
Background and Summary of the Factual Basis for the Proposed Rules

The rules in Chapter 39, Subchapters A - E were initially adopted to be effective January 8, 1997 (December 27, 1996, issue of the Texas Register (21 TexReg 12550)). In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, including those in Chapter 39, Subchapters A - E, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 were obsolete and no longer needed because no applications that were declared administratively complete before September 1,
1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). This rulemaking would repeal obsolete rules to eliminate any possible confusion as to what the applicable public participation requirements are and remove unnecessary sections from the commission’s rules.

Concurrently with this rulemaking, the commission is proposing amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the applicability date. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public’s opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.
Section by Section Discussion

Subchapter A: Applicability and General Provisions
The commission proposes the repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, and 39.25. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter B: Public Notice of Solid Waste Applications
The commission proposes the repeal of §§39.101, 39.103, 39.105 - 39.107, and 39.109. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter C: Public Notice of Water Quality Applications
The commission proposes the repeal of §39.151. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter D: Public Notice of Air Quality Applications
The commission proposes the repeal of §39.201. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.
Subchapter E: Public Notice of Other Specific Applications

The commission proposes the repeal of §39.251 and §39.253. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

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 repeals are 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 repeals.

The proposed rulemaking would repeal rules in Chapter 39, Subchapters A - E regarding public notice and participation because these rules are obsolete. The obsolete rules generally apply to certain permit applications that were administratively complete before September 1, 1999. HB 801 superseded the public participation rules in Chapter 39, Subchapters A - E for certain permit applications declared administratively complete on or after September 1, 1999. The rules that implemented HB 801 and subsequent rulemakings to implement legislation and commission policy nullified the rules that are proposed for repeal.

The rules are proposed for repeal because the reviews of applications declared
administratively complete prior to September 1, 1999 have been completed. The current requirements for public notice and participation in Chapter 39 and other chapters are not affected by this proposed rulemaking. No fiscal implications are anticipated for the state or units of local government.

**Public Benefits and Costs**

Ms. Bearse also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the repeals will be to eliminate obsolete rules regarding the public participation requirements for certain permit applications.

The proposed repeals are not anticipated to result in fiscal implications for businesses or individuals. The rules are proposed for repeal because they have been obsolete since the commission completed its reviews of all of the applications declared administratively complete before September 1, 1999. The current requirements for public participation in Chapter 39 and other chapters are not affected by this proposed rulemaking. The proposed rulemaking does not remove or add fees and does not affect requirements for any regulated entities.

**Local Employment Impact Statement**

The commission 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 repeals are in effect.

**Rural Community Impact Statement**

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect a rural community in a material way for the first five years that the proposed repeals are in effect.

**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 rulemaking for the first five-year period the proposed repeals are 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 rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed repeals are 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 rulemaking 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, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination
The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. 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 of the state. The proposed repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking repeals obsolete rules to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies 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 authority of the commission. The proposed repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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 Texas Government Code, Chapter 2007, is applicable. The proposed repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 is procedural in nature and will not burden private real property. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the sections proposed for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking 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.

**Effect on Sites Subject to the Federal Operating Permits Program**

None of the sections proposed for repeal are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and therefore, no effect on sites subject to the Federal Operating Permits Program is expected if the commission repeals these rules.

**Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, 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 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: 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 2019-119-039-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.
[SUBCHAPTER A: APPLICABILITY AND GENERAL PROVISIONS]

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

Statutory Authority

The repeals 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 the TWC; 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, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.
The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

[§39.1. Applicability.]

[Any permit applications listed below that are declared administratively complete before September 1, 1999 are subject to Subchapter A of this chapter (relating to Applicability and General Provisions), and Subchapters B - E of this chapter (relating to Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications, Public Notice of Air Quality Applications, and Public Notice of Other Specific Applications), as applicable. Any permit applications listed below that are declared administratively complete on or after September 1, 1999 are subject to Subchapter H of this chapter (relating to Applicability and General Provisions), and Subchapters I - M of this chapter (relating to Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses), as applicable. All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), regardless of when they were declared administratively complete. This chapter applies to:]


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

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

[(A) This paragraph includes:]

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

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

[(B) This paragraph does not include:]

[(i) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), other than applications under Subchapter B of this chapter;]
[(ii) applications for authorizations under Chapter 312 of this title, except applications for a permit under the chapter; and]

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

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

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

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

[(6) hearings on contested enforcement cases under Chapter 80 of this title; and]
[(7) applications for consolidated permit processing and consolidated permits processed under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing).]

[§39.3. Purpose.]

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

[§39.5. General Provisions.]

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

[(b) The chief clerk may require the applicant to provide necessary mailing lists in electronic form.]
[(c) When this chapter requires notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.]

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

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

[(f) When this chapter requires an applicant to publish notice, the applicant must file an affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file the affidavit is the day of the public meeting for notice of public meeting, two days before a public hearing for notice of a public hearing, and 30 days after the last publication for other published notices. For notice of a public meeting, the applicant must also submit the affidavit to the executive director no later than the day of the public meeting. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice.]
(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a newspaper of the largest general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements.

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

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

[§39.9. Deadline for Public Comment and Hearing Requests.]

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

[§39.11. Text of Public Notice.]

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

[(1) the name and address of the agency;]

[(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;]
[(3) a brief description of the business conducted at the facility or activity described in the application or the draft permit;]

[(4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;]

[(5) a brief description of public comment procedures, and the time and place of any public meeting or public hearing;]

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

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

[(8) the application or permit number;]

[(9) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the

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

[(1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;]
[(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;]

[(3) the county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;]

[(4) the Texas Department of Health;]

[(5) the Texas Parks and Wildlife Department;]

[(6) the Texas Railroad Commission;]

[(7) if applicable, local, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c), as amended and adopted in the CFR through May 2, 1989, at 54 FedReg 18786;]

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

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

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

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

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

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

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

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

[(1) applications for the correction or endorsement of permits under §305.65 of this title (relating to Corrections of Permits);]
(2) permittees’ voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);]

(3) 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.]
§39.17. Notice of Minor Amendment.

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

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


[If the executive director recommends denial of an application, the notice of that recommendation shall be given under the requirements for notice of draft permit for that type of application. This section does not apply if notice of the draft permit has been issued already.]
[§39.21. Notice of Commission Meeting To Evaluate a Hearing Request on an Application.]

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

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

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

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

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

[§39.25. Notice of Contested Enforcement Case Hearing.]  

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


Statutory Authority

The repeals 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 the TWC; 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, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, §§5.013, 5.102, and 5.103; and THSC, §361.024.

[§39.101. Application for Municipal Solid Waste Permit.]
[(a) Applicability. This subchapter applies to applications for municipal solid waste permits that are declared administratively complete before September 1, 1999. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter I of this chapter (relating to Public Notice of Solid Waste 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 to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing shall be by certified mail.]

[(c) Notice of intent to obtain a permit.]

[(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.]
[(2) After the executive director determines that the application is administratively complete, the following actions shall be taken.]

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

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

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

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

[(d) Notice of draft permit.]
[(1) The applicant shall publish notice at least once under §39.5(g) of this title.]

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

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

[(e) Notice of public meeting.]

[(1) If the application proposes a new facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of this subsection if public notice is provided under this subsection.]

[(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.]
[(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.]

[(f) Notice of hearing.]

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

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

[(3) Mailed notice.]

[(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 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 an affidavit certifying compliance with this paragraph with the chief clerk. Filing an affidavit certifying facts that constitute compliance with the notice requirements creates a rebuttable presumption of compliance with this subparagraph.]

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

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

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

[(a) Preapplication requirements.]

[(1) If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy]
of the notice shall also be mailed to the mayor of the municipality. Mailed notice shall be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.]

[(2) The requirements of this paragraph are set forth at 40 CFR §124.31(b)-(d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous
waste management unit(s), or the application is also for renewal of the permit, where
the renewal application is proposing a significant change in facility operations.]

[(b) Notice of receipt of application. When the executive director receives an
application, or notice of intent to file an application, the chief clerk shall mail notice to
the state senator and representative who represent the area in which the facility is or
will be located, and to the persons listed in §39.13 of this title (relating to Mailed
Notice). For all hazardous waste part B applications for initial permits for hazardous
waste management units, hazardous waste part B permit applications for major
amendments, and hazardous waste part B applications for renewal of permits, the
chief clerk shall provide notice to meet the requirements of this subsection and 40
Code of Federal Regulations (CFR) §124.32(b), which is adopted by reference as
amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417,
and the executive director shall meet the requirements of 40 CFR §124.32(c), which is
adopted by reference as amended and adopted in the CFR through December 11, 1995,
at 60 FedReg 63417. The requirements of this paragraph relating to 40 CFR §124.32(b)-
(c) do not apply to an application for minor amendment under §305.62 of this title
(relating to Amendment), correction under §50.45 of this title (relating to Corrections
to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit
Modification at the Request of the Permittee), or to an application that is submitted for
the sole purpose of conducting post-closure activities or post-closure activities and
corrective action at a facility, unless the application is also for an initial permit for
hazardous waste management unit(s), or the application is also for renewal of the permit.]

[(c) Review of permit application by other governmental agencies. After the executive director determines that the application is administratively complete, the executive director shall mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.]

[(d) Notice of draft permit.]

[(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is located.]

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

[(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title (relating to General Provisions).]
[(4) The notice shall specify the deadline to file public comment or hearing requests. For industrial solid waste applications, the deadline shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.]

[(e) Notice of public meeting.]

[(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided under this subsection.]

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

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

[(f) Notice of hearing.]  

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

[(2) Newspaper notice.]  

[(A) If the application concerns an industrial solid waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the proposed facility is located.]  

[(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three
weeks preceding the hearing under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.]

[(3) Mailed notice.]

[(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 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 chief clerk shall mail notice to the persons listed in §39.13 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.]
[(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.]

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

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

[(g) Information repository. The requirements of 40 Code of Federal Regulations (CFR) §124.33(b)-(f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, apply to all applications for hazardous waste permits.]

[(h) This section does not apply to applications for an injection well permit.]

[§39.105. Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit.]
(a) Notice requirements for Class 1 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits.

(b) The text of required notice shall follow the requirements of §39.11 of this title (relating to Text of Public Notice) and the additional requirements in §305.69 of this title.

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

(d) The effective date of the amendment of existing §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) and this new §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration) is June 3, 2002. Applications for modifications filed before this amended section and new §39.106 of this title become effective, will be subject to this section as it existed prior to June 3, 2002.

§39.106. Application for Modification of a Municipal Solid Waste Permit or Registration.
[(a) When mailed notice is required under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), the mailed notice shall be mailed by the permit or registration holder and the text of the notice shall comply with §39.411(b)(1) - (3), (6), (7), (9), and (11) of this title (relating to Text of Public Notice), and shall provide the location and phone number of the appropriate regional office of the commission to be contacted for information on the location where a copy of the application is available for review and copying.]

[(b) When mailed notice is required by §305.70 of this title, notice shall be mailed by the permit or registration holder to the persons listed in §39.413 of this title (relating to Mailed Notice).]

[(c) The effective date of the amendment of existing §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit) and this new §39.106 is June 3, 2002. Applications for modifications filed before amended §39.105 of this title and this new §39.106 become effective, will be subject to §39.105 of this title as it existed prior to June 3, 2002.]

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

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

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

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

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

[(c) Notice of hearing.]

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

[(2) Newspaper notice.]
[(A) If the application concerns an industrial solid waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located, and in each county and area which is adjacent or contiguous to each county wherein the proposed facility is located.]

[(B) If the application concerns a hazardous solid waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.]

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

[(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under §39.5(h) of this title.]
[(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection shall be completed at least 30 days before the hearing.]
[SUBCHAPTER C: PUBLIC NOTICE OF WATER QUALITY APPLICATIONS]

[§39.151]

Statutory Authority

The repeal is 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 the TWC; 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, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeal is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024.
§39.151. Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

(a) Applicability. This subchapter applies to applications for wastewater discharge permits, including sludge disposal applications, that are declared administratively complete before September 1, 1999. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter J of this chapter (relating to Public Notice of Water Quality Applications and Water Quality Management Plans).

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

(1) an application to renew a permit; or

(2) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by an existing state permit issued
before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).]

[(c) Notice of draft permit. For all draft permits except those in subsection (d) of this section, the following provisions apply.]

[(1) The applicant shall publish notice that the executive director has prepared a draft permit at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.]

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

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

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

[(A) everything that is required by §39.11 of this title (relating to Text of Public Notice); and]

[(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and]

[(C) for applications concerning the disposal of sludge:]

[(i) the use and disposal practices;]
(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(d) Notice of certain draft TPDES permits. For a new TPDES permit for which the discharge is authorized by an existing state permit issued before September 14, 1998, the following shall apply.

(1) If the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the following mailed and published notice is required.

(A) The applicant shall publish notice that the executive director has prepared a draft permit at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.
[(B) The chief clerk shall mail notice of the application and draft permit, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing to:]

[(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;]

[(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutant are or will be discharged;]

[(iii) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c);]

[(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);]

[(v) the applicant;]

[(vi) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists);]
[(vii) any other person the executive director or chief clerk may elect to include; and]

[(viii) if applicable, the secretary of the Coastal Coordination Council.]  

[(C) The notice must set a deadline to file public comment, to request a public meeting, or to request a public hearing with the chief clerk that is at least 30 days after newspaper publication.]  

[(D) The text of the notice shall include:]  

[(i) everything that is required by §39.11 of this title;]  

[(ii) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and]  

[(iii) for applications concerning the disposal of sludge:]  

[(l) the use and disposal practices;]
[(II) the location of the sludge treatment works
treating domestic sewage sludge; and]

[(III) the use and disposal sites known at the time of
permit application.]

[(2) If the application proposes any term or condition that would
constitute a major amendment to the state permit under §305.62 of this title, the
applicant must follow the notice requirements of subsection (c) of this section.]

[(e) Notice for other types of applications. Except as required by subsections (b),
(c), and (d) of this section, the following notice is required for certain applications.]

[(1) For an application for a minor amendment to a permit other than a
TPDES permit, or for an application for a minor modification of a TPDES permit, under
Chapter 305, Subchapter D of this title (relating to Amendments, Modifications,
Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief
clerk shall mail notice, that the executive director has determined the application is
technically complete and has prepared a draft permit, to the mayor and health
authorities for the city or town, and to the county judge and health authorities for the
county in which the waste will be discharged. The notice shall state the deadline to file
public comment, which shall be no earlier than ten days after mailing notice.]
[(2) For an application for a renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, for which the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal, no notice is required.]

[(3) For an application for a minor amendment to a TPDES permit under Chapter 305, Subchapter D of this title (relating to Amendment, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the following requirements apply.]

[(A) The chief clerk shall mail notice of the application and draft permit, providing an opportunity to submit public comments and to request a public meeting to:]

[(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;]

[(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutants are or will be discharged;]
[(iii) if applicable, state and federal agencies for which notice is required in 40 CFR §124.10(c);]

[(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);]

[(v) the applicant;]

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

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

[(B) For TPDES major facility permits, notice shall be published in the Texas Register.]

[(C) The text shall meet the requirements in §39.11 of this title and subsection (b)(4) of this section.]

[(D) The notice shall provide at least a 30-day public comment period.]
[(E) The executive director shall prepare a response to all significant public comments received by the commission under §55.25 of this title (relating to Public Comment Processing).]

[(f) Notice of hearing.]

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

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

[(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.]
[(A) everything that is required by §39.11 of this title;]

[(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and]

[(C) for applications concerning the disposal of sludge:]

[(i) the use and disposal practices;]

[(ii) the location of the sludge treatment works treating domestic sewage sludge; and]

[(iii) the use and disposal sites known at the time of permit application.]

[g] Notice for discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 CFR Part 124, Subsection D, §124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40
CFR Part 124 is available for inspection at the library of the agency, Park 35, 12100 North Interstate 35, Austin.]
[SUBCHAPTER D: PUBLIC NOTICE OF AIR QUALITY APPLICATIONS]

[§39.201]

Statutory Authority

The repeal is 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 the TWC; and 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. The repeal is also proposed under Texas Health and Safety Code (THSC), §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, and 5.103; and THSC, §382.017.

[§39.201. Application for a Preconstruction Permit.]

(a) Applicability. This section applies to the following types of air actions that are declared administratively complete before September 1, 1999:]
[(1) hearings under Chapter 80 of this title (relating to Contested Case Hearings) on applications for permits, permit amendments or permit renewals under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and]

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

[(b) Notice of hearing. The applicant shall publish notice of the hearing in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice must be published not less than 30 days before the hearing.]

[(c) Any application listed in subsection (a) of this section that is declared administratively complete on or after September 1, 1999 is subject to Subchapter K of this chapter (relating to Public Notice of Air Quality Applications).]
Statutory Authority

The repeals 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 the TWC; 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, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019.

[§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.]

[§39.253. Application for Production Area Authorization.]

[(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control) that is declared administratively complete before September 1, 1999. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter L of this chapter (relating to Public Notice of Injection Well and Other Specific Applications).]

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

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

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

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

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

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