

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 9, 2026

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: Phillip Ledbetter, Director **PL**
Office of Legal Services

Docket No.: 2023-1506-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 39, Public Notice
Chapter 55, Requests for Reconsideration and Contested Case Hearings;
Public Comment
Updates to Public Participation Rules to Implement Sunset Legislation
Rule Project No. 2024-003-039-LS

Background and reason(s) for the rulemaking:

The Texas Commission on Environmental Quality (TCEQ or commission) underwent Sunset review during the 88th Regular Legislative Session, 2023. Senate Bill (SB) 1397, 88th Regular Legislature Session, 2023 (TCEQ's Sunset bill), continues TCEQ, and requires changes to TCEQ's public participation rules including an extension of time for filing hearing requests and making public comments for certain air permits. Amendments to TCEQ's rules at 30 Texas Administrative Code (TAC) Chapters 39 and 55 are needed to implement these statutory changes. Additionally, the rulemaking adoption contains revisions intended to provide clarity in the rules and make them easier to understand for the public and regulated entities, including adding definitions of commonly used terms. The rulemaking removes obsolete date references throughout Chapter 39 and corrects minor grammatical issues to reflect current correct usage.

Scope of the rulemaking:

The rule amendments implement changes required by TCEQ's Sunset bill and include revisions for clarification. Rule amendments include, but are not limited to: extending the comment period and opportunity to request a contested case hearing for at least 36 hours following a public meeting for air quality permit applications with consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) as described by §39.603(c) and (d) for applications received on or after March 1, 2026; changing notice requirements to specify that applications for air quality permits, waste permits, and wastewater and water quality permits subject to the requirements of Chapter 39 will be posted electronically by the agency; and updating other notice requirements as necessary for implementation of new requirements.

The agency received public input through a stakeholder process. Although many comments were beyond the scope of the current rulemaking, there was a general request to make the rules less confusing and more helpful to assist the public participation process. The adopted amendments to Chapter 39, along with the companion rulemaking

Re: Docket No. 2023-1506-RUL

adopting changes to Chapter 55, seek to address comments and improve the clarity and readability of the rules.

A.) Summary of what the rulemaking will do:

Adopted amendments will extend the comment period and opportunity to request a contested case hearing for at least 36 hours following a public meeting for air quality permit applications with consolidated NORI and NAPD for applications received on or after March 1, 2026. The amendments also change notice requirements to specify that applications for air quality permits, waste permits, and wastewater permits are posted electronically by the agency; and update other notice requirements. The rulemaking adoption also seeks to clarify the rules to meet the general Sunset recommendation that the agency improve its public participation process for permit applications. The rulemaking will create a new section in 30 TAC Chapter 39, Subchapter K, Public Notice of Air Quality Permit Applications, to include the information about requesting a public meeting, a notice and comment hearing, and a contested case hearing for air quality permit applications for which these opportunities exist. A new Subchapter A will be added to Chapter 39 to define commonly used terms. New definitions are added to Chapter 55, and language is adopted to clarify processes relating to comments, public meetings, and contested case hearings. The rulemaking will remove obsolete date references throughout Chapter 39 and correct minor grammatical issues to reflect current correct usage.

B.) Scope required by state statutes:

TCEQ's Sunset bill requires TCEQ to implement changes relating to public notice. Specifically, TCEQ's Sunset bill required that air quality permit applications that are required to publish notice in a consolidated NORI and NAPD must have an extension of the end of the comment period and the opportunity to request a contested case hearing to at least 36 hours following a public meeting held on the permit application.

C.) Additional staff recommendations that are not required by state statute:

The rulemaking adoption seeks to clarify the rules relating to the agency's public participation process for permit applications. The rulemaking will create a new section in 30 TAC Chapter 39, Subchapter K, Public Notice of Air Quality Permit Applications, to include the information about requesting a public meeting, a notice and comment hearing, and a contested case hearing for air quality permit applications for which these opportunities exist. A new Subchapter A will be added to Chapter 39 to define commonly used terms. New definitions are to be added to Chapter 55, and language is adopted to clarify processes relating to comments, public meetings, and contested case hearings. The rulemaking will remove obsolete date references throughout Chapter 39 and correct minor grammatical issues to reflect current correct usage.

Statutory authority:

- Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules;
- Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation;

Re: Docket No. 2023-1506-RUL

- Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency;
- Texas Water Code (TWC), §§ 5102, 5.103, 5.105, 5.112, 5.129, 5.136, 5.1734, 5.583, 5.584, 5.586, 5.587, 49.011;
- TWC, Chapter 5, Subchapter M;
- TWC, Chapter 26, Water Quality Control;
- TWC, Chapter 27, Injection Well Act;
- Texas Health and Safety Code (THSC), Solid Waste Disposal Act, Chapter 361; and
- THSC, Texas Clean Air Act, §§382.011, 382.017, 382.0515, 382.056, and 382.058.

Effect on the:

A.) Regulated community: Implementation of new statutory language increase opportunities for public participation and requests for contested case hearings on certain air quality permits. These changes may slightly increase the time periods necessary for approval of a permit application. Permit applicants will have some additional requirements, including new language in notices. Generally, permit applicants already satisfy these requirements, and any impact is likely to be limited.

B.) Public: The public may receive a slight increase in opportunities to participate in a limited set of air permitting activities before the commission as a result implementing statutory changes. Rule changes providing clarity and improving public participation will result in increased transparency that will benefit the public.

C.) Agency programs: Agency permitting programs must implement a system to electronically post permit applications; however, this has been completed and implemented since July 2024. New notice templates will need to be developed for permit applications that will be subject to the new requirements. A limited set of TCEQ-issued air permits may experience slight increases in time required for allowing comments on applications, and there could be a slight increase in the number of contested case hearing requests and possibly hearings.

Stakeholder meetings:

The agency engaged in an expanded stakeholder process for this rulemaking. A hybrid virtual/in-person stakeholder meeting was held in Austin on July 15, 2024, with in-person meeting rooms also open in TCEQ regional offices in Midland and Harlingen. Spanish language interpretation was available for this meeting. In-person meetings were held in Arlington on July 16, 2024, and in Houston on July 18, 2024. Because the July 18, 2024 meeting in Houston was shortly after the city experienced Hurricane Beryl, a second in-person meeting was held in Houston on October 3, 2024. Professional Spanish-language interpretation was available at both Houston meetings, and an agency interpreter was available for Spanish language assistance at the Arlington meeting. Stakeholder comments were accepted until October 8, 2024. The agency received input from stakeholders during this process, receiving many comments and suggestions for changes to improve the agency's public participation rules.

Re: Docket No. 2023-1506-RUL

Public Involvement Plan

Yes.

Alternative Language Requirements

Yes. Spanish.

Public comment:

The commission held a public hearing on September 8, 2025. The comment period closed on September 9, 2025. The commission received comments from Air Alliance Houston (AAH), Arcosa Stabilized & Recycling (Arcosa), Associated General Contractors of Texas (AGC of Texas), the Associations – joint letter from Texas Association of Manufacturers (TAM), Texas Chemistry Council (TCC), and Texas Oil and Gas Association (TXOGA), Lone Star Legal Aid of behalf of Better Brazoria Clean Air and Clean Water in Brazoria County (Better Brazoria), Environmental Integrity Project (EIP), Harris County Attorney's Office (HCAO), Harris County Pollution Control Services (HCPCS), City of Houston Health Department (HHD), Perales, Allmon, & Ice (PAI), Texas Aggregates and Concrete Association (TACA), and Texas Industry Project (TIP). The comments expressed mixed support for the rulemaking, requested further changes, and included comments that the commission should limit the rulemaking to statutorily required changes.

In response to comments, changes were made to the adopted rule language as changes from proposal. In Chapter 55, the definition of personal justiciable interest was not adopted, in response to several comments requesting that the commission decline to adopt that definition. In Chapter 39, changes were made to §§39.405, 39.411, 39.412, and new 39.606. Language relating to who may request a contested case hearing on a concrete batch plant standard permit was amended to more closely mirror the statutory requirement. The requirement to keep signs in place was amended to require the signs to remain in place continuously through the end of the final comment period. The proposed requirement to increase the size of signs for air quality applications was not adopted. The requirement to place hard copies of materials in a local public place was amended to clarify when administratively complete versus technically complete applications are required to be in place, and to clarify that for applications with no requirement for a NAPD the materials are only required to remain available for the comment period. The proposed change to explicitly require a 30-day comment period for air quality no-increase renewals that are in the lowest compliance history rating was not adopted. Finally, new §39.606 was amended to clarify requirements for when the agency holds a public meeting and to add an applicability section to be clear what types of applications would be subject to its requirements.

Additionally, proposed new §39.422 that would have required the agency to provide notice of extensions of comment periods is not being adopted. The proposed requirement for staff emails in notices was also not adopted.

Re: Docket No. 2023-1506-RUL

Other comments requested that the agency extend comment periods on all types of applications. Industry representatives wanted the agency to limit when technically complete materials are publicly available. They also requested limiting language on who may request a contested case hearing that was not proposed. No changes were made in response to these comments.

Potential controversial concerns and legislative interest:

A component of the rulemaking is intended to implement Sunset bill requirements and Sunset Commission recommendations; therefore, legislative interest is likely to be high.

Will this rulemaking affect any current policies or require development of new policies?

Yes. This rulemaking affects current public participation policies for notice requirements, comment period duration, application posting, and hearing requests by implementing the required changes in the Sunset bill, SB 1397, and recommendations from the Sunset Commission.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The agency is required to implement the Sunset bill requirements. The agency may implement Sunset recommendations; however, there is flexibility in how those recommendations may be implemented.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: August 8, 2025

Six-month *Texas Register* filing deadline: February 8, 2026

Anticipated *Texas Register* adoption publication date: February 13, 2026

Anticipated effective date: February 19, 2026

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Attachments:

TCEQ Sunset Bill, SB 1397, 88th Legislature, 2023

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