SUBCHAPTER K: PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS  
§§39.601 - 39.605  
Effective December 29, 2016


Air quality permit applications or registrations that are declared administratively complete before September 1, 1999 are subject to the requirements of Chapter 116, Subchapter B, Division 3 (relating to Public Notification and Comment Procedures) (effective March 21, 1999) or (effective December 24, 1998). Air quality permit applications or registrations that are declared administratively complete by the executive director on or after September 1, 1999 are subject to this subchapter.

Adopted June 2, 2010  
Effective June 24, 2010


(a) When this chapter requires notice for air quality permit applications, the chief clerk shall mail notice to:

(1) the applicant;

(2) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists);

(3) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests; and

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

(b) When Notice of Receipt of Application and Intent to Obtain Permit is required, mailed notice shall be sent to the state senator and representative who represent the area in which the facility is or will be located.

(c) For applications filed on or after September 1, 2015, the executive director shall provide written notification of the draft permit to the state senator and state representative who represent the area where the facility which is the subject of the application is or will be located at least 30 days prior to the chief clerk's mailing of the executive director's preliminary decision and Notice of Application and Preliminary Decision.

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(e) of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications.

(b) Notice of Application and Preliminary Decision under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(f) of this title.

(c) Owners and operators who submit initial registration applications on or after January 1, 2017, for authorization to construct and operate a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) shall publish a consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) under §39.418 of this title and Notice of Application and Preliminary Decision (NAPD) under §39.419 of this title no later than 30 days after the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. This notice must contain the text as required by §39.411(f) of this title.

(d) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air quality permit application or registration, the applicant or registrant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application or registration number;
(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(e) Alternative publication procedures for small businesses.

(1) The applicant or registrant does not have to comply with subsection (d)(2) of this section if all of the following conditions are met:

(A) the applicant or registrant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

   (i) are not a major stationary source for federal air quality permitting;

   (ii) do not emit 50 tons or more per year of any regulated air pollutant;

   (iii) emit less than 75 tons per year of all regulated air pollutants combined; and

   (iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's or registrant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(f) If an air application or registration is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant or registrant shall publish
§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs must be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must be provided by the applicant and must substantially meet the following requirements:

(1) Signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1-1/2 inches in size and block printed capital lettering;

(2) Signs must be headed by the words listed in the following subparagraph:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must include the words "APPLICATION NO." and the number of the permit application. More than one application number may be included on the signs if the respective public comment periods coincide;

(4) Signs must include the words "for further information contact";

(5) Signs must include the words "Texas Commission on Environmental Quality" and the address of the appropriate commission regional office;

(6) Signs must include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and
(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs must be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.405(h) of this title (relating to General Notice Provisions). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must be satisfied without regard to whether alternative language newspaper notice is waived under §39.405(h)(8) of this title. The alternative language signs must meet all other requirements of this section.


In addition to the requirements in §39.405(f)(3) of this title (relating to General Notice Provisions):

(1) when newspaper notices are published under this section, the applicant shall furnish a copy of the notices and affidavit to:

(A) the EPA regional administrator in Dallas;
(B) all local air pollution control agencies with jurisdiction in the county in which the construction is to occur;

(C) the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility; and

(D) if notice is for an application filed on or after the effective date of this section for a Prevention of Significant Deterioration or Nonattainment permit under Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the chief executives of the city and county where the source would be located, and any State or Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification;

(2) when sign posting is required under this section, the applicant shall furnish a copy of sign posting verification, within 10 business days after the end of the comment period associated with the notice under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), to:

(A) the chief clerk;

(B) the executive director; and

(C) those listed in paragraph (1)(A) - (C) of this section; and

(3) when alternative language waiver verification are required under this section, the applicant shall furnish a copy to those listed in paragraph (2)(A) - (C) of this section.

Adopted June 2, 2010 Effective June 24, 2010