seawater for Drinking Water, and repealed TWC, §16.060, Desalination Studies and Research.

TWC, §18.003(a), requires a person to obtain a permit to divert and use state water that consists of marine seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a total dissolved solids (TDS) concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter (mg/L). TWC, §18.003(b), creates an exemption from permitting to divert and use marine seawater if TWC, §18.003(a), does not apply. In addition, TWC, §18.005(c), requires a person to obtain a permit to discharge: 1) treated marine seawater into a natural stream in this state or a lake, reservoir, or other impoundment in this state; or 2) waste resulting from the desalination of marine seawater into the Gulf of Mexico.

HB 2031 also directs the commission to issue a bed and banks permit to convey marine seawater in any flowing natural stream or lake, reservoir, or other impoundment. The bill prohibits: 1) the discharge of treated marine seawater into a flowing natural stream and impoundment for conveyance purposes without a discharge permit issued under TWC, Chapter 18; and 2) the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater in a bay and estuary under the expedited permit process as allowed by TWC, Chapter 18. A person has the option to submit an application under TWC, Chapter 11 or 26 to seek a permit to divert or discharge in a bay or estuary.

Further, HB 2031 directs the commission to adopt rules to expedite permitting and related processes for the diversion of marine seawater and the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC, Chapter 18. In addition, the bill requires the commission to establish reasonable measures to minimize impingement and entrainment associated with the diversion of marine seawater.

Finally, HB 2031 requires that the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and for the discharge of waste resulting from the desalination of marine seawater and for the commission to adopt

rules designating diversion zones by September 1, 2020. Under TWC, §18.003(j) and §18.005(g), an applicant for a permit to divert marine seawater must consult with the TPWD and the GLO regarding the point(s) of diversion or discharge until such time as the commission adopts rules designating diversion or discharge zones.

HB 4097 relates to seawater desalination projects. This bill creates TWC, §11.1405, Desalination of Seawater for Use for Industrial Purposes, and TWC, §26.0272, Permits Authorizing Discharges from Certain Seawater Desalination Facilities; and amends TWC, §27.021, Permit for Disposal of Brine from Desalination Operations or Drinking Water Treatment Residuals in Class I Injection Wells, and TWC, §27.025, General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, to address seawater desalination for industrial purposes.

TWC, §11.1405(a), requires a person to obtain a permit to divert and use state water that consists of seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a TDS concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 mg/L. TWC, §11.1405(b) creates an exemption from permitting to divert and use seawater if TWC, §11.1405(a) does not apply. When a permit application is required, TWC, §11.1405(e) specifies that the application does not require a finding of

water availability and TWC, §11.1405(f) requires the permit to be consistent with the commission's adopted environmental flow standards in 30 TAC Chapter 298, Environmental Flow Standards for Surface Water. TWC, §11.1405(h), directs the commission to adopt rules to expedite permitting and related processes for the diversion of seawater.

In addition, TWC, §26.0272(b), indicates that TCEQ may issue a permit for the discharge of water treatment residuals from the desalination of seawater into the portion of the Gulf of Mexico inside the territorial limits of the state. TWC, §26.0272(c), specifies that prior to issuing a permit, TCEQ must evaluate the discharge of water treatment residuals from the desalination of seawater into the Gulf of Mexico for compliance with the state water quality standards, requirements of the Texas Pollutant Discharge Elimination System program, and applicable federal law. TWC, §26.0272(d), indicates that permits may be individual or general. TWC, §26.0272(d), also specifies that for individual permits, an application review procedure, at a minimum, must comply with the requirements of TWC, Chapter 5, Subchapter M; and the commission must comply with the requirements of TWC, §26.040, for a general permit.

TWC, §27.021, allows TCEQ to issue an individual Class I injection well permit authorizing the disposal of water treatment residuals produced by the desalination of seawater. TWC, §27.025, allows TCEQ to authorize a Class I injection well under a

general permit for the disposal of concentrate produced by the desalination of seawater. TWC, §27.025, specifies that the general permit must include any requirements necessary to maintain delegation of the federal underground injection control program administered by TCEQ.

In October 2015, the commission held a stakeholder meeting to solicit comments regarding the implementation of HB 2031 and HB 4097. The executive director based these proposed rules on consideration of the comments received from the stakeholders, sound science and other public interest and relevant factors.

In corresponding rulemakings published in this issue of the *Texas Register*, the commission also proposes new sections in 30 TAC Chapter 295, Water Rights, Procedural; 30 TAC Chapter 297, Water Rights, Substantive; and, 30 TAC Chapter 318, Marine Seawater Desalination Discharges to implement HB 2031 and HB 4097.

### **Section by Section Discussion**

#### *Subchapter O: Public Notice for Marine Seawater Desalination Projects*

##### *§39.901, Applicability*

Proposed new §39.901, identifies the types of applications subject to Chapter 39, Subchapter O, which establishes the public notice process for treated marine seawater and off-shore discharge permits from marine seawater desalination projects under

TWC, Chapter 18. This section clarifies that the terms "Treated marine seawater," "Off-shore discharges," and "Marine seawater desalination project" have the same meanings as the terms are defined in 30 TAC §318.2.

*§39.902, Public Notice and Comment for Treated Marine Seawater Discharges*

Proposed new §39.902, identifies the public notice and comment process. Proposed §39.902(a) specifies that the executive director will file the application, draft permit, technical summary, and draft notice of application and preliminary decision with the chief clerk. Proposed §39.902(b) describes the contents of the notice. Proposed §39.902(c) specifies that the notice of application and preliminary decision, the administratively and technically complete application, the draft permit, and the technical summary will be published on the TCEQ website for public review and comment. Additionally, these documents will be emailed to the state senator and representative who represent the area where the facility is or will be located and to the TPWD and the GLO. Proposed §39.902(d) requires a new notice if major amendments or transfers are made after notice is published. Proposed §39.902(e) specifies that the public comment period ends 10 days after notice is published unless the comment period is extended by the executive director for good cause. This section also specifies that the comment period is extended to the close of any public meeting. Proposed §39.902(f) describes the public meeting notice content. Proposed §39.902(g) specifies that notice of a public meeting will be mailed or emailed to any person who submitted

comments or requested a public meeting; emailed to the state senator and representative who represent the area where the facility is or will be located, the TPWD and the GLO; and published on the TCEQ website.

*§39.903, Public Notice and Comment for Off-Shore Discharges*

Proposed new §39.903, identifies the public notice and comment process for off-shore discharges. Proposed §39.903(a) specifies that the executive director will file the application, draft permit, technical summary, and draft notice of application and preliminary decision with the chief clerk. Proposed §39.903(b) describes the contents of the notice. Proposed §39.903(c) specifies that the notice of application and preliminary decision, the administratively and technically complete application, the draft permit, and technical summary will be published on the TCEQ website for public review and comment. Additionally, these documents will be emailed to the state senator and representative who represent the area where the facility is or will be located and to the TPWD and the GLO. Proposed §39.903(d) requires new notice if major amendments or transfers are made after notice is published. Proposed §39.903(e) specifies that the public comment period ends 10 days after the notice is published unless the comment period is extended by the executive director for good cause. Late comments will be added to the application file but will not be processed. Proposed §39.903(f) specifies that after the close of the comment period, the executive director will evaluate timely and relevant public comments and develop a final technical summary. The final

technical summary will include a summary of all timely and relevant public comments, a response to the issues raised in public comments, and the executive director's final decision on the application. This response to issues raised is not intended to be a detailed discussion and response to each comment, but rather a high level discussion and response to the issues raised in public comment. This high level discussion is to demonstrate that the executive director reviewed and considered the issues raised in public comment.

**Fiscal Note: Costs to State and Local Government**

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are expected for other units of state or local government as a result of the administration or enforcement of the proposed rules.

The rules are proposed in order to implement HB 2031 which created an expedited permitting process for marine seawater desalination projects. HB 2031 directs the commission to adopt rules to expedite permitting and related processes for the discharge of both treated marine seawater and waste resulting from the desalination process.

These proposed rules in Chapter 39 establish the public notice and comment process for treated marine seawater and off-shore discharge permit applications from marine seawater desalination projects. Although the permitting process is expedited, the agency does not expect significant costs or cost savings due to the implementation of the proposed rules. Agency staff does not expect a need for additional resources to issue any permits under the proposed rules as they do not expect a significant number of permit applications. Under the current permitting process, permittees must publish two legal notices in the largest newspaper in the county where the facility is or will be located. The expedited permitting process in the proposed rulemaking allows for a single web-based public notice rather than two newspaper public notices. This change is not expected to significantly impact agency operations.

Desalination plants are not expected to be owned or operated by other units of state or local government. No significant revenue or costs are expected for the agency due to the administration of the proposed rules.

### **Public Benefits and Costs**

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law and a streamlined regulatory process for marine seawater desalination that would assist the state to develop new water supplies

to meet the ever-increasing demand for water.

No significant fiscal implications are anticipated for businesses or for individuals as a result of the administration and enforcement of the proposed rules.

Under the current permitting process, permittees must publish two legal notices in the largest newspaper in the county where the facility is or will be located. The expedited permitting process in the proposed rulemaking allows for a single web-based public notice rather than two newspaper public notices. Legal notices in newspapers can range from approximately \$500 for small newspapers and up to \$4,000 for large newspapers. So the cost savings from using web-based notices rather than two newspaper publications can be \$1,000 - \$8,000 depending on the location of the facility.

According to agency staff, there are currently no marine seawater desalination plants in Texas nor are there a significant number expected to be constructed in the first five years after the proposed rules would come into effect. Any marine seawater desalination plants that would be constructed would be owned by large businesses capable of funding large financial capital expenditures. Even though individuals would pay for water from a desalination plant, they would also benefit from having a new water supply.

### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules would have the same effect on a small business as it does on a large business. The proposed rules do not affect the regulatory burden on small or micro-businesses unless they intend to own or operate a marine seawater desalination plant. Under the proposed rules, if a business does apply for a permit associated with a marine seawater desalination plant, there would be some cost savings from using web-based notices rather than two newspaper publications.

### **Small Business Regulatory Flexibility Analysis**

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

### **Local Employment Impact Statement**

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225(a) because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). The following is a summary of that review.

Texas Government Code, §2001.0225 applies to a "major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and 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. A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state.

The legislature enacted HB 2031, creating TWC, Chapter 18, which relates to marine seawater desalination. HB 2031 states that the purpose of the new law is to remain

economically competitive in order to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water. More specifically, the legislature stated the purpose of HB 2031 was to "... streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination."

Therefore, the specific intent of the proposed rulemaking is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits. The proposed rules in Chapter 39 are for the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the processes for obtaining a permit to discharge treated marine seawater and waste resulting from the desalination of marine seawater under TWC, Chapter 18. The proposed new rules will protect the health and safety of aquatic and wildlife resources, as well as water quality, however, the proposed rules will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. Accordingly, the commission concludes that the proposed rulemaking does not meet the definition of a "major environmental rule."

Even if this rulemaking was a "major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather creates an expedited process under state

law to ensure efficient regulatory oversight, while comprehensively protecting the state's natural resources. Third, the proposed rulemaking does not come under a delegation agreement or contract with a federal program, and finally, it is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 2031. Therefore, the commission does not proposed the rules solely under the commission's general powers.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Takings Impact Assessment**

The commission evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that analysis. The specific purpose of the proposed rulemaking is to modify the TAC to implement the changes to the TWC, from HB 2031, which creates procedures for the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits. The proposed rulemaking will substantially advance this stated purpose by proposing rules in Chapter 39, that are intended to articulate and expedite the permitting process for marine seawater desalination discharges in accordance with HB

2031 and TWC, Chapter 18.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, Texas Government Code, Chapter 2007 does not apply to these proposed rules because these rules do not impact private real property. In HB 2031, the legislature expressed that "In this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. For marine seawater, there are no real property rights that have been granted for use of the water in the Gulf of Mexico. These actions will not affect or burden private real property rights because of the amount of water in the Gulf of Mexico, or a bay or arm of the Gulf of Mexico.

### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore

must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the proposed rules include: discharges must comply with water quality-based effluent limits; discharges that increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development; and to the greatest extent practicable, new wastewater outfalls must be located where they will not adversely affect critical areas.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rules are consistent with these CMP goals and policies because these rules do not create or have a direct or significant adverse effect on any CNRAs, and because the proposed rules do not allow a discharge from marine seawater desalination projects into or adjacent to water in the

state, except in accordance with an individual permit issued by the commission.

Individual permits issued under these proposed rules will include effluent limitation to ensure compliance with water quality standards. Further, the expedited permitting process in these proposed rules cannot be used to authorize discharges of reject water into bays and estuaries. Reject water must be discharged into the Gulf of Mexico, and applicants must consult with the TPWD and the GLO regarding the outfall location(s).

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on June 21, 2016, at 2:00 p.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are

planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-029-295-OW. The comment period closes on July 5, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Kathy Ramirez, Water Availability Division, at (512) 239-6757 or Laurie Fleet, Wastewater Permitting Section, at (512) 239-5445.

**SUBCHAPTER O: PUBLIC NOTICE FOR MARINE SEAWATER  
DESALINATION PROJECTS**

**§§39.901 - 39.903**

**Statutory Authority**

The rules are proposed under Texas Water Code (TWC), §5.013 which establishes the general jurisdiction of the commission; TWC §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103 which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120 which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011 which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the commission in the public interest; TWC, §26.027 and §26.041 which authorize the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state, and to set standards to prevent the discharge of waste that is injurious to the public health; and TWC, §18.005(e) which directs the commission to adopt rules to expedite permitting and related processes for the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC,

Chapter 18.

The proposed rules implement TWC, §18.005 and House Bill 2031 (84th Texas Legislature, 2015).

**§39.901. Applicability**

The provisions of this subchapter establish the public notice process for treated marine seawater discharge permits and off-shore discharge permits from marine seawater desalination projects under Texas Water Code, Chapter 18. For the purposes of this subchapter, the terms "Treated marine seawater," "Off-shore discharges," and "Marine seawater desalination project" have the same meaning as the definitions of these terms found in §318.2 of this title (relating to Definitions).

**§39.902. Public Notice and Comment for Treated Marine Seawater Discharges.**

(a) Filing the administrative record. After the technical review is completed, the executive director shall file the application, draft permit, technical summary, and draft notice of application and preliminary decision with the chief clerk.

(b) Notice text. The notice of application and preliminary decision must contain the following information:

(1) the permit number;

(2) the name, address, and telephone number of the applicant;

(3) a brief description of the location and nature of the proposed marine seawater desalination project, including the location of each outfall;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) if applicable, a statement that the application is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(6) a brief description of public comment procedures, including:

(A) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted;

(B) the deadline to file comments; and

(C) the deadline to request a public meeting or a contested case hearing;

(7) a statement that the executive director will respond to comments raising issues that are timely received and are relevant, material or otherwise significant;

(8) a brief description of procedures by which the public may request a public meeting and a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility will be located or there is substantial public interest in the proposed activity;

(9) a statement that there is an opportunity for a contested case hearing, the procedures by which the public may request a contested case hearing, and that only disputed issues of fact or mixed issues of fact and law that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(10) a statement that the executive director may issue final approval of the application unless a timely contested case hearing request is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(11) the name and telephone number of an agency contact that interested persons may contact for further information; and

(12) any additional information required by the executive director.

(c) Publication of the notice. The notice of application and preliminary decision, the administratively and technically complete application, the draft permit, and the technical summary, excluding oversized documents, will be published on the TCEQ website for public review and comment. Additionally, these documents will be emailed to the state senator and representative who represent the general area in which the facility is or will be located, the Texas Parks & Wildlife Department, and the Texas General Land Office at the email address on file for these individuals and agencies.

(d) Amendment after notice. No amendments to an application which would constitute a major amendment under the terms of §318.6 of this title (relating to Amendment of a Permit) can be made by the applicant after the notice of application

and preliminary decision has been published, unless new notice is published which includes a description of the proposed amendments to the application. For purposes of this subsection, an attempted transfer of an application shall constitute an amendment requiring additional notice.

(e) Public comment. Public comments must be filed with the chief clerk within the time period specified in the notice. The public notice period shall end 10 calendar days after the date of publication on the TCEQ website unless extended by the executive director for good cause. The public comment period shall be extended to the close of any public meeting.

(f) Public meeting notice. Notice of a public meeting must include the following information:

(1) the information required by subsection (b)(1) - (3) and (11) of this section;

(2) the date, time, and place of the meeting;

(3) a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(g) Recipients of public meeting notice. Notice of a public meeting will be mailed or emailed to any person who submitted comments or requested a public meeting; emailed to the state senator and representative who represent the area where the facility is or will be located, the Texas Parks & Wildlife Department, and the Texas General Land Office; and published on the TCEQ website at least 14 calendar days prior to the meeting date. The chief clerk need not mail or email notice of the public meeting to persons submitting public comment or public meeting requests who have not provided a return mailing address or email address.

**§39.903. Public Notice and Comment for Off-Shore Discharges.**

(a) Filing the administrative record. After the technical review is completed, the executive director shall file the application, draft permit, technical summary, and draft notice of application and preliminary decision with the chief clerk.

(b) Notice text. The notice of application and preliminary decision must contain the following information:

(1) the permit number;

(2) the name, address, and telephone number of the applicant;

(3) a brief description of the location and nature of the proposed marine seawater desalination project, including the location of each outfall;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) a statement that the application is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(6) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and the deadline to file comments;

(7) a statement that the executive director will evaluate comments raising issues that are timely received and are relevant, material or otherwise significant and develop a final technical summary;

(8) the name and telephone number of an agency contact that interested persons may contact for further information; and

(9) any additional information required by the executive director.

(c) Publication of the notice. The notice of application and preliminary decision, the administratively and technically complete application, the draft permit, and the technical summary, excluding oversized documents, will be published on the TCEQ website for public review and comment. Additionally, these documents will be emailed to the state senator or representative who represent the area where the facility is or will be located, the Texas Parks & Wildlife Department, and the Texas General Land Office at the email address on file for these individuals and agencies.

(d) Amendment after notice. No amendments to an application which would constitute a major amendment under the terms of §318.6 of this title (relating to Amendment of a Permit) can be made by the applicant after the notice of application

and preliminary decision has been published, unless new notice is published which includes a description of the proposed amendments to the application. For purposes of this subsection, an attempted transfer of an application shall constitute an amendment requiring additional notice.

(e) Public comment. Public comment must be filed with the chief clerk within the time period specified in the notice. The public notice period shall end 10 calendar days after the date of publication on the TCEQ website unless extended by the executive director for good cause. A public comment that is not filed with the chief clerk by the deadline provided in the notice shall be accepted by the chief clerk and placed in the application file but the chief clerk shall not process it.

(f) Response to comments and final decision. After the close of the comment period, the executive director shall:

(1) evaluate all timely received and relevant, material or otherwise significant issues raised in public comments;

(2) develop a final technical summary which includes:

(A) a summary of all timely received and relevant, material or otherwise significant issues raised in public comments;

(B) a response to the issues raised in public comments; and

(C) a summary of the executive director's final decision;

(3) revise the draft permit in response to comments, if necessary; and

(4) file the final technical summary and revised draft permit, if applicable, with the chief clerk within the shortest practical time after the comment period ends.