

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** July 3, 2025

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

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

**Docket No.:** 2023-1506-RUL

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

### **Background and reason(s) for the rulemaking:**

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

### **Scope of the rulemaking:**

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

The agency received public input through a stakeholder process. Although many 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 proposed amendments to Chapter 39, along with the companion rulemaking proposing changes to Chapter 55, seek to address comments and improve the clarity and readability of the rules.

Re: Docket No. 2023-1506-RUL

**A.) Summary of what the rulemaking will do:**

Proposed amendments will extend the comment period and opportunity to request a contested case hearing for at least 36 hours following a public meeting for air quality permit applications with consolidated NORI and NAPD for applications received on or after March 1, 2026. The amendments also change notice requirements to specify that applications for air quality permits, waste permits, and wastewater permits are posted electronically by the agency; and update other notice requirements. The proposed rulemaking also seeks to clarify the rules to meet the general Sunset recommendation that the agency improve its public participation process for permit applications. The rulemaking will create a new section in 30 TAC Chapter 39, Subchapter K., Public Notice of Air Quality Permit Applications, to include the information about requesting a public meeting, a notice and comment hearing, and a contested case hearing for air quality permit applications for which these opportunities exist. The rulemaking will also increase the size of the required signs for air quality permit applications to 48 inches by 48 inches, with a minimum size of 3 inches for lettering, a size that is consistent with the size of other required signs in the Municipal Solid Waste program. A new Subchapter A will be added to Chapter 39 to define commonly used terms. New definitions are proposed to be added to Chapter 55, and language is proposed to clarify processes relating to comments, public meetings, and contested case hearings. The rulemaking extends the comment period for certain air quality permit renewal applications based on a facility's or applicant's compliance history, expressly clarifying that more time for public comment is allowed when applicants have a poor compliance history. The rulemaking will remove obsolete date references throughout Chapter 39 and correct minor grammatical issues to reflect current correct usage.

**B.) Scope required by state statutes:**

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

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

The proposed rulemaking seeks to clarify the rules relating to the agency's public participation process for permit applications. The rulemaking will create a new section in 30 TAC Chapter 39, Subchapter K, Public Notice of Air Quality Permit Applications, to include the information about requesting a public meeting, a notice and comment hearing, and a contested case hearing for air quality permit applications for which these opportunities exist. A new Subchapter A will be added to Chapter 39 to define commonly used terms. New definitions are proposed to be added to Chapter 55, and language is proposed to clarify processes relating to comments, public meetings, and contested case hearings. The rulemaking will also increase the size of the required signs for air quality permit applications to 48 inches by 48 inches, with a minimum size of 3 inches for lettering. The rulemaking extends the comment period for certain air quality permit renewal applications based on a facility's or applicant's compliance history, expressly clarifying that more time for public comment is allowed when applicants have a poor

Re: Docket No. 2023-1506-RUL

compliance history. The rulemaking will remove obsolete date references throughout Chapter 39 and correct minor grammatical issues to reflect current correct usage.

**Statutory authority:**

- Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules;
- Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation;
- Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency;
- Texas Water Code (TWC), §§ 5102, 5.103, 5.105, 5.112, 5.129, 5.136, 5.1734, 5.583, 5.584, 5.586, 5.587, 49.011;
- TWC, Chapter 5, Subchapter M;
- TWC, Chapter 26, Water Quality Control;
- TWC, Chapter 27, Injection Well Act;
- Texas Health and Safety Code (THSC), Solid Waste Disposal Act, Chapter 361;
- THSC, Texas Clean Air Act, §§382.011, 382.017, 382.0515, 382.056, and 382.058.

**Effect on the:**

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

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

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

**Stakeholder meetings:**

The agency engaged in an expanded stakeholder process for this rulemaking. A hybrid virtual/in-person stakeholder meeting was held in Austin on July 15, 2024, with in-person meeting rooms also open in TCEQ regional offices in Midland and Harlingen. Spanish language interpretation was available for this meeting. In-person meetings were held in

Re: Docket No. 2023-1506-RUL

Arlington on July 16, 2024, and in Houston on July 18, 2024. Because the July 18, 2024 meeting in Houston was shortly after the city experienced Hurricane Beryl, a second in-person meeting was held in Houston on October 3, 2024. Professional Spanish-language interpretation was available at both Houston meetings, and an agency interpreter was available for Spanish language assistance at the Arlington meeting. Stakeholder comments were accepted until October 8, 2024. The agency received input from stakeholders during this process, receiving many comments and suggestions for changes to improve the agency's public participation rules.

**Public Involvement Plan**

Yes.

**Alternative Language Requirements**

Yes. Spanish.

**Potential controversial concerns and legislative interest:**

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

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

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

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

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

**Key points in the adoption rulemaking schedule:**

**Anticipated proposal date: July 23, 2025**

**Anticipated *Texas Register* publication date: August 8, 2025**

**Anticipated public hearing date: September 8, 2025**

**Anticipated public comment period: August 8 – September 9, 2025**

**Anticipated adoption date: February 2026**

**Agency contacts:**

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**Attachments:**

TCEQ Sunset Bill, SB 1397, 88<sup>th</sup> Legislature, 2023

Commissioners

Page 5

July 3, 2025

Re: Docket No. 2023-1506-RUL

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