The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31.

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

The rules in Chapter 55, Subchapters A and B were initially adopted to be effective June 6, 1996 (May 28, 1996, issue of the *Texas Register* (21 TexReg 4742)). 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 55, Subchapters A and B.

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 Definitions

The commission proposes the repeal of §55.1 and §55.3. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter B: Hearing Requests, Public Comment

The commission proposes the repeal of §§55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31. 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 55, Subchapters A and B regarding public participation because these rules are obsolete. The obsolete rules apply to certain permit applications that were administratively complete before September 1, 1999. HB 801 superseded the public participation rules in Chapter 55,
Subchapters A and B 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 would be repealed.

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 55 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 55 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 repeals do 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 repeals 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 §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 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 would repeal 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 §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 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 §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 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 rules 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/](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](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 DEFINITIONS]

[§55.1, §55.3]

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.

[§55.1. Applicability.]

[(a) This chapter is divided into subchapters, each of which governs only certain specific types of applications. This subchapter and Subchapter B of this chapter (relating to Hearing Requests, Public Comment) describe the hearing request and comment procedures which will continue to apply to applications declared administratively complete before September 1, 1999. Subchapter D of this chapter (relating to Applicability and Definitions) describes the applications that will be subject to Subchapters E, F, and G of this chapter (relating to Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications). Subchapters E and F of this chapter establish public comment, public meeting, request for reconsideration and contested case hearing procedures that apply to applications filed under Texas Water Code (TWC), Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382 that are declared administratively complete on or after September 1, 1999. Subchapter G of this chapter addresses requests for contested case hearing and public comment procedures on applications filed under other statutory provisions that are declared administratively complete on or after September 1, 1999.]
[(b) Hearing requests and comments regarding any permit application that is declared administratively complete before September 1, 1999 are subject to this subchapter and Subchapter B of this chapter.]

[(c) This subchapter and Subchapter B of this chapter do not apply to hearing requests on:]

[(1) applications for emergency or temporary orders;]

[(2) applications for temporary or term permits for water rights;]

[(3) air quality exemptions from permitting under Chapter 106 of this title (relating to Permits by Rule) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project; and]

[(4) applications for weather modification licenses or permits under TWC, Chapter 18.]

[(d) This subchapter and Subchapter B of this chapter do not apply to:]
[(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);]

[(2) applications for authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) except for applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);]

[(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);]

[(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);]

[(5) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);]

[(6) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and]
[(7) applications where the opportunity for a contested case hearing does not exist under the law.]

[§55.3. Definitions.]

[The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: Affected person--A person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. The determination of whether a person is affected shall be governed by §55.29 of this title (relating to Determination of Affected Person).]
[SUBCHAPTER B: HEARING REQUESTS, PUBLIC COMMENT]

[§§55.21, 55.23, 55.25 - 55.27, 55.29, 55.31]

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.

[§55.21. Requests for Contested Case Hearings, Public Comment.]

[(a) Applicability. This subchapter applies to hearing requests and public comments on applications that are declared administratively complete before September 1, 1999.]

[(b) Hearing Requests. The following may request a contested case hearing under this chapter:]

[(1) the commission;]

[(2) the executive director;]

[(3) the applicant;]

[(4) affected persons, when authorized by law; and]
[(5) for applications for air quality permits, or standard exemptions required to provide public notice, a legislator from the general area of the proposed facility.]

[(c) Form of Request. A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (d) of this section.]

[(d) Requirements for Request. A hearing request must substantially comply with the following:]

[(1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;]

[(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the
subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;]

[(3) request a contested case hearing; and]

[(4) provide any other information specified in the public notice of application.]

[(e) Deadline for hearing requests; public comment period. A hearing request must be filed with the chief clerk within the time period specified in the notice. The public comment period shall also end at the end of this time period. The time period shall end 30 days after the last publication of the notice of application, except that the time period shall end:]

[(1) 60 days after the last publication of the notice of a Class 3 modification of a solid waste permit under the TSWDA;]

[(2) 30 days after last publication for a new permit or permit amendment under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);]
[(3) 15 days after the last publication for a permit renewal or standard exemption for a concrete plant under Chapter 116 of this title;]

[(4) ten days after the mailing of notice of the application for the transfer of a permit;]

[(5) no less than 30 days after the last publication of the notice of draft permit for an application for a municipal solid waste permit or to amend, extend, or renew such a permit;]

[(6) no less than 30 days after the last publication of the notice of draft permit for an application for an industrial waste facility permit or to amend, extend, or renew such a permit;]

[(7) no less than 45 days after the last publication of the notice of draft permit for an application for a hazardous waste facility permit or to amend, extend, or renew such a permit;]

[(8) no less than 30 days after the last publication of the notice of draft permit for an application for a wastewater discharge permit except as provided in paragraph (9) of this subsection;]
[(9) no less than ten days after the mailing of the notice of draft permit for an application to amend a wastewater discharge permit where the application is to improve the quality of waste authorized to be discharged and does not seek to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge;]

[(10) no less than 30 days after the last publication of the notice of draft permit for an application for an injection well permit or to amend, extend, or renew such a permit;]

[(11) no less than 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control); or]

[(12) the time specified in commission rules for other specific types of application.]

[(f) Public Comment. Documents that are filed with the chief clerk that comment on an application but that do not request a hearing will be treated as public comment.]
[(g) Late Filed Hearing Requests and Public Comment, Extensions.]

[(1) A hearing request or public comment shall be processed under §55.26 of this title (relating to Hearing Request Processing) or under §55.25 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline for hearing requests and public comment. The chief clerk shall accept a hearing request or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.]

[(2) The commission may extend the time allowed for filing a hearing request.]

[(h) No Right to Hearing.]

[(1) There is no right to a hearing on an application for a minor amendment of a permit or a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits).]

[(2) There is no right to a contested case hearing on applications for weather modification licenses or permits under Texas Water Code, Chapter 18.]
§55.23. Request by Group or Association.

(a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

(2) the interests the group or association seeks to protect are germane to the organization’s purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

(b) The executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of subsection (a) of this section. The request and response shall be filed according to the procedure in §55.25(e) and (f) of this title (relating to Hearing Request Processing).

§55.25. Public Comment Processing.]
[(a) The chief clerk shall deliver or mail to the executive director, the public interest counsel, the director of the Office of Public Assistance, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents timely filed with the chief clerk in response to public notice of an application.]

[(b) This subsection applies to applications concerning hazardous waste facilities, underground injection wells, or Texas Pollutant Discharge Elimination System (TPDES) permits. It applies to an application only when the commission has federal authorization to manage the permitting program under which the application is evaluated.]

[(1) Before an application is approved, the executive director shall prepare a response to all significant public comment on the draft permit raised during the public comment period. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes. The executive director shall make the response available to the public.]

[(A) If the application is acted on by the commission under §50.13 of this title (relating to Action on Application) or §55.27(a)(1) of this title (relating to Commission Action on Hearing Request), the executive director's response to public
comment shall be made available to the public and filed with the chief clerk at least ten days before the commission acts on the application. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.]

[(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title (relating to Action by the Executive Director), the response to public comment should be made no later than the time of the executive director's action on the application.]

[(2) The executive director may call and conduct public meetings in response to public comment. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law. If a contested case hearing is held on the application, the public meeting shall be conducted as part of the preliminary hearing under §80.105 of this title (relating to Preliminary Hearings), unless the executive director specifies a different time and place for the public meeting. If the executive director specifies a different time and place for the public meeting, then public comment shall not be taken at the preliminary hearing. This paragraph supersedes and controls any conflict between this paragraph and §80.105 of this title.
(relating to Preliminary Hearings). The public comment period shall automatically be extended to the close of any public meeting. Public notice of the meeting shall be given as required by commission rule. The applicant shall attend any public meeting held by the executive director. A tape recording or written transcript of the public meeting shall be made available to the public.]

[(3) Any person who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under this subsection, and failed to participate in the public hearing held under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.19 of this title (relating to Notice of Commission Action, Motion for Rehearing) or §55.27 of this title (relating to Commission Action on Hearing Request) or §80.271 of this title (relating to Motion for Rehearing) or may file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration) only to the extent of the changes from the draft permit to the final permit decision.]

[(c) This subsection applies to applications other than those under subsection (b) of this section. The commission may designate an agency office to process public comment under this subsection.]
[(1) The designated office may evaluate and respond to public comment, other than timely hearing requests, when appropriate.]

[(A) If the application and timely hearing requests are considered by the commission, the designated office should prepare any response to public comment no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk.]

[(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title, any response to public comment should be made no later than the time of the executive director's action on the application.]

[(2) The designated office shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The applicant shall attend any such public meeting held by the designated office. When the designated office holds a public meeting it shall respond to public comment either by giving an immediate oral response or by preparing a written response. The response shall be made available to the public.]
[§55.26. Hearing Request Processing.]

[(a) The requirements in this section and §55.27 of this title (relating to Commission Action on Hearing Request) apply only to hearing requests that are filed within the time period specified in §55.21(d) of this title (relating to Requests for Contested Case Hearings, Public Comment).]

[(b) The executive director shall file a statement with the chief clerk indicating that technical review of the application is complete. The executive director may file the statement with the chief clerk either before or after public notice of the application is issued.]

[(c) After a hearing request is filed and the executive director has filed a statement that technical review of the application is complete, the chief clerk shall process the hearing request by both:]

[(1) referring the application and hearing request to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the person making the request for hearing; and]
[(2) scheduling the hearing request for a commission meeting. The chief clerk should try to schedule the request for a commission meeting that will be held approximately 40 days after the later of the following:]

[(A) the deadline to request a hearing specified in the public notice of the application; or]

[(B) the date the executive director filed the statement that technical review is complete.]

[(d) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making a timely hearing request at least 30 days before the first meeting at which the commission considers the request. The chief clerk shall explain how the person may submit public comment to the executive director, describe alternative dispute resolution under commission rules, explain that the agency may hold a public meeting, and explain the requirements of this chapter.]

[(e) The executive director, the public interest counsel, and the applicant may submit written responses to the hearing request no later than 20 days before the commission meeting at which the commission will evaluate the hearing request.]
Responses shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, the director of the Office of Public Assistance, the applicant, and any persons filing hearing requests.

[f] The person who filed the hearing request may submit a written reply to a response no later than six days before the scheduled commission meeting at which the commission will evaluate the hearing request. A reply may also contain additional information responding to the letter by the chief clerk required by subsection (d) of this section. A reply shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, and the applicant.

[g] The executive director or the applicant may file a request with the chief clerk that the application be sent directly to SOAH for a hearing on the application. If a request is filed under this subsection, the commission’s scheduled consideration of the hearing request will be canceled.

[§55.27. Commission Action on Hearing Request.]
commission will evaluate the hearing request at the scheduled commission meeting, and may:

[(1) determine that a hearing request does not meet the requirements of this subchapter, and act on the application;]

[(2) determine that a hearing request does not meet the requirements of this subchapter, and refer the application to a public meeting to develop public comment before acting on the application;]

[(3) determine that a hearing request meets the requirements of this subchapter, and direct the chief clerk to refer the application to the State Office of Administrative Hearings (SOAH) for a hearing; or]

[(4) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the APA.]
[(b) A request for a contested case hearing shall be granted if the request is:]

[(1) made by the applicant or the executive director;]

[(2) made by an affected person if the request:]

[(A) is reasonable;]

[(B) is supported by competent evidence;]

[(C) complies with the requirements of §55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment);]

[(D) is timely filed with the chief clerk; and]

[(E) is pursuant to a right to hearing authorized by law;]

[(3) for an air quality permit, made by a legislator in the general area of the facility if the request:]

[(A) is reasonable;]
[B] complies with the requirements of §55.21 of this title, except for §55.21(d)(2) - (4) of this title;]

[(C) is timely filed with the chief clerk; and]

[(D) is pursuant to a right to hearing authorized by law.]

[(c) The commission may refer an application to SOAH if there is no hearing request complying with this subchapter, if the commission determines that a hearing would be in the public interest.]

[(d) A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.]

[(e) If a hearing request is denied, the procedures contained in §80.272 of this title (relating to Motion for Rehearing) apply. A motion for rehearing in such a case
must be filed no earlier than, and no more than 20 days after, the date the person or
his attorney of record is notified of the commission’s final decision or order on the
application. If the motion is denied under §80.272 of this title and §80.273 of this title
(relating to Decision Final and Appealable), the commission's decision is final and
appealable under Texas Water Code, §5.351 or Texas Health and Safety Code,
§§361.321, 382.032, or 401.341.]

[§55.29. Determination of Affected Person.]

[(a) For any application, an affected person is one who has a personal justiciable
interest related to a legal right, duty, privilege, power, or economic interest affected by
the application. An interest common to members of the general public does not qualify
as a personal justiciable interest.] 

[(b) Governmental entities, including local governments and public agencies,
with authority under state law over issues contemplated by the application may be
considered affected persons.] 

[(c) All relevant factors shall be considered, including, but not limited to, the
following:]
[(1) whether the interest claimed is one protected by the law under which the application will be considered;]

[(2) distance restrictions or other limitations imposed by law on the affected interest;]

[(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;]

[(4) likely impact of the regulated activity on the health, safety, and use of property of the person;]

[(5) likely impact of the regulated activity on use of the impacted natural resource by the person; and]

[(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.]

[§55.31. Determination of Reasonableness of Hearing Request.]
[(a) The reasonableness of a hearing request shall be based on all relevant factors including the following:]

[(1) whether the request is based solely on concerns outside of the jurisdiction of the commission; and]

[(2) whether the request is based on concerns related to other media that cannot be addressed by the pending application, even though within the jurisdiction of the commission;]

[(3) whether the project is an emissions, pollutant, or source reduction project or a project to improve the quality of waste to be discharged, including:]

[(A) whether there are no increases in emissions of any contaminants or no increases in discharges of any pollutants;]

[(B) whether the project is not driven by a noncompliance situation; and]
[(C) whether the project will have both emission, source, or pollutant discharge reductions and incidental increases, where the net effect is an emission, source, or pollutant discharge reduction;]

[(4) whether the project is mandated by commission rule;]

[(5) the location of the proposed project;]

[(6) whether the applicant requests authority to substitute an equivalent or more efficient control device;]

[(7) whether the hearing request is based solely on something other than concerns about pollution;]

[(8) the extent to which the person requesting a hearing is likely to be impacted by the emissions, discharge, or waste; and]

[(9) the applicant’s compliance history.]
[(1) A request concerning an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted is unreasonable.]

[(2) Notwithstanding paragraph (1) of this subsection, a request may be determined reasonable if the application involves a facility for which the applicant’s compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.]