SUBCHAPTER D: APPLICABILITY AND DEFINITIONS

§55.101, §55.103
Effective January 3, 2019

§55.101. Applicability.

(a) This subchapter and Subchapters E – 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) apply to permit applications that are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section.

(b) This subchapter and Subchapters E – G of this chapter apply to public comments, public meetings, hearing requests, and requests for reconsideration.

(c) This subchapter and Subchapters E and F of this chapter apply only to applications filed under Texas Water Code (TWC), Chapters 26, 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361 and 382.

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section and other than those filed under TWC, Chapters 26, 27, and 32 and THSC, Chapters 361 and 382.

(e) This subchapter and Subchapters E and F of this chapter apply to applications for amendment, modification, or renewal of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Processing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(f) This subchapter and Subchapters E – G of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;
(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting and permits by rule 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;

(4) applications for Class I injection well permits used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under TWC, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(5) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under TWC, §27.025, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals; and

(6) applications where the opportunity for a contested case hearing does not exist under other laws.

(g) This subchapter and Subchapters E – G 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 TWC, §11.036 or §11.041. The maximum expected duration of a hearing on an application referred to the State Office of Administrative Hearings (SOAH) under this provision shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a SOAH hearing on an application
subject to this provision are all those issues that are material and relevant under the law;

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

(7) applications for initial issuance of voluntary emissions reduction permits under THSC, §382.0519;

(8) applications for initial issuance of permits for electric generating facility permits under Texas Utilities Code, §39.264;

(9) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(10) applications for multiple plant permits under THSC, §382.05194;

(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-Injection Units Registration); and

(12) applications where the opportunity for a contested case hearing does not exist under other laws.

Adopted December 12, 2018

Effective January 3, 2019

§55.103. Definitions.

The following words and terms, when used in Subchapters D - G of this chapter (relating to Applicability and Definitions; Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) shall have the following meanings. 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 §55.203 of this title (relating to Determination of Affected Person), or, if applicable under §55.256 of this title (relating to Determination of Affected Person). Notwithstanding any other law, a state agency, except a river authority, may not file a request for a contested case hearing or request for reconsideration, nor may it be considered an affected person or named a party, or otherwise contest of a permit or license on an application received by the commission on or after September 1, 2011 unless the state agency is the applicant.

Adopted April 11, 2012

Effective May 3, 2012