

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§55.103, 55.152, 55.154, 55.156, 55.200, 55.201, 55.203, 55.209, 55.210, 55.211, 55.250, 55.251, and 55.254.

Amended §§55.103, 55.152, 55.201, and 55.251 are adopted with changes to the proposed text as published in the August 8, 2025 issue of the *Texas Register* (50 TexReg 5185) and, therefore, will be republished. Amended §§, 55.154, 55.156, 55.200, 55.203, 55.209, 55.210, 55.211, 55.250, and 55.254 are adopted without changes to the proposed text as published in the August 8, 2025 issue of the *Texas Register* (50 TexReg 5185) and, therefore, will not be republished.

The adopted amendments to §55.152 and §55.154 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

### **Background and Summary of the Factual Basis for the Adopted Rules**

TCEQ underwent Sunset review during the 88th Regular Legislative Session, 2023. The Sunset bill, SB 1397, continuing the Texas Commission on Environmental Quality (TCEQ), included provisions requiring certain changes to TCEQ's public participation rules, which are found primarily in Title 30 Texas Administrative Code (TAC) Chapters 39 and 55.

The agency engaged in an extended stakeholder process for this rulemaking. A hybrid

virtual/in-person stakeholder meeting was held on July 15, 2024, in Austin, 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 on July 16, 2024, in Arlington and on July 18, 2024, in Houston. Because the July 18, 2024, meeting in Houston was shortly after the city experienced a hurricane, 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 robust participation from stakeholders during this process, receiving many comments and suggestions for changes to improve the agency's public participation rules.

The TCEQ Sunset bill required the extension of public comment period and opportunity to request a hearing for a specific subset of air quality permit applications. Specifically, air quality permit applications that are required to publish notice in a consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) (consolidated notice) must extend the close 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. During the stakeholder process, a large number of comments requested that this extension be given to all types of permit applications. Although many other 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 55, along with the companion rulemaking adopting changes to Chapter 39, seek to improve and clarify the rules in addition to satisfying the requirements of the Sunset bill.

The adopted amendments in Chapter 55 will expand the current definitions section to add definitions relating to the public participation processes. In response to public comment received, the commission is not adopting a proposed definition for personal justiciable interest. The other proposed definitions are being adopted. The adopted amendments will extend the public comment period and opportunity to request a contested case hearing for at least 36 hours following the close of a public meeting for air quality permit applications with consolidated notice. This adopted requirement will apply to applications that the executive director receives on or after March 1, 2026. Because the agency is continually processing permit applications, a specific date by which new requirements will be in place is necessary to ensure smooth and fair processing of permit applications and not require current applications to follow new requirements that do not exist when the applications are submitted. As the executive director has the authority to extend comment periods and the requirement for the extension has been a statutory requirement since September 1, 2023, when the agency has held public meetings for air quality permit applications with consolidated notice, the comment period has been extended. The current rule changes will make that requirement clear to both the regulated industry and the public. The adopted amendments will specify that the commission will follow new notice procedures that

are being adopted in Chapter 39 when a comment period or period to request a contested case hearing is extended, to allow the public to know what the process is. The adopted amendments will clarify and update language, including removing a requirement for a fax number and adding a requirement for a valid email address in requests submitted to the commission for a contested case hearing or request for reconsideration. The commission is not adopting proposed new §39.422 in Chapter 39, so conforming proposed new language in Chapter 55 is also not being adopted. Further adopted changes update language to conform with current stylistic and grammar conventions.

## **Section by Section Discussion**

### *Subchapter D. Applicability and Definitions.*

Current §55.103 is amended to revise and clarify the existing definition for affected person as new §55.103(1). Adopted new §§55.103(2)-(6) will add new definitions for contested case hearing, motion to overturn, motion for rehearing, public meeting, and request for reconsideration. These are terms that the public has indicated consistently cause confusion; therefore, the new definitions are intended to provide clarity and assist the public in understanding the different components that are part of the public participation process. In response to public comment, the proposed definition for personal justiciable interest is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public. The numbering of the remaining proposed definitions is being updated from proposal to reflect this change.

*Subchapter E. Public Comment and Public Meetings.*

Section 55.152(b) is amended to extend the public comment period to at least the close of a public meeting by adding new §55.152(b)(1) for existing language and §55.152(b)(2) to specify that the comment period is extended for at least 36 hours following the close of a public meeting for air quality applications with a consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision that are received by the executive director on or after March 1, 2026. The commission is not adopting proposed new §55.152(c) which would have specified that any extension of time for filing public comments or hearing requests must follow the notice procedures of §39.422 (relating to Notice of Extension of Comment Period) because the commission is not adopting proposed new §39.422. New §55.152(c), which was proposed as (d), specifies that timely comments are those received by the Office of the Chief Clerk by the end of the comment period. Section 55.154(a) is amended to add the word “hearing” to be clear that a public meeting is not a contested case hearing under the Texas Administrative Procedure Act.

*Subchapter F. Requests for Reconsideration or Contested Case Hearing.*

Section 55.200 is adopted to remove obsolete language regarding the date of applicability. Subsections 55.201(d) and (e) are amended to remove the requirement for a fax number and to add the requirement for a valid email address to be included in a request for hearing. The commission is not adopting proposed new subsection 55.201(g)(3), which would have added the requirement that extensions of time for filing public comments or hearing requests must follow the requirements of §39.422

of this title (relating to Notice of Extension of Comment Period) because the commission is not adopting proposed new §39.422. The adopted amendments of § 55.209 (d) and (g) revise the phrasing of the rule to make clear that the parties shall file notice of the response or reply with the chief clerk and shall serve the notice of the filing on the parties. Subsection 55.210(c)(4) is amended to extend the public comment period to at least the close of any public meeting, and for at least 36 hours following the close of a public meeting for air quality permit applications with a consolidated notice that are received on or after March 1, 2026. Subsection 55.210(c)(6) is amended to update the type of recording to the more appropriate audio recording.

*Subchapter G. Requests for Contested Case Hearing and Public Comment on Certain Applications.*

Section 55.250 is adopted to remove obsolete language regarding the date of applicability. Subsection 55.251(c)(1) is amended to remove the requirement for a fax number and add the requirement for a valid email address. The adopted amendment to §55.251(f)(2) clarifies that the commission may extend the time for submission of public comments and hearing requests. The commission is not adopting new §55.251(f)(3) which would have added the requirement that extensions of time for filing public comments or hearing requests must follow the requirements of §39.422 of this title (relating to Notice of Extension of Comment Period), because the commission is not adopting proposed new §39.422. Adopted amendments of § 55.254 (e) and (f) revise the phrasing of the rule to make clear that the parties shall file notice of the response or reply with the chief clerk and shall serve the notice of the filing on

the parties. Section 55.251(g) is adopted for repeal as obsolete, as the commission no longer has authority over weather modification licenses or permits, and Texas Water Code Chapter 18 does allow for the opportunity for a contested case hearing on certain types of permit applications.

### **Final Regulatory Impact Determination**

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the action is not subject to TGC, §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. Additionally, the rulemaking adoption does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in TGC, §2001.0225(a).

The rulemaking adoption is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health. The purpose of the rulemaking adoption is to update and clarify the requirements for public participation in the permitting process

for air quality, water quality, and waste permit applications. The rulemaking adoption will implement changes to comply with the requirements in the Sunset bill, SB 1397, 88th Regular Legislature, as well as other recommended changes. The TCEQ Sunset bill required the extension of the public comment period and opportunity to request a hearing for a subset of air quality permit applications that have a consolidated notice. Following extensive stakeholder outreach, the commission is adopting that the comment period and opportunity to request a contested case hearing be extended for at least 36 hours following the close of a public meeting for air quality permit applications with a consolidated notice that are received on or after March 1, 2026. The adopted amendments will specify that the commission will follow new notice procedures that are being simultaneously adopted in Chapter 39 when a comment period or period to request a contested case hearing is extended, to allow the public to know what the process is. The adopted amendments will clarify and update language, including removing a requirement for a fax number and adding a requirement for a valid email address in requests submitted to the commission for a contested case hearing or request for reconsideration. Further adopted changes update language to conform with current stylistic and grammar conventions.

As defined in TGC, TGC, §2001.0225, only 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 adopted amendments 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 TGC, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the rulemaking adoption and performed an analysis of whether Texas Government Code (TGC), Chapter 2007, is applicable. The adopted amendments are procedural in nature and will not burden private real property. The adopted amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under TGC, §2007.002(5). The adopted amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under TGC, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §29.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §29.11(a)(6). Therefore, the adopted amendments are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments regarding the CMP were received.

### **Effect on Sites Subject to the Federal Operating Permits Program**

The adopted amendments will not require any changes to outstanding federal operating permits.

### **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.

### **Response to Comment**

#### **Comment**

TIP comments that the new requirement to leave permit documents in the public place and signs in place until final commission action on a permit lacks clarity and could lead to confusion.

#### **Response**

**Changes in adopted §§39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application must now remain in the public place until replaced by the technically complete application and draft permit. Generally, the publication of the NAPD notifies the public of the availability of the technically complete application and draft permit. The technically complete application and draft permit must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, then the application must remain in place through the publication's designated comment period. The proposed change to §39.405(g)(2) to require the technically complete application to remain in place**

**continuously is adopted and for consistency the same change is also being adopted for §39.405(g)(3).**

**The signs must now be in place at the start of the comment period and remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must go up at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application, as is intended by the posting of signs.**

**The commission notes that the current rule requires the application to remain available in the public place until the commission takes action on the application or refers it to SOAH for applications that require a NAPD and the commission did not propose to change this time period. For applications for which there is no requirement for a NAPD, the requirement in current rule is for the application to remain in place for the publication's designated comment period and the commission is retaining this requirement in the adopted rule. The suggestion in the comment that materials remain only until the end of the comment period would provide less notice to the public than current rules and what the commission proposed. No changes were made in response to that part of the comment.**

## **Comment**

TIP comments that the proposed change to §39.405 could be interpreted to require availability of the administratively complete application from the date of the NORI up to and including the end of the public comment period on the application. Such a duplicative requirement would be confusing to the public as the technically complete application is required to be made available from the date of the NAPD until the commission has taken final action on the permit or the commission refers the permit to SOAH. TIP also comments that the extension of the requirement to maintain a copy of the administratively complete application for longer than the initial 30-day comment period after the NORI and the use of the term continuously in the proposed rule changes raises questions about how and when revisions, clarifications or updates to an application should be added to the locally available copy.

## **Response**

**Changes in adopted §§39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application must now remain in place until replaced by the technically complete application and draft permit. The technically complete application and draft permit must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, as some types of permit applications are only required to publish NORI, then the application must remain in place through the publication's designated comment period. The proposed change to §39.405(g)(2) to require the technically complete application to remain in place continuously is adopted and for consistency the same change is**

**also being adopted for §39.405(g)(3).**

**The commission notes that the current rule requires the application to remain available in the public place until the commission takes action on the application or refers it to SOAH and the commission did not propose to change this time period. The suggestion in the comment that materials remain only until the end of the comment period would provide less notice to the public than current rules and what the commission proposed. No changes were made in response to that part of the comment.**

### **Comment**

TIP comments with respect to §39.405(g) recommend deleting the requirement to keep the administratively complete application in place after the NAPD is published and confirming the current requirement to include “any subsequent revisions to the application” in §39.405(g)(2) to commence only with the publication of the NAPD.

### **Response**

**Changes in adopted §§39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application must now remain in place until replaced by the technically complete application and draft permit. The technically complete application must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, then the application must remain in place through the publication’s designated comment period. The proposed change to §39.405(g)(2) to require the technically complete application to remain in place**

**continuously is adopted and for consistency the same change is also being adopted for §39.405(g)(3).**

### **Comment**

TIP suggested changes to new §39.405(l), including a change to specify on the commission's website that there is additional confidential information in a confidential file, if an application is submitted with confidential information. TIP also commented in its suggested changes that the commission should only keep the electronic copies on the application available until the end of the comment period. Additionally, TIP's suggested changes request the commission change language in §39.405(g) that require the technically complete application to remain in place until the commission takes final action or refers the application to SOAH.

### **Response**

The commission disagrees that it is necessary to add information in the rule regarding confidential information, as that is not included in the new legislative requirement in SB 1397, and therefore no change has been made in response this comment. The commission disagrees that electronic copies of the technically complete application should not remain available until final opportunity for the public to request review of the application. The commission notes that it is a longstanding rule in §39.405(g) that the technically complete application must remain available in the public place until the commission takes action on an application or refers it to SOAH and is also declining to make changes to shorten that time until only the end of the comment period. New §39.405(l) was amended at adoption to require the technically complete application to remain in place until final action or referral to SOAH, to mirror the requirements in §39.405(g). The commission notes that following the end of the public comment period and transmittal of the executive director's response to comments, the public may continue to participate by submitting a request for contested case hearing or request for consideration. These opportunities benefit from having the technically complete application and draft permit available electronically on the commission's website. No other changes were made in response to this comment.

### **Comment**

EIP objects to imposing additional procedural hurdles for a litigant to be considered an affected person who can pursue a matter in court. EIP states that for the sake of efficiency, clarity, and legal certainty, litigants should have a uniform standard for justiciability in administrative hearings and courts alike.

### **Response**

**This comment is outside the scope of this rulemaking. Nothing in the proposed rules imposes any additional procedural hurdles for a litigant to be considered an affected person. No changes were made in response to this comment.**

### **Comment**

EIP commented that TCEQ should amend §55.211 to provide guidelines for when a person who is not deemed an affected person is entitled to reconsideration and what the requestor must provide to meet such a standard.

### **Response**

**This comment is outside the scope of this rulemaking. The commission did not propose any changes related to requesting reconsideration or what requesters may need to provide in relation to such a request. No changes were made in response to this comment.**

### **Comment**

AGC of Texas requests that §39.606(f) be amended to match THSC §382.058(c), and to therefore be clear that an affected person is someone who actually resides within 440

yards. AGC also requests that the commission review §39.411(e)(13) so that the language matches the statutory requirement. Commenter also wants the commission to affirm that the 440-yard setback requirement is not an environmental protectiveness measure.

**Response**

**The commission added "actually" to new §39.606(g), which was proposed as §39.606(f), to match the statutory language, as requested by this comment. The commission is also adopting a change to §39.411(e)(13) to have the rule language more closely mirror the statutory requirement. This is a statutory requirement regarding who may request a contested case hearing as a person who may be affected for a specific type of air quality permit - a registration for a standard permit for a concrete batch plant.**

**Comment**

Arcosa commented that the commission should clarify thresholds for granting hearings so that only requests with clear, material evidence of environmental or health impacts move forward.

**Response**

**The commission did not propose any changes to the requirements for being an affected person or for issues for which a hearing can be granted. Therefore, this comment is outside the scope of this rulemaking. No changes have been made in response to this comment.**

### **Comment**

Better Brazoria comments that the brightline 440-yard requirement to determine access to judicial review is not consistent with Article III.

### **Response**

**The requirement that a person must actually reside within 440 yards of a proposed plant to be an affected person entitled to request a contested case hearing on a concrete batch plant standard permit is a requirement of Texas statute - THSC §382.058(c). This comment is outside the scope of this rulemaking. No changes were made in response to this comment.**

### **Comment**

Better Brazoria commented that TCEQ rules require a contested case hearing request to state a person's location and relative distance to the proposed facility but provides no clarification of how the agency will take into account or measure that distance.

Commenter further stated that TCEQ should be consistent in how to measure distances

### **Response**

**This comment is outside the scope of this rulemaking. The commission did not propose any changes to the process for how a person may request a contested case hearing or for the contents of those requests. No changes were made in response to this rulemaking.**

### **Comment**

Better Brazoria commented that TCEQ should not allow distance to predominate over all other considerations of an affected person

**Response**

**This comment is outside the scope of this rulemaking. The commission did not propose any changes to the consideration of distance in affected person determinations. For concrete batch plant standard permit registrations, the commission considers distance as prescribed by THSC §382.058(c). Otherwise, distance is only one of many factors that the commission considers in an affected person determination. No changes were made in response to this comment.**

**Comment**

Better Brazoria suggested that §55.103(1)(c) should state "For an air quality standard permit for a concrete batch plant, only a person actually residing within 440 yards of the proposed plant boundary may be an affected person."

**Response**

**The plain language of THSC §382.058(c) provides: "For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected." The statutory language does not include the "plant boundary" as requested in this comment. No changes were made in response to this comment.**

**Comment**

Better Brazoria proposed that the commission should make §39.423 the same notice

period as §39.709, which is a minimum of 30 days mailed notice of a contested case hearing.

**Response**

**Although the Office of the Chief Clerk typically mails notice for a contested case hearing prior to 30 days to give the public sufficient time for notice of the contested case hearing, the commission retains discretion to mail the notice no less than 13 days before the hearing, as required by the current rule. No changes were made in response to this comment.**

**Comment**

AAH requests that the commission clarify the criteria for a contested case hearing.

**Response**

**The commission did not propose any changes to the criteria for a contested case hearing. This comment is therefore outside the scope of this rulemaking. No changes were made in response to this comment.**

**Comment**

The Associations requested that the commission require additional language in the text of public notices that properly informs the public that failing to submit timely comments will preclude a person from being able to potentially request a contested case hearing. This complies with the statutory text of Texas Government Code §2003.047(e-1).

**Response**

**The commission did not propose any language related to changes in how to request a contested case hearing; therefore, this comment is outside the scope of the current rulemaking. No changes were made in response to this comment.**

### **Comment**

TIP requests the commission revise §39.411 as proposed to require notice language clarifying that if no comments are timely submitted by a person (or association meeting the requirements of 30 TAC §55.205) to the TCEQ during the public comment period, then that person or association may not be named an affected person or association by the commission or SOAH.

### **Response**

**The commission did not propose any language related to changes in how to request a contested case hearing; therefore, this comment is outside the scope of the current rulemaking. No changes were made in response to this comment.**

### **Comment**

AGC of Texas believes that there is no justification for §39.606(c)(2), with respect to why facilities with low compliance classification are treated differently, since THSC Chapter 382 and Chapter 5 of the Texas Water Code are silent on the impact of poor compliance history.

### **Response**

**In response to comment, the commission is not adopting this provision.**

### **Comment**

AGC of Texas states in their comment that it appears that all new §39.606 may not have been underlined.

### **Response**

**The proof copies submitted to TCEQ by the Secretary of State show all of new §39.606 underlined as new language. No changes were made in response to this comment.**

### **Comment**

Better Brazoria agrees with adding new §39.606, as it makes the contested case hearing process clearer to the public.

### **Response**

**The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.**

### **Comment**

TIP also seeks clarification on the processing and issuance of these types of applications in §39.606(a), as they should not be subject to the opportunity for any person or association to submit comments, request a public meeting, request reconsideration, or request a contested case hearing.

### **Response**

**The commission has added a new applicability subsection to new §39.606 to clarify that the section only applies to applications subject to Subchapters H and K of**

**Chapter 39. As this is now new §39.606(a), the remaining subsections have been re-numbered accordingly. The language in new §39.606(b) mirrors the long-standing language in §39.402 and §39.411 for the types of air quality applications that have opportunities for public meetings and contested case hearings. The adopted new language provides clarity for the public but does not change the underlying requirements that already exist, other than specific changes that the commission has noted. These changes are related to comment periods for air quality permit applications with a consolidated NORI and NAPD. The commission has included the new subsection to clarify the applicability of the new §39.606.**

### **Comment**

TIP requests that the commission include language in §39.606(a) that recognizes the statutory limitation in THSC §382.056(g) which states that the commission may not seek further public comment or hold a public hearing on amendments, modifications, or renewals that “...would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.”

### **Response**

**Language that addresses the deadline for requesting a contested case hearing on these types of applications was proposed and is being adopted in new §39.606(d)(1) specifically for contested case hearings, which mirrors existing language in §39.411. No language was proposed relating to the commission’s consideration of requests on these types of applications. Furthermore, no-increase renewal applications are not included in the list of application types in §39.606(h) or (i)**

**which list the types of air quality applications for which the executive director may hold a public meeting.**

**Comment**

TIP requests that the commission revise §39.606(h) to be consistent with §55.154(c) and federal law.

**Response**

**Adopted new §§39.606(h) and (i), which were proposed as §§39.606(g) and (h) were revised to match the requirements in §39.411(e) and §55.154(c).**

**Comment**

PAI comments that additional time is needed to prepare a reply to responses to hearing requests. PAI states instead of the current 14-day time period, it would be more appropriate to establish a rule that allows 30 days to reply to a Response to Hearing Request.

**Response**

**The commission did not propose to extend the time frame for replying to a Response to Hearing Request and is not adopting changes to the time frame at this time. No changes have been made in response to this comment.**

**Comment**

HCPCS comments that an extended comment period is necessary and warranted and would afford participants time to process any new information that may have been

garnered from the public meeting. HCPCS requests that the commission extend the comment period for at least 10 days following a public meeting for all types of permit applications.

#### **Response**

**The commission did not propose changing comment periods for any types of permit applications other than those air quality permit applications with consolidated notice, as required by the Sunset bill. Expanding notice periods for other types of permit applications is beyond the scope of the current rulemaking project. No changes were made in response to this comment.**

#### **Comment**

EIP commented that except where statutorily prohibited TCEQ should standardize and extend the length of all comment periods under §55.152 to 60 days to allow the public to secure legal and technical assistance and time to adequately review applications and permits.

#### **Response**

**The proposed rules did not propose to extend any comment periods except for the one required by the TCEQ Sunset bill for air quality permit applications with consolidated notice. The length of comment periods is provided in the notices published on permit applications. No changes were made in response to this comment.**

#### **Comment**

AGC of Texas requests that the commission provide examples or clarify what good cause is to extend a comment period in §39.409(c) and §39.422. Commenter also requests clarification as to who has the burden for demonstrating good cause.

#### **Response**

**The commission is not adopting the proposed §39.422. Some examples of when comment periods have been extended would include issues with notice, such as signs not being in place or documents not being available for the public to review in an appropriate local place, mistakes in notice that may be discovered later during the comment period, failure to publish notice in the correct newspaper, and other similar issues. The rules provide the basic legal standard; however, nuanced, in-depth consideration that is not easily captured by rule language can best be considered on a case-by-case basis as needed.**

#### **Comment**

Better Brazoria agrees with extending the comment period for 36 hours, and suggests that this change be extended to all permits

#### **Response**

**The commission appreciates the support for the extension of the comment period for certain types of air quality permit applications. The commission did not propose changing comment periods for any types of permit applications other than those air quality permit applications with consolidated notice, as required by the Sunset bill. Expanding notice periods for other types of permit applications is beyond the scope of the current rulemaking project. No changes were made in response to this**

**comment.**

**Comment**

Better Brazoria agrees with the language extending the comment period for good cause as it ensures more inclusive public participation.

**Response**

**The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.**

**Comment**

Better Brazoria suggests that notice of extensions of comment periods should be published in alternative languages when required in §39.422.

**Response**

**The commission is not adopting the proposed §39.422.**

**Comment**

AAH requests that the commission clarify the ED's role in extending comment periods.

**Response**

**Some examples of when comment periods have been extended would include issues with notice, such as signs not being in place or documents not being available for the public to review in an appropriate local place, mistakes in notice that may be discovered later during the comment period, failure to publish notice in the correct newspaper, and other similar issues. The rules provide the basic legal**

**standard; however, nuanced, in-depth consideration that is not easily captured by rule language can best be considered on a case-by-case basis as needed. No changes were made in response to this comment.**

### **Comment**

PAI believes the comment period should extend to 36 hours after the close of the public meeting for all air quality, water quality, and solid waste permit applications.

### **Response**

**The commission proposed compliance dates for new rule requirements to allow applicants to plan and be able to fully comply with these changes. Providing a date certain helps both applicants and the public know when applications must meet the new requirements. The commission has been meeting its statutory requirement to extend the comment period for at least 36 hours for air quality permit applications with a consolidated NORI and NAPD since the effective date of the sunset bill. No changes were made in response to this comment.**

### **Comment**

Better Brazoria approves current language access plan and proposed rules in §39.422(d).

### **Response**

**The commission is not adopting the proposed §39.422.**

### **Comment**

Better Brazoria commented that the commission should be aware of the lack of email/computer availability in low-income situations.

**Response**

**The commission appreciates the comment and acknowledges that there are commenters with less technical expertise or resources who rely on other methods to participate in the permitting process. No changes were made in response to this comment.**

**Comment**

Better Brazoria voiced concern about the distances in concrete batch plant applications and where it will vary to avoid providing someone with standing.

**Response**

**The requirement that a person must actually reside within 440 yards of a proposed plant to request a contested case hearing on a concrete batch plant standard permit is a requirement of Texas statute - THSC §382.058(c). The current rulemaking does not concern how the agency reviews these types of applications or how applicants may revise their applications during the permit review process and is therefore outside the scope of this rulemaking. No changes were made in response to this comment.**

**Comment**

Better Brazoria commented about the abuse of the notice function by publishing in smaller newspaper circulations.

### **Response**

**This comment is outside the scope of this rulemaking. The commission does not require publication in specific newspapers, so long as they meet the rule requirements. No changes were made in response to this comment.**

### **Comment**

HCAO suggests including the exact URL where applicable for the proposed amendments that require a statement that a copy of the administratively complete application can be found online.

### **Response**

**Because a website URL may change over time, including it in rule language is not best practice, as it can lead to future problems. No changes were made in response to this comment.**

### **Comment**

Better Brazoria proposes changes for §§39.419, 39.804, 39.1003, and 39.1005(b) - “Regardless of the notice requirements in §39.XXX of this title, the commission shall make available by electronic means on the commission's website the permit application.”

### **Response**

**The adopted changes to the rules provide specifically for the commission to make both the initial application and the technically complete application and draft permit available electronically on the commission's website in new §39.405(l). This**

**requirement applies to all types of applications that are subject to Chapter 39, Subchapter H. Therefore, it is not necessary to repeat this requirement in other places in the rules as requested by the commenter. No changes were made in response to this comment.**

### **Comment**

TIP believes that electronic availability of the application will provide greater public access to application materials than the current requirement in §39.405(g) to provide access to physical copies in a local public place.

### **Response**

**While the commission agrees that having applications and the draft permit available electronically provides the best access for the public, it is still necessary for the commission to ensure that the public can access the relevant permit application documents in a local public place, as required by statute. No changes were made in response to this comment.**

### **Comment**

AAH commented that ensuring that information about permit meetings and public hearings is made more available, readily available to community members is great.

### **Response**

**The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.**

### **Comment**

AAH commented that they also have concerns regarding applicants using less widely circulated newspapers.

### **Response**

**This comment is outside the scope of this rulemaking. The commission does not require publication in specific newspapers, so long as they meet the rule requirements. No changes were made in response to this comment.**

### **Comment**

Arcosa commented that the commission should encourage proactive outreach by operators (e.g., bilingual fact sheets, open houses) as an alternative to lengthier contested case proceedings.

### **Response**

**This comment is outside the scope of this rulemaking. Regulated entities are always welcome and encouraged to engage with community stakeholders during the application process. No changes have been made in response to this comment.**

### **Comment**

HCAO requests further clarification on the difference between public meeting and public hearing in Chapter 39 Subchapter A.

### **Response**

**A public meeting is intended for the public to ask questions of TCEQ staff and the applicant during the informal part of the meeting, and to provide formal oral**

**comments that will receive an official written response from the executive director. A public meeting is not a contested case hearing. There is no definition for a public hearing included in the adopted rules. A contested case hearing is a formal legal proceeding at the State Office of Administrative Hearings before an Administrative Law Judge (ALJ). Following a contested case hearing, the ALJ will issue a Proposal for Decision and make a recommendation to the commission. The commission will then consider this decision at an open meeting and make a final decision on issuance of the permit. No changes were made in response to this comment.**

#### **Comment**

HCAO requests clarification of what “too large and unduly burdensome for posting” means in §39.405(l); they further request that a tangible threshold be established before materials may be exempt.

#### **Response**

**The text of the new rule language aligns with the statutory requirement. No changes were made in response to this comment.**

#### **Comment**

HCAO suggests adding instructions on how shareholders can view permitting documents that are exempt under §39.405(l).

#### **Response**

**Complete applications are available at physical locations and would include documents that may be too large for posting online. No changes were made in**

**response to this comment.**

### **Comment**

Better Brazoria disagrees with the July 1, 2026 implementation date for certain rules and suggests that they should correspond with the March 1, 2026 implementation date.

### **Response**

**The commission proposed compliance dates for new rule requirements to allow applicants and the commission to plan and be able to fully comply with these changes. However, the commission is not adopting any proposed changes that would have had a July 1, 2026 implementation date. Providing a date certain helps both applicants and the public know when applications must meet the new requirements. There are two different implementation dates because some of the changes are already being implemented by the commission, while others will require the development of new procedures and will therefore take longer for full implementation by the commission. No changes were made in response to this comment.**

### **Comment**

Better Brazoria suggests that the implementation of changes under §39.422 should be March 1, 2026, instead of May 1, 2026.

### **Response**

**The commission is not adopting the proposed new §39.422.**

### **Comment**

PAI supports the extension of the public comment period to 36 hours after a public meeting is held for air quality permits with a consolidated notice and believes that this requirement should apply earlier than only to those applications submitted on or after March 1, 2026.

### **Response**

**The commission proposed compliance dates for new rule requirements to allow applicants to plan and be able to fully comply with these changes. Providing a date certain helps both applicants and the public know when applications must meet the new requirements. The commission also notes that it has been implementing this statutory requirement since it became effective. No changes were made in response to this comment.**

### **Comment**

AGC of Texas comments that several proposed amendments go beyond the direction of the legislature and believes that the substantive changes should be limited to the statutory changes made through the sunset process.

### **Response**

**The purpose of this rulemaking is to improve readability and clarity of the rules to generally improve the commission's public participation processes, in addition to implementing specific requirements of the Sunset bill. No changes were made in response to this comment.**

### **Comment**

The Associations comment that the commission should confine any rule changes to those required by SB 1397 from the 88<sup>th</sup> Legislative Session.

### **Response**

**The purpose of this rulemaking is to improve readability and clarity of the rules to improve the commission's public participation processes, in addition to implementing specific requirements of the Sunset bill. No changes were made in response to this comment.**

### **Comment**

Arcosa commented that the commission should provide permit timelines certainty by setting reasonable deadlines for processing Requests for Reconsideration.

### **Response**

**The commission did not propose any changes for the process by which the commission sets Requests for Reconsideration for commission consideration. Following the end of the opportunity to request a contested case hearing or reconsideration of the executive director's initial decision, requests that have been received are set for commission consideration on the commission's agenda. This comment is outside the scope of this rulemaking, and no changes have been made in response to this comment.**

### **Comment**

Arcosa commented that the commission should maintain flexibility for routine amendments so that these are not unnecessarily delayed.

**Response**

**The commission did not propose any changes to the processing of routine amendments. This comment is outside the scope of this rulemaking, and no changes have been made in response.**

**Comment**

EIP supports hybrid meetings to include virtual options for public meetings and contested case hearings. EIP comments that 30 TAC §55.154(f) should be amended to require that TCEQ produce slides, meeting audio recordings, written transcripts and presentation materials on its website and/or by email immediately following each meeting's conclusion.

**Response**

**The current rulemaking project did not propose to include any options for public meetings; therefore, this comment is beyond the scope of this rulemaking. Virtual contested case hearings are currently allowed by the State Office of Administrative Hearings but are also beyond the scope of the current rulemaking. Information provided at a public meeting by an applicant is not under the control of the commission. The commission does not make a visual recording of public meetings and therefore does not have visual recordings to post. The commission does make an audio recording of public meetings, and the audio recording of the formal portion of the public meeting is available on the commission's website within a few**

**days of public meetings. No changes were made in response to this comment.**

**Comment**

EIP comments that TCEQ should establish a fund by which community members may pay for necessary contested case costs.

**Response**

**This comment is outside the scope of this rulemaking. The current rulemaking project does not address costs associated with contested case hearings. The commission does not have the statutory authority or the mandate to provide such a fund for the public. No changes were made in response to this comment.**

**Comment**

EIP believes that TCEQ should expand the availability of Texas Pollutant Discharge Elimination System program (TPDES) permit application information to the public. EIP comments that TCEQ should make information available for all phases of TPDES permit issuance, including draft fact sheets or statements of basis.

**Response**

**This comment is outside the scope of this rulemaking. The commission did not propose changes to the ways in which TPDES permit applications are reviewed that would include the requested changes. No changes were made in response to this comment.**

**Comment**

EIP comments that all recordkeeping violations are relevant and should be addressed by TCEQ, even if through informal compliance. EIP states that it is essential that TCEQ revise its approach to penalty calculations to ensure that recordkeeping violations are penalized sufficiently.

**Response**

**This rulemaking does not concern the development of compliance history or penalty calculations. This comment is outside the scope of this rulemaking. No changes were made in response to this comment.**

**Comment**

EIP urges TCEQ to consider compliance history in a comprehensive, holistic manner when determining whether permits should be renewed, modified, amended or otherwise changed and not to limit evaluations to immediate sites or current owners or operators.

**Response**

**This comment is outside the scope of this rulemaking, which does not include consideration of how the agency uses compliance history when evaluating an application for a permit. No changes were made in response to this comment.**

**Comment**

AGC of Texas requests that the commission affirm that air quality standard permits are “off-the-shelf” authorizations issued for specific, well-characterized classes of facilities; concrete batch plants are minor sources of emissions, and that plants

operating in accordance with the terms and conditions of the standard permit (developed based on a conservative protectiveness review) are protecting human health and the environment; and the primary concerns expressed about these types of operations are land-use considerations that are beyond the authority of TCEQ, and, where there is local zoning, such concerns can and have been addressed locally.

#### **Response**

**The proposed rule changes did not directly concern the review of air quality standard permits. The requirement to extend the comment period and opportunity to request a contested case hearing following a public meeting held on certain types of air quality permits, which includes an application for the registration to use the concrete batch plant standard permit, is a specific statutory requirement. There are no other air quality standard permit registrations that include a right to request a contested case hearing. No changes were made in response to this comment.**

#### **Comment**

Better Brazoria commented that the agency should measure from the property boundary to the residence/school/place of worship when making distance determinations. Better Brazoria further states that one facility point is not sufficient representation of a concrete batch plant as they do not correspond to emission sources and plant equipment is subject to change.

#### **Response**

**This comment is outside the scope of this rulemaking. The commission did not propose any changes to the process for how a person may request a contested case**

**hearing or for the contents of those requests, including how distance is measured when evaluating those requests. No changes were made in response to this comment.**

**Comment**

Better Brazoria comments that applicants in Harris County are abusing the requirement that notice should be published in a newspaper of general circulation as required by §39.603.

**Response**

**This comment is outside the scope of this rulemaking. No changes were made in response to this comment.**

**Comment**

AAH commented that industry misuses public notice requirements to limit the exposure of information.

**Response**

**This comment is outside the scope of this rulemaking. No changes were made in response to this comment.**

**Comment**

TACA asked if the ED staff can put some discretion on that portion of the rulemaking to account for situations where the signs accidentally fell down or the signs were stolen or the signs were burned by wildfires or the signs were blown down from a

tornado or from a hurricane. TACA's comments also expressed concern about leaving signs in place until final commission action on a permit application.

### **Response**

**Issues with signs that may go missing or be damaged by weather are issues that can be considered on a case-by-case basis. No changes were made in response to this comment. However, the commission did make changes to the sign-posting requirement in adopted §39.604(b) in response to comments to clarify that signs must remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must be posted at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission's intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application.**

### **Comment**

AGC of Texas opposes defining personal justiciable interest in proposed §55.103(3) since it is already included in the determination of an affected person and the new language expands the definition of justiciable too much.

### **Response**

**The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as**

**commenters indicated that it would not provide additional clarity or guidance to the public.**

### **Comment**

PAI commented that the new definition of “personal justiciable interest” adds limitations upon who may be considered an affected person that are not contained in statute and are inappropriate.

### **Response**

**The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.**

### **Comment**

PAI adds that the limitations on defining personal justiciable interest raise concerns for whether Texas programs would meet the minimum requirements to maintain delegated authority over certain federal programs such as the TPDES program.

### **Response**

**The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to**

**the public.**

### **Comment**

The Associations commented that they believe there is a risk of adding a definition for “personal justiciable interest” that has additional terms, which may unintentionally expand or restrict the agency’s determination of an affected person compared to the statute.

### **Response**

**The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.**

### **Comment**

TIP requests that TCEQ decline to adopt proposed 30 TAC §55.103(3), which would define “personal justiciable interest” based on key concepts from Texas Water Code §5.115 but with additional terms.

### **Response**

**The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to**

**the public.**

**Comment**

In new §39.606(g) and (h) Better Brazoria suggests including express provisions on what may trigger a public meeting and further clarify by what measure the ED will determine whether substantial public interest is present.

**Response**

**The commission rules include the provisions on when a public meeting may be held. The factors that determine substantial public interest can vary between media. The commission did not propose specific criteria to define these terms and is not making changes in adopted rules to address this concern. No changes were made in response to this comment.**

**Comment**

Better Brazoria comments that public meetings should be held before and after the draft permit is completed and that an informal meeting during technical review would allow the public to propose suggestions to add to the permit and a second meeting would allow the public to formally comment on the draft permit.

**Response**

**The commission did not propose to change the way in which it holds public meetings or to provide for a second meeting before the draft permit is prepared. The commission does not believe that holding such a second meeting before the technical review of the permit is completed would be a good use of agency**

**resources and time. No changes were made in response to this comment.**

**Comment**

AAH requests that the commission expand the authority to request a public meeting to any legislator.

**Response**

**The requirement to hold a public meeting at the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located is a statutory requirement found at THSC §382.056(k)(1) and TWC §5.554(1). The commission did not propose changes to this requirement in Chapter 39 or 55. No changes were made in response to this comment.**

**Comment**

HCAO requests that §39.411(e)(14) not be deleted and suggests that regional offices should be required to keep compliance history files and provide physical access to those documents

**Response**

**TCEQ regional offices often do not have the space or on-site personnel available to assist. Compliance files are no longer kept by the agency as hard copy files, only as electronic files that can be accessed by the public without going to the physical regional office. No changes were made in response to this comment.**

**Comment**

HCAO asserts that a copy of the application should be made physically available to the public and disagrees with deleting that requirement in §39.1009(a)

### **Response**

**The deletion in §39.1009(a) for a location of the regional office to contact for information about where a physical copy of the application can be found does not remove the requirement for providing a hard copy of the application in a local physical location. The information about where a hard copy of the application can be found is still included in the notice of the application, which is both published and available online on the commission's website. Regional staff often do not have staff on-site who are familiar with all applications filed with the commission. No change was made in response to this comment.**

### **Comment**

AGC of Texas comments §39.405(g)(1)-(2) and §39.604(b) should be modified to provide that the application and signage should be made available only through the comment period and not through final commission action as proposed.

### **Response**

**Changes in adopted §§39.405(g)(1) and (2) and 39.604(b) were made in response to this comment. The initial application must now remain in place until replaced by the technically complete application and draft permit. The technically complete application and draft permit must remain in place for the remaining entirety of the comment period. Generally, the publication of the NAPD notifies the public of the availability of the technically complete application and draft permit. The technically**

**complete application and draft permit must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, then the application must remain in place through the publication's designated comment period. The signs must now be in place at the start of the comment period and remain must remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must go up at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission's intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application.**

### **Comment**

AGC of Texas opposes change in signage size in §39.604(a)(1) for the following reasons: current size is proficient for notifying the public; signs and notice are being supplemented by social media and local advocacy; safety concerns with traffic and visibility; changes may result in more variance requests to the agency; and the change is outside the recommendation of the legislature.

### **Response**

**In response to comment the commission is not making any changes to the size of required signs in the adopted rule.**

## **Comment**

The Associations comment that they oppose change in signage size in §39.604(a)(1) for the following reasons: practical issues; highly complex industrial facilities can have several concurrent permitting actions taking several months to years for final resolution, which will make it difficult for the public to readily understand and meaningfully engage if signs are posted after public comment periods close; maintain the current requirements for applicants to post signs only during the appropriate public comment periods at the same time as physical and electronic copies of the permit application are available to ensure the public can provide timely comments.

## **Response**

**In response to comment the commission is not making any changes to the size of required signs in the adopted rule.**

**Changes in adopted §39.604(b) were made in response to this comment addressing the time period for signage posting. The signs must now be in place at the start of the comment period and remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must go up at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission's intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application.**

### **Comment**

TIP commented on the requirement for the increased size of signs in §39.604, stating that increasing the size of the font may not allow all the information to be on the signs. TIP comments that the large size may be difficult for major plants that have multiple signs, which is different than the signs in §39.510(b)(1), which are for inactive municipal solid waste permits. TIP comments that one possibility is to require some font to be larger for certain types of information.

### **Response**

**In response to comment the commission is not making any changes to the size of required signs in the adopted rule.**

### **Comment**

AGC of Texas asks that the commission consider consolidating all air quality permit related public notice rules under Chapter 39, Subchapter K.

### **Response**

**The adopted new §39.606 is intended to put existing public notice requirements in Chapter 39, Subchapter H also in Subchapter K to provide clarity for the public and regulated entities and to make it easier to find air-specific requirements. Therefore, the proposed and adopted rules have done this with the addition of new §39.606.**

**Further consolidation and removing the air quality notice rules from Chapter 39, Subchapter H was not proposed by the commission and was not considered necessary for this rulemaking. No changes were made in response to this comment.**

### **Comment**

HHD generally supports the proposed changes and believes that the changes will provide multiple benefits. HHD also makes a suggestion that local compliance data be included in the permit review process, and that air monitoring data collected by local pollution control programs could be used to augment the permit approval process.

### **Response**

**The commission appreciates the support for the changes in this rulemaking.**  
**Compliance history and the use of monitoring data are issues outside the scope of this rulemaking. No change was made in response to this comment.**

### **Comment**

Better Brazoria agrees with the new proposed definitions in §39.1 and the new signage and notice requirements in §39.604(a)(1) and (b) and §39.510(b)(1).

### **Response**

**The commission appreciates the support for the rule changes. Although the commission did make some changes to §39.604 in response to other comments, no changes were made in response to this comment.**

### **Comment**

Better Brazoria recommends that the changes to Ch. 55 take effect as soon as possible and that an effective date of March 2026 seems reasonable.

### **Response**

**The commission appreciates the support for the changes in this rulemaking. No**

**changes were made in response to this comment.**

**Comment**

Better Brazoria generally agrees with embracing agency use of email but encourages more community outreach.

**Response**

**The commission appreciates the support for the changes in this rulemaking.**

**However, the commission is not finalizing changes requiring the use of agency email addresses in notices. Due to the potential for staff changes during the course of a permit review, it could lead to misunderstandings and incorrect available information if an email changes during the pendency of the permit action.**

**Comment**

EIP comments that Operating Permits issued under Title V of the Clean Air Act should be electronically available to anyone wishing to learn more about them.

**Response**

**This comment is outside the scope of this rulemaking. Title V permits are not the subject of the current rulemaking project; however, the commission notes that Title V permits under review and open for comment are available electronically on the commission's website. No changes were made in response to this comment.**

**Comment**

Better Brazoria requested that the commission add additional language clarifying that

any petition for judicial review should be filed 30 days after a motion for rehearing is decided since the concurrent timing is problematic.

**Response**

**The statutory language of TWC §5.351 subsection (b) addresses this issue.**

**Therefore, no rule changes are required. No changes were made in response to this comment.**

**Comment**

Better Brazoria commented that as to the proposed changes in §§55.209(d) and (g), as long as the time frames are not being shortened, they agree with the changes.

**Response**

**The time periods are not changing; only the way the time periods are explained in the rule language is changing. The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.**

**Comment**

Better Brazoria states that all public notices should provide notice of where the facility is located or proposed to be located.

**Response**

**This information is currently required in §§39.411(b)(3) and (e)(3). No changes were made in response to this comment.**

**Comment**

EIP comments that the commission should remove all obsolete dates from Chapter 55.

**Response**

**The commission notes that the dates EIP identified as obsolete rule language in this comment are not actually obsolete, as the commission is still actively reviewing permit applications that would be impacted. No changes were made in response to this comment.**

## **SUBCHAPTER D: APPLICABILITY AND DEFINITIONS**

### **§55.103**

#### **Statutory Authority**

The amendments are adopted 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 adopted 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. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public

health, general welfare, and physical property; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules.

The rulemaking adoption implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §§361.024, 382.011, and 382.056.

### **§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.

(1) **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.

(A) 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).

(B) 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 an application for a permit or license received by the commission on or after September 1, 2011 unless the state agency is the applicant.

(C) For an air quality standard permit for a concrete batch plant, only a person actually residing within 440 yards of the proposed plant may be an affected person

(2) Contested case hearing—A proceeding, including occupational licensing hearings, in which the legal rights, duties, or privileges of a person are determined by a state agency after an opportunity for adjudicative hearing.

(3) Motion to overturn—A request for the commission to overturn a final decision made by the executive director under §50.139 of this title (relating to Motion to Overturn the Executive Director's Decision).

(4) Motion for rehearing--A request for the commission to reconsider its final decision on a permit application under §50.119 (relating to (Notice of Commission Action, Motion for Rehearing) and §80.272 (relating to Motion for Rehearing) of this title.

(5) Public meeting—A meeting held under §55.154 (relating to Public Meetings) of this title that is intended for the taking of public comments. A public meeting is not a contested case hearing.

(6) Request for reconsideration--A request that the commission reconsider the decision of the executive director on a permit application.

## **SUBCHAPTER E: PUBLIC COMMENT AND PUBLIC MEETINGS**

### **§§55.152, 55.154, 55.156**

#### **Statutory Authority**

The amendments are adopted 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 adopted 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. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public

health, general welfare, and physical property; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The rulemaking adoption implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §§361.024, 382.011, and 382.056.

#### **§55.152. Public Comment Period.**

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of 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), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title (relating to Newspaper Notice) for a registration for 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), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project;

(3) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title for an application for a new permit or permit amendment under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits);

(4) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of

Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(5) 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(6) 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(7) the time specified in commission rules for other specific types of applications; or

(8) as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended if a public meeting is held:

(1) to at least the close of any public meeting for permit applications; and

(2) for at least 36 hours following the close of any public meeting for air quality permit applications with a consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision that are received by the executive director on or after March 1, 2026.

(c) Timely comments are those received by the Office of the Chief Clerk by the end of the comment period.

#### **§55.154. Public Meetings.**

(a) A public meeting is intended for the taking of public comment and is not a contested case hearing under the Texas Administrative Procedure Act.

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or the Office of the Chief Clerk may hold public meetings. The executive director or the Office of the Chief Clerk shall hold a public meeting if:

- (1) the executive director determines that there is a substantial or significant degree of public interest in an application;
- (2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held;
- (3) for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph will be held after Notice of Application and Preliminary Decision is published;
- (4) for applications for Hazardous Air Pollutant permits subject to 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)), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph will be held after Notice of Application and Preliminary Decision is published; or
- (5) when a public meeting is otherwise required by law.

(d) Notice of the public meeting shall be given as required by §39.411(d) or (g) of this title (relating to Text of Public Notice), as applicable. The notice must also meet the requirements of §39.426(d) of this title (relating to Alternative Language Requirements), when applicable.

(e) The applicant shall attend any public meeting held by the executive director or Office of the Chief Clerk. The applicant shall comply with the requirements of §39.426(d)(2) of this title, when applicable.

(f) An audio recording or written transcript of the public meeting shall be made available to the public.

(g) The executive director will respond to comments as required by §55.156(b) and (c) of this title (relating to Public Comment Processing).

#### **§55.156. Public Comment Processing.**

(a) The chief clerk shall deliver or mail to the executive director, the Office of Public Interest Counsel, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents filed with the chief clerk in response to public notice of an application.

(b) If comments are received, the following procedures apply to the executive director.

(1) Before an application is approved, the executive director shall prepare a response to all timely, relevant and material, or significant public comment, whether or not withdrawn, and specify if a comment has been withdrawn. Before any air quality permit application for a Prevention of Significant Deterioration or Nonattainment permit subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits) or for applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), filed on or after the effective date of this section, is approved, the executive director shall prepare a response to all comments received. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes.

(2) The executive director may call and conduct public meetings, under §55.154 of this title (relating to Public Meetings), in response to public comment.

(3) The executive director shall file the response to comments with the chief clerk within the shortest practical time after the comment period ends, not to exceed 60 days.

(c) After the executive director files the response to comments, the chief clerk shall mail (or otherwise transmit) instructions for electronically accessing the executive director's decision, the executive director's response to public comments, and

instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing or information about how to request a hard copy of these documents. The chief clerk shall provide the information required by this section to the applicant, any person who submitted comments during the public comment period, any person who requested to be on the mailing list for the permit action, any person who timely filed a request for a contested case hearing in response to the Notice of Receipt of Application and Intent to Obtain a Permit for an air application, the Office of Public Interest Counsel, and the director of the External Relations Division. Instructions for requesting reconsideration of the executive director's decision or requesting a contested case hearing are not required to be included in this transmittal for the applications listed in:

(1) §39.420(e) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision); and

(2) §39.420(f) and (g) of this title.

(d) The instructions sent under §39.420(a) of this title regarding how to request a contested case hearing shall include at least the following statements; however, this subsection does not apply to post-closure order applications:

(1) a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(2) a contested case hearing request should include a description of how and why the requester will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requester's uses of property which may be impacted by the proposed facility or activity;

(3) only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted for an application filed before September 1, 2015;

(4) only relevant and material disputed issues of fact and mixed questions of fact and law raised during the comment period by a hearing requester who is an affected person and whose request is granted can be considered if a contested case hearing request is granted for an application filed on or after September 1, 2015; and

(5) a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(e) The instructions sent under §39.420(c) of this title regarding how to request a contested case hearing shall include at least the following statements:

(1) a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(2) a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requester's uses of property which may be impacted by the proposed facility or activity;

(3) only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted for an application filed before September 1, 2015;

(4) only relevant and material disputed issues of fact and mixed questions of fact and law raised during the comment period by a hearing requester who is an affected person and whose request is granted can be considered if a contested case hearing request is granted for an application filed on or after September 1, 2015; and

(5) a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(f) For applications referred to State Office of Administrative Hearings under §55.210 of this title (relating to Direct Referrals):

(1) for air quality permit applications subsections (c) and (d) of this section do not apply; and

(2) for all other permit applications, subsections (b)(2), (c), and (d) of this section do not apply.

(g) Regardless of the requirements in §39.420 of this title, the commission shall make available by electronic means on the commission's website the executive director's decision and the executive director's response to public comments.

**SUBCHAPTER F: REQUESTS FOR RECONSIDERATION OR CONTESTED CASE**

**HEARING**

**§§55.200, 55.201, 55.203, 55.209, 55.210, 55.211**

**Statutory Authority**

The amendments are adopted 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 adopted 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; 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; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the

amendments are adopted under Texas Government Code (TGC), §2001.004, which requires state agencies to adopt procedural rules; and TGC, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking adoption 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.

**§55.200. Applicability.**

This subchapter applies only to applications filed under Texas Water Code, Chapter 26, 27, or 32 or Texas Health and Safety Code, Chapter 361 or 382.

**§55.201. Requests for Reconsideration or Contested Case Hearing.**

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment, and, for applications filed on or after September 1, 2015, must be based only on the requester's timely comments.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, a valid email address of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, a valid email address, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) for applications filed:

(A) before September 1, 2015, list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the executive director's responses to comments that the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; or

(B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requester during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the

requester should, to the extent possible, specify any of the executive director's responses to the requester's comments that the requester disputes, the factual basis of the dispute, and list any disputed issues of law; and

(5) provide any other information specified in the public notice of application.

(e) Any person, other than a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title (relating to Definitions), may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, a valid email address of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline, but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, the public interest counsel, and a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of

this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program);

(C) a permit issued under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions); or

(D) amendment, modification, or renewal of an air application 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 hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine from Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) 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 Texas Water Code, §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;

(8) an application for a permit, registration, license, 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), if the application was submitted on or before January 1, 2018;

(9) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law; and

(10) an application for a production area authorization, except as provided in accordance with §331.108 of this title (relating to Opportunity for a Contested Case Hearing on a Production Area Authorization Application).

**§55.203. Determination of Affected Person.**

(a) For any application, an affected person is one 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.

(b) Except as provided by §55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.

(c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person;

(6) for a hearing request on an application filed on or after September 1, 2015, whether the requester timely submitted comments on the application that were not withdrawn; and

(7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

(d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:

(1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;

(2) the analysis and opinions of the executive director; and

(3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requester.

(e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the

commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.

**§55.209. Processing Requests for Reconsideration and Contested Case Hearing.**

(a) This section and §55.211 of this title (relating to Commission Action on Requests for Reconsideration or Contested Case Hearing) apply only to requests for reconsideration and contested case hearing that are timely filed.

(b) After the final deadline to submit requests for reconsideration or contested case hearing, the chief clerk shall process any requests for reconsideration or hearing by both:

(1) referring the application and requests for reconsideration or contested case hearing to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the requesters; and

(2) scheduling the hearing request and request for reconsideration for a commission meeting. However, if only a request for reconsideration is submitted and the commission has delegated its authority to act on the request to the general counsel, the request for reconsideration shall be scheduled for a commission meeting only if the general counsel directs the chief clerk to do so. The chief clerk should try to schedule the requests for a commission meeting that will be held approximately 44

days after the final deadline for timely filed requests for reconsideration or contested case hearing.

(c) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and all timely commenters and requesters at least 35 days before the first meeting at which the commission considers the requests. The notice shall explain how to participate in the commission decision, describe alternative dispute resolution under commission rules, and explain the relevant requirements of this chapter.

(d) The executive director, the public interest counsel, and the applicant may submit written responses to the requests no later than 12 days after the chief clerk mails notice of the first meeting at which the commission will consider the hearing request, unless extended by the general counsel. Each party shall file its response with the chief clerk. On the same day, each party shall serve the executive director, the public interest counsel, the director of the External Relations Division, the applicant, and any requesters its response or notice that its response is available electronically on the commission's website along with instructions for accessing the responses or requesting a mailed copy.

(e) Responses to hearing requests must specifically address:

(1) whether the requester is an affected person;

- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

(f) Responses to requests for reconsideration should address the issues raised in the request.

(g) The requesters may submit written replies to a response no later than 26 days after the chief clerk mails notice of the first meeting at which the commission will consider the request for reconsideration and the hearing request, unless extended by the general counsel. The requester shall file a reply with the chief clerk. On the same

day, the requester shall serve to the executive director, the public interest counsel, and the applicant its reply or notice that its reply is available electronically on the commission's website.

#### **§55.210. Direct Referrals.**

(a) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to State Office of Administrative Hearings (SOAH) for a hearing on the application.

(b) After receipt of a request filed under this section and after the executive director has issued his preliminary decision on the application, the chief clerk shall refer the application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

(c) A case which has been referred to SOAH under this section shall not be subject to the public meeting requirements of §55.154 of this title (relating to Public Meetings). The agency may, however, call and conduct public meetings in response to public comment. A public meeting is intended for the taking of public comment and is not a contested case proceeding under the Administrative Procedure Act. Public meetings held under this section shall be subject to following procedures.

(1) The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law.

(2) To the extent practicable, the public meeting for any case referred under this section shall be held prior to or on the same date as the preliminary hearing.

(3) Public notice of a public meeting may be abbreviated to facilitate the convening of the public meeting prior to or on the same date as the preliminary hearing, unless the timing of notice is set by statute or a federal regulation governing a permit under a federally authorized program. In any case, public notice must be provided at least ten days before the meeting.

(4) If a public meeting is held, the public comment period shall be extended to at least the close of any public meeting and for at least 36 hours following the close of a public meeting for air quality permit applications with a consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision that are received by the executive director on or after March 1,2026.

(5) The applicant shall attend any public meeting held.

(6) An audio recording or written transcript of the public meeting shall be filed with the chief clerk and will be included in the chief clerk's case file to be sent to SOAH as provided by §80.6 of this title (relating to Referral to SOAH).

(d) A case which has been referred to SOAH under this section shall be subject to the public comment processing requirements of §55.156(a) and (b)(1) and (3) of this title (relating to Public Comment Processing). The requirements of §39.426(e) of this title (relating to Alternative Language Requirements) shall also be met, as applicable.

(e) For applications filed before September 1, 2015, if Notice of Application and Preliminary Decision is provided at or after direct referral under this section, this notice shall include, in lieu of the information required by §39.411(c) and (e) of this title (relating to Text of Public Notice), the following:

(1) the information required by §39.411(b)(1) - (3), (4)(A), (6) - (11), and (13) and (e)(10), (11)(A), (C) and (D), (13) and (14) of this title;

(2) the information required by §39.411(c)(4) and (5) of this title; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, the deadline to file public comments or request a public meeting, and a statement that a public meeting will be held by the executive director if there is significant public interest in the proposed activity. These public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice.

(f) For applications filed on or after September 1, 2015, the administrative law judge may not hold a preliminary hearing until after the issuance of the executive director's response to comment.

**§55.211. Commission Action on Requests for Reconsideration and Contested Case Hearing.**

(a) Commission consideration of the following items is not itself a contested case subject to the Texas Administrative Procedure Act (APA):

- (1) public comment;
- (2) executive director's response to comment;
- (3) request for reconsideration; or
- (4) request for contested case hearing.

(b) The commission will evaluate public comment, executive director's response to comment, requests for reconsideration, and requests for contested case hearing and may:

- (1) grant or deny the request for reconsideration;

(2) determine that a hearing request does not meet the requirements of this subchapter, and act on the application; or

(3) determine that a hearing request meets the requirements of this subchapter and:

(A) if the request raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment, and that are relevant and material to the commission's decision on the application:

(i) specify the number and scope of the specific factual issues to be referred to the State Office of Administrative Hearings (SOAH);

(ii) specify the maximum expected duration of the hearing; and

(iii) direct the chief clerk to refer the issues to SOAH for a hearing; or

(B) if the request raises only disputed issues of law or policy, make a decision on the issues and act on the application; or

(4) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the requester is an affected person. If the commission refers the hearing request to SOAH, it shall be processed as a contested case under the APA. If the commission determines that a requester is an affected person, SOAH may proceed with a contested case hearing on the application if either the commission has specified, or the parties have agreed to, the number and scope of the issues and maximum expected duration of the hearing.

(c) A request for a contested case hearing shall be granted if the request is:

(1) made by the applicant or the executive director;

(2) made by an affected person if the request:

(A) is on an application filed:

(i) before September 1, 2015, and raises disputed issues of fact that:

(I) were raised during the comment period;

(II) were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment; and

(III) are relevant and material to the commission's decision on the application; or

(ii) on or after September 1, 2015, and raises disputed issues of fact or mixed questions of fact or law that:

(I) were raised during the comment period by the affected person whose request is granted;

(II) were not withdrawn by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment; and

(III) are relevant and material to the commission's decision on the application;

(B) is timely filed with the chief clerk;

(C) is pursuant to a right to hearing authorized by law; and

(D) complies with the requirements of §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing).

(d) Notwithstanding any other commission rules, the commission may refer an application to SOAH if the commission determines that:

(1) a hearing would be in the public interest; or

(2) the application is for an amendment, modification, or renewal of an air permit under Texas Health and Safety Code, §382.0518 or §382.055 that 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.

(3) the application is for renewal of a hazardous waste permit, subject to §305.65(8) of this title (relating to Renewal) and the applicant's compliance history as determined under Chapter 60 of this title (relating to Compliance History) raises an issue regarding the applicant's ability to comply with a material term of its permit.

(4) the application is for renewal or amendment of a wastewater discharge permit and the applicant's compliance history as determined under Chapter

60 of this title raises an issue regarding the applicant's ability to comply with a material term of its permit.

(e) If a request for a contested case hearing is granted, a decision on a request for reconsideration or contested case hearing is an interlocutory decision on the validity of the request or issue and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties) or the issues referred to SOAH under this section. A judge may consider additional issues beyond the list referred by the commission as provided by §80.4(c)(16) of this title (relating to Judges). A person whose request for reconsideration or contested case hearing is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's request for reconsideration or hearing request.

(f) If all requests for reconsideration or contested case hearing are denied, §80.272 of this title (relating to Motion for Rehearing) applies. A motion for rehearing in such a case must be filed not later than 25 days after the date that the commission's final decision or order is signed, unless the time for filing the motion for rehearing has been extended under Texas Government Code, §2001.142 and §80.276 of this title (relating to Request for Extension to File Motion for Rehearing), by agreement under Texas Government Code, §2001.147, or by the commission's written order issued pursuant to Texas Government Code, §2001.146(e). If the motion is denied under §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final

and Appealable) the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §361.321 or §382.032, or under the APA.

(g) If all hearing requesters whose requests for a contested case hearing were granted with regard to an issue, withdraw in writing their hearing requests with regard to the issue before issuance of the notice of the contested case hearing, the scope of the hearing no longer includes that issue except as authorized under §80.4(c)(16) of this title.

**SUBCHAPTER G: REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC  
COMMENT ON CERTAIN APPLICATIONS**

**§§55.250, 55.251, 55.254**

**Statutory Authority**

The amendments are adopted 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 adopted 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 adopted

under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking adoption 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.

**§55.250. Applicability.**

This subchapter applies to applications filed with the commission except applications filed under Texas Water Code (TWC), Chapter 26 or 27, Texas Health and Safety Code, Chapter 361 or 382, or TWC, §11.036 or §11.041.

**§55.251. Requests for Contested Case Hearing, Public Comment.**

(a) The following may request a contested case hearing under this section:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(b) A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (d) of this section.

(c) A hearing request must substantially comply with the following:

(1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, a valid email address, who shall be responsible for receiving all official communications and documents for the group.

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the activity that is the subject of the application and how and why the requester believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

(d) Deadline for hearing requests; public comment period. A hearing request must be filed with the chief clerk within the time period specified in the notice. The public comment period shall also end at the end of this time period. The time period shall end as specified in §55.152 of this title (relating to Public Comment Period).

(e) Documents that are filed with the chief clerk that comment on an application but that do not request a hearing will be treated as public comment.

(f) Late filed hearing requests and public comment, extensions.

(1) A hearing request or public comment shall be processed under §55.254 of this title (relating to Hearing Request Processing) or under §55.253 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline for hearing requests and public comment. The chief clerk shall accept a hearing request or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.

(2) The commission may extend the time allowed for filing public comments or a hearing request.

#### **§55.254. Hearing Request Processing.**

(a) The requirements in this section and §55.255 of this title (relating to Commission Action on Hearing Request) apply only to hearing requests that are filed

within the time period specified in §55.251(d) of this title (relating to Requests for Contested Case Hearing, Public Comment).

(b) The executive director shall file a statement with the chief clerk indicating that technical review of the application is complete. The executive director will file the statement with the chief clerk either before or after public notice of the application is issued.

(c) After a hearing request is filed and the executive director has filed a statement that technical review of the application is complete, the chief clerk shall process the hearing request by both:

(1) referring the application and hearing request to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the person making the request for hearing; and

(2) scheduling the hearing request for a commission meeting. The chief clerk shall attempt to schedule the request for a commission meeting that will be held approximately 44 days after the later of the following:

(A) the deadline to request a hearing specified in the public notice of the application; or

(B) the date the executive director filed the statement that technical review is complete.

(d) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making a timely hearing request at least 35 days before the first meeting at which the commission considers the request. The chief clerk shall explain how the person may submit public comment to the executive director, describe alternative dispute resolution under commission rules, explain that the agency may hold a public meeting, and explain the requirements of this chapter.

(e) The executive director, the public interest counsel, and the applicant may submit written responses to the hearing request no later than 12 days after the chief clerk mails notice of the first meeting at which the commission will consider the hearing request, unless extended by the general counsel. Each party shall file its response with the chief clerk. On the same day, each party shall serve the applicant, the executive director, the public interest counsel, the External Relations Division, and any persons filing hearing requests its response or notice that its response is available electronically on the commission's website along with instructions for accessing the responses and requesting a mailed copy.

(f) The person who filed the hearing request may submit a written reply to a response no later than 26 days after the chief clerk mails notice of the first meeting at

which the commission will consider the hearing request, unless extended by the general counsel. A reply may also contain additional information responding to the letter by the chief clerk required by subsection (d) of this section. The requester shall file its reply with the chief clerk. On the same day, the requester shall serve to the executive director, the public interest counsel, and the applicant its reply or notice that its reply is available electronically on the commission's website.

(g) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to the State Office of Administrative Hearings (SOAH) for a hearing on the application. If a request is filed under this subsection, the commission's scheduled consideration of the hearing request will be canceled. An application may only be sent to SOAH under this subsection if the executive director, the applicant, the public interest counsel, and all timely hearing requesters agree on a list of issues and a maximum expected duration of the hearing.