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

The proposed rulemaking is intended to update some of the commission’s procedural rules and is not intended to impose any new procedural or substantive requirements.

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 which 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, 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 are 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)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in 30 TAC Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 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. 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 specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. The proposed rule in Subchapter P carry forward only the portions of the rules that are currently applicable to the types of applications in new §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 and do not add or remove any current notice requirements for these applications. The addition of new Subchapter P would increase the ease of understanding the applicable notice requirements for these applications. In addition, the proposed amendments to Chapter 39 remove obsolete text and update cross-references.
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
The commission proposes to make various stylistic, non-substantive changes such as grammatical corrections. These changes are non-substantive and generally are not specifically discussed in this preamble.

Subchapter H: Applicability and General Provisions
§39.402, Applicability to Air Quality Permits and Permit Amendments
The commission proposes to amend §39.402 by repealing subsection (b) and re-lettering subsection (c) as subsection (b).

§39.403, Applicability
The commission proposes to amend §39.403(a) by removing obsolete text that references rules that are concurrently proposed for repeal. The commission proposes to amend §39.403(a)(1) to add that proposed subsection (e) lists the types of
applications for which public notice is not required.

The commission proposes to amend §39.403(c) by removing §39.403(c)(4) - (8) and relocating the text, together with rules referenced in those paragraphs which are concurrently proposed for repeal, to Chapter 39, proposed new Subchapter P. The commission also proposes to remove §39.403(c)(9) and relocate the text to proposed §39.403(e)(4). Due to the relocation of the text in §39.403(c)(4) - (9), the commission proposes to renumber paragraphs (10) - (12) as §39.403(c)(4) - (6). Because §39.551 is in Chapter 39, Subchapter J, the commission also proposes to amend §39.403(c)(4), to ensure there is no conflict in the introductory part of amended §39.403(c) and (c)(4). Finally, the commission proposes to add §39.403(c)(7), which references applications subject to Chapter 39, new Subchapter P.

The commission proposes to amend §39.403(d) by referencing §39.705 (Mailed Notice for Radioactive Material Licenses) to ensure the correct mailed notice information is included.

The commission proposes to add §39.403(e)(1) - (4) to relocate and update the text of §39.15(a) and §39.403(c)(9). The cross-reference to §50.45 is also proposed to be updated to §50.145 (Corrections to Permits).

*Subchapter I: Public Notice of Solid Waste Applications*
§39.501, Application for Municipal Solid Waste Permit

The commission proposes to amend §39.501 by removing obsolete subsection (e)(1) and obsolete text in subsection (e)(2) regarding a public meeting for an application for a new municipal solid waste facility because no applications filed before September 1, 2005 remain pending with the commission. The commission also proposes re-designating subsection (e)(2) and (3) as subsection (e)(1) and (2) and updating cross-references in subsection (e)(4) – (6).

§39.503, Application for Industrial or Hazardous Waste Facility Permit

The commission proposes to amend §39.503(b) and (c) by updating the cross-references in each subsection to §50.45, which is concurrently proposed for repeal, to §50.145 (Corrections to Permits). In addition, the commission proposes to remove obsolete text in §39.503(e)(1) and (e)(2) and in §39.503(e)(4) regarding requirement for an applicant to hold a public meeting for an application for a new hazardous waste facility, for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, or for which there is “substantial public interest” filed because no applications filed before September 1, 2005 remain pending with the commission.

Subchapter M, Public Notice for Radioactive Material Licenses

§39.709, Notice of Contested Case Hearing on Application

The commission proposes to amend §39.709 by removing subsection (d) because no
new license applications filed on or before January 1, 2007 remain pending with the commission.

Subchapter P, Other Notice Requirements

§39.1001, Purpose and Applicability
The commission proposes new §39.1001 as part of the relocation of text in §39.1 (Applicability) and §39.3 (Purpose), both concurrently proposed for repeal, and from §39.403 (Applicability) to proposed new Subchapter P. Proposed new §39.1001 specifies the types of applications for which an opportunity for contested case hearings is otherwise not required by law and which are not subject to the requirements of Chapter 39, Subchapters G – M.

§39.1003, Notice of Application for Minor Amendments
The commission proposes new §39.1003 to relocate text from §39.403(c)(5), and from §39.11 (Text of Public Notice) and §39.17 (Notice of Minor Amendment), which are concurrently proposed for repeal. Proposed new §39.1003(a) provides that for applications for minor amendments of a permit under Chapter 305, Subchapter D (Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice to the persons listed in §39.413 (Mailed Notice), as well as, for minor amendments of injection well permit applications. Proposed new §39.1003(b) specifies the text of the notice of a minor amendment and new §39.1003(c) provides that the deadline to file public comment is
ten days after mailing. Finally, proposed new §39.1003(d) provides that §39.1003(a) 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 §39.551 (Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).

§39.1005, Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit

The commission proposes new §39.1005 to relocate text from §39.403(c)(6), and from §39.11 (Text of Public Notice) and §39.105 (Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), which are concurrently proposed for repeal. Proposed new §39.1005(b) specifies the text for notice requirements in §305.69 (Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits. Proposed §39.1005(c) specifies requirements for mailed notice for these applications.

§39.1007, Notice of Class 2 Modification of an Industrial Solid Waste or Hazardous Waste Permit

The commission proposes new §39.1007 to relocate text from §39.403(c)(8), from §39.107 (Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), which is concurrently proposed for repeal, from §39.411 (Text of Public Notice) and §305.69 (Solid Waste Permit Modification at the Request of the
Permittee). Proposed new §39.1007 provides that notice requirements for applications for Class 2 modifications are in §305.69, except that the text of notice shall comply with §305.69 and §39.411(b). In addition, it provides that the notice shall specify the deadline to file public comment with the chief clerk and that when mailed notice is required, the applicant shall mail notice to the persons listed in §39.413 (Mailed Notice).

§39.1009, Notice of Modification of a Municipal Solid Waste Permit or Registration
The commission proposes new §39.1009 to relocate text from §39.403(c)(7), and from §39.106(a) and (b) (Application for Modification of a Municipal Solid Waste Permit or Registration), which is concurrently proposed for repeal. Proposed new §39.1009 specifies that the mailed notice requirements for applications are in §305.70 (Municipal Solid Waste Permit and Registration Modifications).

§39.1011, Notice of Application for Voluntary Transfer of Injection Well Permit
The commission proposes new §39.1011 to relocate text from §39.403(c)(4), and from §39.11 (Text of Public Notice) and §39.15 (Public Notice Not Required for Certain Types of Applications), which are concurrently proposed for repeal. Proposed new §39.1011 specifies the requirements for the content of and to whom notice of a voluntary transfer of an injection well permit must be provided, as well as, the deadline to file public comment on the application.
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 rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rulemaking.

This rulemaking, concurrently proposed with amendments in various other chapters, would update cross-references of rules related to public notice of certain types of permit applications and other types of actions.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public notice and public participation in certain types of permit applications. The proposed rules are not anticipated to result in fiscal implications for businesses or individuals.

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 rulemaking is in effect.

**Rural Community Impact Statement**

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. These changes will improve readability and minimize confusion with regard to applicable rules.

**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 rulemaking is in effect. This rulemaking addresses necessary changes in order to update cross-references and remove obsolete language in various procedural and permitting program rules.

**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 rulemaking is in effect.
Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed 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 amendments of §§39.402, 39.403,
39.501, 39.503, and 39.709, and proposal of new Subchapter P, §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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 updates cross-references 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 amendments of §§39.402, 39.403, 39.501, 39.503, and 39.709, and proposal of new Subchapter P, §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are 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**

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the rules 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 (CMP).

Written comments on the consistency of this rulemaking with the CMP goals and policies 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

Proposed amended §§39.402, 39.403, 39.501, 39.503, and 39.709, and proposed new Subchapter P, §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011, are not 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 amends these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or
written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Paige Bond, 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 2019-121-033-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 H: APPLICABILITY AND GENERAL PROVISIONS

§39.402, §39.403

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; 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, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; 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 amendments 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. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§39.402. Applicability to Air Quality Permits and Permit Amendments.

(a) As specified in those subchapters, Subchapters H and K of this chapter (relating to Applicability and General Provisions; and Public Notice of Air Quality Permit Applications, respectively) apply to applications for:

(1) new air quality permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits);

(2) a new major source or a major modification for facilities subject to the requirements of Chapter 116, Subchapter B, Division 5 or 6 of this title (relating to New Source Review Permits, Nonattainment Review Permits and Prevention of Significant Deterioration Permits);
(3) air quality permit amendments under Chapter 116, Subchapter B of this title when the amendment involves:

(A) a change in character of emissions or release of an air contaminant not previously authorized under the permit;

(B) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds public notice *de minimis* levels by being greater than any of the following levels:

(i) 50 tpy of carbon monoxide (CO);

(ii) ten tpy of sulfur dioxide (SO₂);

(iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NOₓ), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(C) a facility affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit
exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NOx;

(ii) 25 tpy of VOC, SO2, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions); or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(D) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;
(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission’s rules in Chapter 60 of this title (relating to Compliance History); or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(4) new air quality flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits);

(5) air quality permit amendments to flexible permits under Chapter 116, Subchapter G of this title when the amendment involves:

(A) change in character of emissions or release of an air contaminant not previously authorized under the permit;

(B) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit
exceeds public notice *de minimis* levels by being greater than any of the following levels:

(i) 50 tpy of carbon monoxide (CO);

(ii) ten tpy of sulfur dioxide (SO₂);

(iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NOₓ), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(C) a facility affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NOₓ;

(ii) 25 tpy of VOC, SO₂, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;
(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title; or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(D) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission’s rules in Chapter 60 of this title; or
(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(6) renewal of air quality permits under Chapter 116, Subchapter D of this title (relating to Permit Renewals);

(7) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(8) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116, Subchapter C of this title (relating to Plant-Wide Applicability Limits).

(9) applications for multiple plant permits (MPPs) under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits);

(10) applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), submitted on or before January 1, 2018, are subject to the public notice requirements
of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

(11) concrete batch plants without enhanced controls authorized by an air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project; and

(12) change of location or relocation of a portable facility, consistent with the requirements of §116.178 of this title (relating to Relocations and Changes of Location of Portable Facilities).

[b] Unless otherwise stated in this chapter, applications for air quality permits and permit amendments declared administratively complete on or after September 1, 1999 and filed before the effective date of this section are governed by the rules in Subchapters H and K of this chapter as they existed immediately before the effective date of this section and those rules are continued in effect for that purpose.]

(b) [c] Regardless of the applicability of [Notwithstanding] subsection (a) [or (b)] of this section, Subchapters H and K of this chapter do not apply to the following
applications where notice or opportunity for contested case hearings is not otherwise required by law:

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

(2) applications under Chapter 116, Subchapter F of this title, except applications for concrete batch plants authorized by standard permit as referenced in subsection (a)(11) of this section; and

(3) registrations under Chapter 106 of this title (relating to Permits by Rule).

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - J, L, and M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). [Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - E of this chapter]
(relating to Applicability and General Provisions; 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.) All consolidated
permit applications are subject to Subchapter G of this chapter (relating to Public
Notice for Applications for Consolidated Permits). [The effective date of the
amendment of existing §39.403, specifically with respect to subsection (c)(6) and (7)
of this section, is June 3, 2002. Applications for modifications filed before this
amended section becomes effective will be subject to this section as it existed prior
to June 3, 2002.]

(1) Explanation of applicability. Subsection (b) of this section lists all the
types of applications to which Subchapters H - J, L, and M of this chapter apply.
Subsection (c) of this section lists certain types of applications that would be
included in the applications listed in subsection (b) of this section, but that are
specifically excluded. Subsection (d) of this section specifies that only certain
sections apply to applications for radioactive materials licenses. Subsection (e) of this
section lists the types of applications for which public notice is not required.

(2) Explanation of organization. Subchapter H of this chapter contains
general provisions that may apply to all applications under Subchapters H - M of this
chapter. Additionally, in Subchapters I - M of this chapter, there is a specific
subchapter for each type of application. Those subchapters contain additional
requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - J, L, and M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

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

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);
(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

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

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (d) of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing); and

(8) Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.
(c) Regardless of the applicability of [Notwithstanding] subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

1. applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Subchapter B of that chapter;

2. applications for registrations and notifications under Chapter 312 of this title;

3. applications under Chapter 332 of this title (relating to Composting);

[(4) applications under §39.15 of this title (relating to Public Notice Not Required for Certain Types of Applications) without regard to the date of administrative completeness;]

[(5) applications for minor amendments under §305.62(c)(2) of this title (relating to Amendments). Notice for minor amendments shall comply with the requirements of §39.17 of this title (relating to Notice of Minor Amendment) without regard to the date of administrative completeness;]
[(6) applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;]

[(7) applications for modifications of municipal solid waste permits and registrations under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Notice for modifications shall comply with the requirements of §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration), without regard to the date of administrative completeness;]

[(8) applications for Class 2 modifications of industrial or hazardous waste permits under §305.69(c) of this title. Notice for Class 2 modifications shall comply with the requirements of §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), without regard to
the date of administrative completeness, except that text of notice shall comply with §39.411 and §305.69(c) of this title;

[(9) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee);]

(4) [(10)] applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title, except as provided by §39.551 of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge);

(5) [(11)] applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); [or]

(6) [(12)] applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-injection Units Registration); or [.] 

(7) applications listed in Subchapter P of this chapter (relating to Other Notice Requirements).
(d) Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title (relating to General Notice Provisions); §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice) that are not listed in §39.705 of this title (relating to Mailed Notice for Radioactive Material Licenses).

(e) Public notice is not required for the following:

(1) applications for the correction or endorsement of permits under §50.145 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 special collection route permits under §330.7(c)(2) of this title (relating to Permit Required); or
(4) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee).
SUBCHAPTER I: PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§39.501, §39.503

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; 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, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments 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. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2001.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.
The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 27.019; and THSC, §361.024.


(a) Applicability. This section applies to applications for municipal solid waste permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant for a municipal solid waste permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall 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 must 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 must be by certified mail.

(c) Notice of Receipt of Application and Intent to Obtain a Permit.
(1) Upon 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:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located. This notice must contain the text as required by §39.411(b)(1) - (11) of this title (relating to Text of Public Notice);

(B) the chief clerk shall publish Notice of Receipt of Application and Intent to Obtain Permit in the Texas Register; [ ]and

(C) the executive director or chief clerk shall mail the Notice of Receipt of Application and Intent to Obtain Permit, 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 Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). The notice must be published after the chief clerk has mailed the Notice of Application and Preliminary Decision to the applicant. The notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(e) Notice of public meeting.

[(1) If an application for a new facility is filed before September 1, 2005:] (A) the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; and]

[(B) the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.]
(1) [(2)] For [If] an application for a new facility, the agency [is filed on or after September 1, 2005]:

[(A) the agency:]  

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

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

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

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

(2) [(B)] The [the] applicant may hold a public meeting in the county in which the facility is proposed to be located.
(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

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

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

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of
paragraph (1) [(1)(A) or (2)(A)] of this subsection if public notice is provided under this subsection.

(5) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (2) [(1)(B) or (2)(B)] of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person...
(6) For public meetings held by the agency under paragraph (1) [(1)(A) or (2)(A)] of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(f) Notice of hearing.

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

(2) The applicant shall publish notice at least once under §39.405(f)(2) 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 must be mailed to the persons listed as owners in
the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend a permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

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

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication requirements.
(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must 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 in 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 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 §50.145 [§50.45] of this title (relating to Corrections to Permits), or modification under §305.69 of this title, 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.

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

(1) Upon 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 and to the persons listed in §39.413 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 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 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, (60 FR 63417). The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.145 [§50.45] of this title, or modification under §305.69 of this title, 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.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk 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 Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

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

(2) If the application concerns a hazardous waste facility, 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.
(3) The notice must comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) For [if] an application for a new hazardous waste facility, the agency [is filed]:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or]

(B) on or after September 1, 2005, the agency:]

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) For an application for a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant may hold a public meeting in the county in which the facility is proposed to be located. [is filed:]

[(A) before September 1, 2005, the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed; or]
[(B) on or after September 1, 2005, the applicant may hold a public meeting in the county in which the facility is proposed to be located.]

(5) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) or (2) of this subsection if public notice is provided under this subsection.

(6) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;
(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(7) For public meetings held by the agency under paragraphs (1) or (2) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (concerning Contested Case Hearings).

(2) Newspaper notice.

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

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) or have a total size of at least nine column inches (18 square inches). The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) 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 must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the
persons listed in §39.413 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 shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

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

(g) Injection wells. This section does not apply to applications for an injection well permit.
(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) apply to all applications for hazardous waste permits.
SUBCHAPTER M: PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

§39.709

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; 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, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; 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 amendment 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; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and THSC, §401.051, which authorizes the commission adopt rules relating to control of sources of radiation. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct
hearing for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.


(a) The requirements of this section apply when an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) Except as provided in subsection (d) of this section, for applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), or Subchapter L of this title (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), notice must be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) or Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities), notice must be mailed no
later than 31 days before the hearing.

(c) When notice is required under this section, the text of the notice must include the applicable information specified in §39.411(b)(12) and (d) of this title (relating to Text of Public Notice).

[(d) For an application for a new license to dispose of by-product material under Chapter 336, Subchapter L of this title that was filed with the Department of State Health Services on or before January 1, 2007, notice under this section must be provided to the applicant, the office of public interest counsel, the executive director, and any person who timely submitted a request for a contested case hearing by mail at least 10 days in advance of the hearing.]


SUBCHAPTER P: OTHER NOTICE REQUIREMENTS


Statutory Authority

The new sections are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; 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, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; 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 new sections 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. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, concerning Hearings for Texas Commission on
Texas Commission on Environmental Quality
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Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.


This subchapter specifies the notice requirements for certain applications where opportunity for contested case hearing is otherwise not required by law and which are not subject to the requirements of Subchapters G – M of this chapter (relating to Public Notice for Applications for Consolidated Permits; Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Air Quality Permit Applications; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses).


(a) Except as provided in subsection (d) of this section, the only required notice for applications for 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 §39.413 of this title (relating to Mailed Notice). For an application for a minor amendment of an injection well permit, the chief clerk shall also mail notice to the persons entitled to receive notice under §39.651(c)(4) of this title (relating to Application for Injection Well Permit).

(b) The text of the notice of application for minor amendment of a permit must provide:

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 application and 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;
(6) the application or permit number;

(7) a statement that the executive director may issue final approval of the application;

(8) a statement of whether the executive director has prepared a draft permit; and

(9) the deadline to file comments.

(c) The deadline to file public comment is ten days after mailing.

(d) Subsection (a) of this section does not apply to applications for a minor amendment or minor modification of a wastewater discharge permit. For such applications, the notice requirements are in §39.551 of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).


(a) Notice requirements for applications 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 §305.69 of this title and provide:

(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 application and 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

(6) the application or permit number.

(c) When mailed notice is required, the applicant shall mail notice to the

The notice requirements for applications 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 §39.411(b) of this title (relating to Text of Public Notice). The notice shall specify the deadline, as specified in §305.69 of this title, to file with the chief clerk public comment. When mailed notice is required, the applicant shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

§39.1009. Notice of 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).


(a) For notice of application for the voluntary transfer of an injection well permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice). The chief clerk shall also mail notice to:

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

2. landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

3. persons who own mineral rights underlying the existing or proposed injection well facility; and
(4) 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.

(b) The text of the notice of application for the voluntary transfer of an injection well permit must provide:

(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 application and 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;

(6) the application or permit number;
(7) a statement that the executive director may issue final approval of
the application;

(8) a statement of whether the executive director has prepared a draft
permit; and

(9) the deadline to file comments.

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

(d) If the executive director determines that changes to the injection well
permit in addition to the transfer are necessary, other notice requirements may
apply.