The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §39.651.

**Background and Summary of the Factual Basis for the Proposed Rule**

This rulemaking implements House Bill (HB) 720, 86th Texas Legislature, 2019, addressing the commission’s regulation of aquifer recharge (AR) projects in Texas. HB 720 added Texas Water Code (TWC), §27.203(c). Texas Water Code, §27.203(c) requires applicants for AR individual permits to provide notice to any groundwater conservation district in which the AR project will be located and publish notice in a newspaper of general circulation in the county in which the wells will be located.

Chapter 39 does not currently contain notice requirements for AR projects. Section 39.651(h) contains similar notice requirements for aquifer storage and recovery projects, therefore, the proposed amendment adds AR projects to this rule.

In addition, on June 12, 2019, the commission determined that certain rules in Chapter 39 (Non-Rule Project Number 2019-013-039-LS) are obsolete and no longer needed (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission has proposed to repeal obsolete rules in Chapter 39 (Rule Project Number 2019-119-039-LS) and to update other rules, primarily to remove obsolete text and update cross-references (Rule Project Number 2019-121-033-LS). The proposed amendment of §39.651(e) is included in this proposed rulemaking due to the necessary amendment of §39.651(h).
As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 281, Applications Processing; Chapter 295, Water Rights, Procedural; Chapter 297, Water Rights, Substantive; and Chapter 331, Underground Injection Control.

Section Discussion

The commission proposes various stylistic, non-substantive changes, such as grammatical corrections and correct uses of references. These changes are non-substantive and are not specifically discussed in this preamble.

§39.651, Public Notice of Injection Well and Other Specific Applications

As a result of the quadrennial review, the commission proposes to amend §39.651, by removing obsolete text in §39.651(e)(1) and (2) regarding the requirement for a public meeting for an application for a new hazardous waste facility, or for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit because no applications filed before September 1, 2005 remain pending with the commission.

To implement HB 702, the commission proposes to amend §39.651(h), so that the notice requirements for individual Class V permit applications for aquifer storage and recovery projects also apply to individual Class V permit applications for AR projects.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for
the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

This rulemaking addresses necessary changes in order to comply state law, specifically HB 720. The proposed rulemaking would amend §39.651(e) to remove obsolete text and amend §39.651(h) to state that notice requirements for individual Class V permit applications for aquifer storage and recovery projects also apply to individual Class V permit applications for AR projects.

Public Benefits and Costs
Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated will be compliance with state law, and improved readability and minimized confusion with regard to applicable rules.

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, members of the public will not experience any significant fiscal impact. Any person who applies for an AR individual permit will be required to provide notice to any groundwater conservation district in which the AR project is located and will be required to publish notice in a newspaper of general circulation in the county in which the wells are located. The agency anticipates that the fiscal implications for businesses and individuals will be minimal because applicants will be able to utilize the authorization by rule option, which does not have newspaper publishing costs associated with it.
Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The amendment would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.
**Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation; however, it does have the potential to increase the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state’s economy.

**Draft Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. A "Major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to
implement HB 720, which enacted requirements in TWC, Chapters 11 and 27, for aquifer storage projects and AR projects, and to remove obsolete text.

Second, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that there will be a significant cost to comply with the proposed rule because no new fees are proposed, therefore, the cost will not be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The proposed amendment removes obsolete text and establishes notice requirements consistent with the requirement of HB 720; therefore, will not adversely affect in a material way the public health and safety of the state or a sector of the state.

Finally, the rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general
powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements for the following reasons: this rulemaking does not exceed any standard set by federal law for the commission’s Underground Injection Control Program authorized for the State of Texas under the federal Safe Drinking Water Act; does not exceed any express requirement of state law because it is consistent with the requirements of HB 720; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government because it is consistent with the requirements of the commission’s Underground Injection Control Program; and is not based solely under the general powers of the agency, but is based specifically under TWC, §27.019, Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082; and HB 720, Section 4, as well as under the other authority of the commission cited in the statutory authority section of this preamble.

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 this rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed action implements legislative requirements in HB 720, for aquifer storage or AR projects.
The commission determined that the proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule establishes public notice requirements consistent with the requirements of HB 720 for an AR project application and removes obsolete text. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not burden constitutionally, nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulation.

Therefore, the rule would not constitute a taking under Texas Government Code, Chapter 2007.

**Consistency with the Coastal Management Program**

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

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 January 7, 2020,
at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact 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 Andreea Vasile, 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: [https://www6.tceq.texas.gov/rules/ecomments/](https://www6.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 2019-116-297-OW. The comment period closes on January 21, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Carol Dye, Underground Injection Control Permits Section, at (512) 239-1504.
SUBCHAPTER L: PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

§39.651

Statutory Authority

This amendment is proposed under the authority of Texas Water Code (TWC), Chapter 5, Subchapter M, which establishes environmental permitting procedural requirements; TWC, §5.102, which establishes the commission’s general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.003, which allows the commission to use all reasonable methods to implement its policy of maintaining the quality of fresh water in the state of Texas; TWC, §27.011, which establishes the commission's jurisdiction over certain injection well permits; TWC, §27.019, which specifically authorizes the commission to adopt rules and procedures necessary for performance of its powers, duties, and functions under TWC, Chapter 27; Texas Health and Safety Code (THSC), §361.017, which establishes the commission’s jurisdiction over all aspects of the management of hazardous waste; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.0666, which establishes public meeting and notice requirements for solid waste facilities; THSC, §361.0791, which establishes public meetings and notice requirements for new hazardous waste management facilities; THSC,
§361.082, which establishes notice and hearing requirements for hazardous waste permit applications; Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and House Bill (HB) 720, Section 4, which authorizes and directs the commission to adopt rules implementing TWC, §11.157 and §11.158, and TWC, Chapter 27, Subchapter H.

The proposed amendment implements TWC, Chapter 5, Subchapter M; THSC, §§361.0666, 361.0791, and 361.082; and HB 720.


(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 shall 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 must 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 must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (11) of this title (relating to Text of Public Notice). Notice under §39.418 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 must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For Notice of Receipt of Application and Intent to Obtain a Permit concerning Class I or Class III 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;

(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

(E) any groundwater conservation district established in the county in 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 three inches (7.6 centimeters) and the notice must 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 Notice of Application and Preliminary Decision) must 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 §39.405(h) and §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 that 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 three inches (7.6 centimeters) and the notice must 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" have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I or Class III 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;

(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

(E) any groundwater conservation district established in the county in 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, Class III, or Class V injection well permit applications will 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) For [If] an application for a new hazardous waste facility, the agency [is filed:] [(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or]

[(B) on or after September 1, 2005, the agency:]
(A) [(i)] may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) [(ii)] shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(i) [(I)] on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) [(II)] if the executive director determines that there is substantial public interest in the proposed facility.

(2) For [If] an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, the agency [is filed:]

[(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment on the application if a person affected files with the chief clerk a request for a public meeting concerning the application before the deadline to file public comment or to file requests for reconsideration or hearing; or]
(B) on or after September 1, 2005, the agency:

(A) [(i)] may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application; but

(B) [(ii)] shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(i) [(I)] on the request of a member of the legislature who represents the general area in which the facility is located; or

(ii) [(II)] if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity's governing body;
(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council’s solid waste advisory committee, executive committee, or governing board;

(C) a homeowners’ or property owners’ association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. 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.

(5) 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 must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).
(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings 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 that is adjacent or contiguous to each county in which 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 three inches (7.6 centimeters) and the notice must 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 must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must 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 or Class III 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;
(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; and

(v) any groundwater conservation district established in the county in 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 must 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 shall 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) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.
(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

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

(h) Applications for individual Class V injection well permits for aquifer storage and recovery (ASR) projects and aquifer recharge (AR) projects. Notwithstanding the requirements of subsections (c) and (d) of this section, this subsection establishes the public notice requirements for an application for an individual Class V injection well permit application for either an ASR project or an AR project. Issuance of the Notice of Receipt of Application and Intent to Obtain a Permit is not required for an application for an individual Class V injection well permit application for an ASR project or an AR project. The notice required by §39.419 of this title must be published by the applicant once in a newspaper of general circulation in the county in which the injection well will be located after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. The chief clerk shall provide notice by first class mail to any groundwater conservation district in which the wells associated with the ASR project or AR project will be located. The chief clerk shall also mail notice to the persons listed in §39.413(7) - (9) of this title. This notice must contain the text as required by §39.411(c)(1) - (6) of this title.