TCEQ REGULATORY GUIDANCE
Environmental Law Division
RG-633 • November 2022

Public Notices: New 30 TAC Section 39.426 Requirement

Public Notice Overview

What is public notice?

Public notice provides notification to the public that an entity is applying for a permit, registration, or authorization to emit or discharge a contaminant into the air or water, or to store, process, or dispose of solid waste.

What types of permit applications does public notice under Title 30 Texas Administrative Code (30 TAC) Chapter 39 apply to?

Public notice must be completed on applications for new permits and applications to amend, modify, or renew permits that are subject to 30 TAC Subsection 39.403(a)(3).

New Alternative Language Public Notice Requirements

When is alternative language public notice required?

In accordance with 30 TAC Section 39.426, alternative language notice is required if either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program and (1) students are enrolled in a bilingual program at that school, (2) students from that school attend a bilingual education program at another location, or (3) the school would be required to provide a bilingual education program but has an exemption. The Executive Director may also determine that alternative language notice is necessary based on public interest. This rule does not apply if the school has an English as a second language (ESL) program.

For information on the difference between bilingual education programs and ESL programs, please visit the Texas Education Agency's webpage, Bilingual and English as a Second Language Education Program[1].

[1] https://tea.texas.gov/academics/special-student-populations/english-learner-support/bilingual-and-english-as-a-second-language-education-programs

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What are the alternative language newspaper publication requirements?

An applicant must publish notice in an alternative language in a newspaper primarily published in that alternative language. An applicant cannot satisfy this requirement by publishing notice in an alternative language in a newspaper published in English. The alternative language newspaper must be in general circulation in the county or municipality where the proposed facility will be located. TCEQ provides alternative language templates in Spanish for all notices. The published English language notice will include instructions in the alternative language explaining how to access the electronic version of the alternative language notice.

The published newspaper notice is the same notice that is posted to TCEQ's website. If an applicant receives a waiver for newspaper publication, the alternative language notice must still be posted to TCEQ's website. The applicant should ensure that proper notice is given, and notices contain correct information. Any substantive errors in translation may require the notice to be re-published or re-posted. If there is a substantive error in the notice posted online, the posted notice may have to be re-posted which may extend the comment period and could delay the application process.

When is alternative language newspaper notice not required?

If, after conducting a diligent search of publications circulated in the county and municipality, an applicant cannot find an alternative language publication to publish its notice in, alternative language publication is not required. If an alternative language publication exists but publishes less than once a month, then the Executive Director may waive the alternative language notice requirement on a case-by-case basis. The applicant must submit a verification of the waiver to the Office of the Chief Clerk.

If alternative language newspaper publication is waived, the applicant must still translate all notices and provide them to TCEQ. The notices will be posted to TCEQ's website and mailed to persons on the mailing list. Failure to provide these translated notices may delay the permit application process.

The applicant must comply with all other applicable notice provisions in accordance with TCEQ rules.

Are applicants required to provide copies of the public notices, including alternative language public notices, to TCEQ?

Yes. All notices, including the alternative language notices, must be provided to the program area immediately. The notices will be posted to TCEQ's website and mailed to everyone who requested to be on the mailing list. This includes alternative language notices, even if a waiver for publication is obtained.

Plain Language Summary

What is required in the plain language summary?

The applicant must include a plain language summary with the application. This summary is meant to be brief and provide basic and simplified information regarding

the facility to members of the public. TCEQ has provided an English and Spanish template to assist applicants in drafting the plain language summary.

The summary must include the function of the proposed facility, the expected output, the expected contaminants that may be emitted or discharged by the proposed facility, and how the applicant will control those pollutants. This summary will be posted on TCEQ's website.

When is a translated plain language summary required?

For permit applications declared administratively complete on or after May 1, 2022, and subject to 30 TAC Ch. 39, an applicant is required to provide a translated plain language summary of the permit application if they are otherwise required to translate notices.

Interpretation Services

Does an applicant have to provide interpretation services at a public meeting?

Yes. The applicant is required to provide competent alternative language interpretation services at a public meeting if the Office of the Chief Clerk has received comments in the alternative language at least two weeks before the scheduled public meeting, or if the Executive Director determines that there is substantial or significant public interest that would be served by having translation services available. Competent interpretation includes an unbiased and accurate translation. Interpreters should be able to translate technical terms and information in a manner the public can understand. Incompetent interpretation that does not satisfy the rule requirement may require the applicant to hold another public meeting with competent alternative language interpretation.

TCEQ encourages the applicant to seek interpreters with experience interpreting public meetings or legal proceedings and interpretation services from an objective third party. TCEQ also encourages the applicant to use equipment necessary to facilitate interpretation for the meeting, multiple interpreters, and administrative staff to allow interpreters to focus solely on interpretation.

Responses to Requests for Reconsideration or a Contested Case Hearing

Does an applicant have to translate the applicant's response to requests for reconsideration or a contested case hearing?

If a timely hearing request or request for reconsideration is submitted in an alternative language, an applicant must provide a translated response to requests for reconsideration or contested case hearing in the alternative language. Failure to provide a translated response could delay the commission's consideration of the application.

Translation Resources

How must a public notice or plain language summary be translated?

TCEQ does not require that the applicant use any particular translation tool or service to translate public notices and plain language summaries. To assist the applicant with the translation requirement, TCEQ has provided Spanish versions of templates for public notices and plain language summaries. However, it is entirely the applicant's responsibility to provide an accurate and complete translation of public notices and plain language summaries that require translation.

Where can templates for public notices and plain language summaries be found?

Find templates for public notices as follows:

- **Air Permits**

  Air Permits[2]

- **Water Quality Permits**

  Water Quality Permits[3]

- **Waste Permits**

  Municipal Solid Waste Permits[4]

  Industrial and Hazardous Waste Permits[5]

  Radioactive Materials Licensing

  - Notice templates are provided directly to the applicant during technical review.

  Underground Injection Control Permits[6]

Find templates for plain language summaries as follows:

- **Air Permits**

  Air Permits[7]

- **Water Quality Permits**

  - Plain language summary template is included in the application.

- **Waste Permits**

  Municipal Solid Waste Permits[8]

[2] https://www.tceq.texas.gov/permitting/air/nav/air_publicnotice.html
[3] https://www.tceq.texas.gov/permitting/wastewater/review/wqspanishtemplates.html
[4] https://www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw_aln_spantemplate.html
[5] https://www.tceq.texas.gov/permitting/waste_permits/ihw_permits/bilingualnotices.html
[6] https://www.tceq.texas.gov/permitting/radmat/uic_permits/uic_anl_page.html
[7] https://www.tceq.texas.gov/permitting/air/guidance/newsourcereview/nsrapp-tools.html
[8] https://www.tceq.texas.gov/downloads/permitting/waste-permits/msw/forms/20947-instr.pdf

Industrial and Hazardous Waste Permits[9]

Radioactive Materials Licensing

- Plain language summary template is included in the application.

Underground Injection Control Permits

- Plain language summary template is included in the application.

Errors in Translations

What happens if a public notice or plain language summary contains an error in translation?

The applicant should ensure that proper notice is given, and notices contain correct information. Any substantive errors in translation may require the notice to be re-published, re-posted, or re-mailed. Examples of substantive errors include errors in the time or location of meetings, errors regarding the pollutants emitted, information about the applicant, errors in log-in information for virtual meetings, information relating to means to obtain further information about the subject of the notice, and information about the permit applicant. The published English language notice will include instructions in the alternative language explaining how to access the electronic version of the alternative language notice.

For More Information

For more information regarding alternative language requirements, contact the following:

- **Air Permits**

  airperm@tceq.texas.gov

- **Water Quality Permits**

  wqap@tceq.texas.gov

- **Waste Permits**

  Municipal Solid Waste Permits – mswper@tceq.texas.gov
  Industrial & Hazardous Waste Permits – ihwper@tceq.texas.gov
  Radioactive Materials Licensing – radmat@tceq.texas.gov
  Underground Injection Control Permits – uic@tceq.texas.gov

[9] https://www.tceq.texas.gov/downloads/permitting/waste-permits/ihw/pending-permit-notices/ihw-50105-plainlanguagesummary.pdf