The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§39.1, 39.405, 39.409, 39.419, 39.422, 39.501, 39.503, 39.606, 39.804; and amendments to §§39.402, 39.403, 39.405, 39.407, 39.411, 39.412, 39.419, 39.420, 39.423, 39.425, 39.426, 39.501, 39.503, 39.509, 39.510, 39.551, 39.553, 39.601, 39.603, 39.604, 39.605, 39.651, 39.707, 39.803, 39.804, 39.807, 39.808, 39.809, 39.810, 39.902, 39.903, 39.1003, 39.1005, 39.1009, and 39.1011.

If adopted, proposed new §§39.1, 39.405, 39.409, 39.419, and 39.606, and amended §§39.402, 39.405, 39.407, 39.411, 39.412, 39.419, 39.420, 39.426, 39.601, 39.603, 39.604, and 39.605 and 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 Proposed Rules

TCEQ underwent Sunset review during the 88th Regular Legislative Session, 2023. The Sunset bill, SB 1397, continuing TCEQ, included provisions requiring changes to TCEQ's public participation rules, which are found primarily in Title 30 Texas Administrative Code (TAC) Chapters 39, Public Notice, and 55, Requests for Reconsideration and Contested Case Hearings; Public Comment.

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

Spanish-language interpretation was available for this meeting. In-person meetings were held in Arlington on July 16, 2024, and in Houston on July 18, 2024. Because the July 18, 2024, meeting in Houston was shortly after the city experienced Hurricane Beryl, a second in-person meeting was held in Houston on October 3, 2024. Professional Spanish-language interpretation was available at both Houston meetings, and an agency interpreter was available for Spanish language assistance at the Arlington meeting. Stakeholder comments were accepted until October 8, 2024. The agency received 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 the public comment period and opportunity to request a hearing for a 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 the public meeting held on the permit application. The Sunset bill also required TCEQ to post permit applications electronically on TCEQ's website and make these available to the public.

During the stakeholder process, a large number of comments requested that the

extension of the comment period and opportunity to request a contested case hearing following a public meeting 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 the public participation process. The proposed amendments to Chapter 39, along with the companion rulemaking proposing changes to Chapter 55, seek to improve and clarify the rules in addition to satisfying the requirements of the Sunset bill.

The proposed rulemaking will remove obsolete date references throughout Chapter 39 and correct minor grammatical issues to reflect current correct usage. A new Subchapter A for definitions will be added to define several commonly used terms. Updates to notice requirements are proposed that will require the addition of an email address to the information for an agency contact. The agency has already implemented the Sunset bill requirement to electronically post administratively and technically complete applications on its website. Information about the availability of this information and how to find it is proposed to be added to the text of required notices. Additionally, provisions are proposed to be re-structured for ease of reading comprehension in some places where the current rule is in paragraph form.

The proposed rules will also make clear that required sign posting must remain in place throughout the permit review process from the beginning until final action is taken on a permit application. This can be final action by the commission, voidance of

an application, or withdrawal of an application by the applicant. Also, documents required to be posted by applicants in a public place must remain in place throughout the permit review process from the beginning until a final action is taken on a permit application. These proposed changes make explicit in the rule language the agency's policy to make application information available throughout the comment period, and the changes are intended to reduce confusion on the part of both the public and the regulated industry. The commission is also proposing to add a new subsection in Subchapter H to detail how the commission will provide notice to the public when a comment period is extended.

The comment period and deadline to submit comments and request a contested case hearing will be extended for at least 36 hours following the close of a public meeting for air quality permits that have consolidated notice, as required by the Sunset bill, that are received on or after March 1, 2026. Because permit applications are being submitted and reviewed constantly, the new rule requirements need an implementation date by which the new rules will apply to permit applications. The commission is proposing that this date will be March 1, 2026, for this new requirement and July 1, 2026 for other proposed new requirements. The commission is specifically soliciting comment on the appropriateness of these dates as implementation dates for the proposed new requirements.

For air quality permit applications for a renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted, and the application does involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code (TWC), §5.753 and §5.754 and the commission's rules in 30 TAC Chapter 60, relating to Compliance History, the comment period is for 15 days following a single notice; and a request for a contested case hearing must be received during this period to be considered timely. However, the rules are silent as to the impact of a poor compliance history on the comment period. Therefore, the commission is proposing to specify that if an application for a renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the applicant's compliance history is in the lowest classification under TWC, §5.753 and §5.754 and the commission's rules in 30 TAC Chapter 60, then the comment period would be extended to 30 days or within 30 days of filing of the executive director’s RTC. This is implied by the current rule language that differentiates an applicant that does not have a compliance history that is in the lowest classification, but the proposed change is intended to reduce confusion among both the public and regulated industry stakeholders by making the difference explicit.

Currently, the information about how to request a contested case hearing for air quality applications is found only in Subchapter H, §39.411. This can be a source of confusion for all stakeholders seeking to understand the public participation processes for air quality permit applications. To make this information easier to access, the commission is proposing a new section in Subchapter K, Public Notice of Air Quality Permit Applications. The new section is proposed to have the information about requesting a public meeting, a notice and comment hearing, and a contested case hearing for those air quality permit applications for which these opportunities exist.

Comments were also received during the stakeholder process about the difficulties of reading posted signs for air quality permit applications. Agency experience is that often the posted signs are one of the first ways that the public becomes aware of a potential new plant being built. However, the signs can be difficult to read from the road. The commission is proposing to increase the size of these signs. The Municipal Solid Waste (MSW) program also has sign-posting requirements, with a larger required size than currently required for air quality permit applications. The proposed rules would increase the size of the required signs to 48 inches by 48 inches, with a minimum size of 3 inches for lettering, consistent with the current requirements in the MSW program. The commission is specifically soliciting comments on the proposed change, including the proposed size of the signs.

Section by Section Discussion

New Subchapter A. Definitions

The commission is proposing a new Subchapter A, Definitions, to provide clarity relating to commonly used terms in Chapter 39. Proposed new §39.1(1)-(8) defines administratively complete application, contested case hearing, notice and comment hearing, public comment, public meeting, response to comment, request for reconsideration, and technically complete application.

Subchapter H. Applicability and General Provisions.

The commission is proposing to delete §39.402(a)(10) as obsolete. The deadline of January 1, 2018 in this provision has passed, and the commission has no FutureGen applications to which this provision applies. The commission is specifically soliciting comment on the appropriateness of this deletion. The remaining §39.402(a)(11) and (12) are proposed to be re-numbered to (a)(10) and (11), and (b)(2) is proposed to be amended to update the reference to reflect the change in numbering. The commission is also proposing to delete obsolete language in §39.403(a).

The commission is proposing to amend §39.405(g)(1) and (2) to add clarifying language to make clear that an application must remain available for the entirety of the time an application is under review and to amend §39.405(g)(3) to replace “issues” with “the application” to be more accurate. New §39.405(l) adds new language for applications that are administratively complete on or after June 1, 2024, to require the executive

director to make the administratively complete and technically complete applications available on the commission's website until final action is taken on an application and there is no further opportunity for commission review. This requirement exempts materials that would be overly burdensome or too large for posting on the commission's website, as allowed by SB 1397. The date in this section of the rule is the date on which the commission began making applications electronically available, as required by SB 1397.

Proposed amendment to §39.407 improves clarity and requires that persons requesting to be on the mailing list provide a valid mailing address.

The commission proposes to restructure §39.409 as new language is proposed to be added. Proposed new §39.409(a) is the current existing language. Proposed new (b) clarifies when comments must be received to be considered timely. Proposed new (c) states that the executive director may extend a comment period for any reason; and new (d) states that when a comment period is extended, the requirements of §39.422, relating to Notice of Extension of Comment Period, will apply.

The proposed amendment to §39.411(b)(1) requires an email address for the agency contact. Proposed amendments to §39.411(b)(5) re-word and re-structure for improved readability. The proposed amendment to §39.411(b)(8) requires, for applications administratively complete on or after May 1, 2026, a statement that a copy of the

administratively complete application can be found online at the commission's website; and the location of the website must be included in the notice. Proposed amendments to §39.411(c)(2) re-word and re-structure for improved readability. The proposed amendment to §39.411(c)(5) requires, for applications administratively complete on or after May 1, 2026, a statement that a copy of the technically complete application can be found online at the commission's website; and the location of the website must be included in the notice. Amendments to §39.411(d)(3) are proposed to re-word and re-structure for improved readability.

An amendment to §39.411(e)(1) adds the requirement for an email address for an agency contact. An amendment to §39.411(e)(5) fixes a language issue that appears to be missing punctuation and words that makes the current language confusing. The proposed amendment to §39.411(e)(11)(A)(iv) replaces the date of January 1, 2017, with March 1, 2026. Proposed new §39.411(e)(11)(A)(v) provides for requirements for initial registrations for concrete batch plant standard permits received on or after March 1, 2026, including the requirement that if a public meeting is held, then the comment period and right to request a contested case hearing extends for at least 36 hours following the close of the public meeting. Existing §39.411(e)(11)(A)(v) is proposed to be renumbered to (vi) and is amended to apply existing requirements for timely hearing requests to applications received before March 1, 2026. For applications received after March 1, 2026, the new requirement for the opportunity to comment and request a hearing to be extended to at least 36 hours following a public meeting is

added, as these types of permit applications have a consolidated notice. Existing §39.411(e)(11)(A)(vi) is proposed to be renumbered to (vii) and amended to reflect the re-numbering. Current §39.411(e)(14) is proposed to be deleted, as TCEQ regional offices no longer keep hard copies of compliance files, and many offices do not have viewing capabilities for the public. Current §39.411(e)(15) and (16) are renumbered to (e)(14) and (15).

The proposed amendment to §39.411(f)(3) adds a requirement for the notice on applications that are declared administratively complete on or after May 1, 2026 to include a statement that the technically complete application and draft permit may be viewed online at the commission's website and the location of the website where these can be found. Proposed amendments to §39.411(f)(4) and (5) re-word and re-structure for improved readability. The proposed amendment to §39.411(g)(1) reflects the proposed re-numbering of the cited subsections. Proposed amendments to §39.411(g)(3) re-word and re-structure for improved readability.

The commission is proposing to amend §39.412(b)(2)(A) to reflect the proposed re-numbering of these sections. Proposed amendments to (b)(4) clarify that signs must remain in place until final action is taken on a permit application.

The commission is proposing to amend §39.419 to re-structure and re-word to clarify language related to air quality permit applications. NAPD applies to minor NSR air

quality permits, and the language as written could imply that only certain major sources are subject to NAPD. The proposed amendments move language to (a) concerning major air quality permit applications subject to Chapter 116, Subchapter B and add language to specify that the NAPD requirement applies to applications subject to Chapter 116, Subchapter E. The proposed amendment also moves language to specify that NAPD does not apply to air quality permit renewal applications that do not have a poor compliance history. The proposed amendment adds new (d) to specify that for air applications mailed notice requirements under §39.602 requirements apply. The proposed amendment also renumbers (d) to (e).

Proposed amendments to §39.420(c)(1)(C)(i)(III) replace the reference to §39.402(7) to be specific about the type of permit application that is being referenced. The existing citation is incorrect, and it is clearer to state that the reference is 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), whether for construction or reconstruction. Proposed new §39.420(c)(1)(C)(i)(IV) clarifies that no-increase renewal applications that have the lowest compliance history rating do receive information related to contesting the permit application.

Proposed new §39.422 will specify how the executive director will provide notice when a comment period is extended. Proposed new (a) states that the executive director can extend any comment period for good cause, mirroring §55.152(a)(8); (b) requires the

commission to post notice on its website when a comment period is extended for applications administratively complete on or after May 1, 2026; (c) requires the commission to provide electronic notice of an extension of a comment period to those persons who have subscribed to receive informal electronic notices through the permit notice by email system for applications that are administratively complete on or after May 1, 2026; and (d) requires that alternative language requirements in §39.426 apply when notice of an extension of a comment period is required.

An amendment is proposed to §39.426 (a)(1)(B) to remove an obsolete date requirement.

Subchapter I

A proposed amendment to §39.501(a) will remove obsolete date language.

Obsolete language related to applicability date is proposed to be removed from §39.503(a).

Obsolete language related to date of applicability is proposed to be removed from §39.509(a). A reference to an obsolete notice process and an extra word in existing language is proposed to be deleted from (b). A proposed amendment to (c) replaces a citation to a specific paragraph with a citation to the subsection that contains information regarding an applicant held meeting. A proposed amendment to

§39.510(a)(5)(A) adds the requirement for the email of the agency contact.

Subchapter J

A proposed amendment to §39.551(a) will remove obsolete language related to the applicability date. The proposed amendment to §39.553 (b)(3)(D) adds the requirement for an email for the agency contact.

Subchapter K

The removal of obsolete language regarding date of applicability in §39.601 is proposed.. Proposed amendments to (c) remove the obsolete date reference.

The proposed amendment to §39.604(a)(1) states that for permit applications administratively complete on or after May 1, 2026, the signs must be 48 inches by 48 inches in size with text at least 3 inches high. This change mirrors the requirements for the size of signs in §39.510(b)(1). The commission is specifically soliciting comment on this change and the proposed size of signs. The proposed amendment to §39.604(b) clarifies that signs must remain posted until final commission action on a permit application. An amendment to remove obsolete language from §39.605(1)(D) is proposed.

The commission is proposing new §39.606, Contested Case Hearings and Public Meetings, to specify the details on information related to contested case hearings and

public meetings on air quality permit applications. Proposed new (a)(1)-(7) lists the types of air quality permit applications for which a contested case hearing may be requested. Proposed new (b) lists the types of air quality permits for which a notice and comment hearing may be requested. Proposed new (c) lists the time periods by which a request for contested case hearing must be received to be considered timely for different types of air quality permits. Proposed (c)(1) states that for an application that is for a renewal of an air quality permit that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under TWC, §5.753 and §5.754 and the commission's rules in 30 TAC Chapter 60 of this title, relating to Compliance History, a request for a contested case hearing must be received by the end of the 15-day comment period following NORI. Proposed new (c)(2) states that for an application that is for a renewal of an air quality permit that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does involve a facility for which the applicant's compliance history is in the lowest classification under TWC, §5.753 and §5.754 and the commission's rules in 30 TAC Chapter 60, relating to Compliance History, a request for a contested case hearing must be received by end of the comment period or within 30 days of the mailing of the Response to Comments. Proposed (c)(3) lists the requirements for permit types that have a consolidated notice – applications for concrete batch plant standard permits and permit amendment

applications issued under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits), for which the executive director has declared the application administratively and technically complete and prepared a draft permit within 15 days of receipt of the application. Because these types of applications must receive an extension of the comment period and opportunity to request a contested case hearing if a public meeting is held of at least 36 hours following the end of the meeting, the requirements are clearly listed for the different scenarios. For permit applications received before March 1, 2026, the current requirements in §39.411(e) are repeated here, and a request for a contested case hearing must be received within 30 days following the publication of the combined notice for the opportunity to request a hearing to continue to exist. If a request is received within 30 days, then the right to request a hearing is present until 30 days following the mailing of the executive director's Response to Comments. For permit applications received on or after March 1, 2026, a request for a contested case hearing must be received within 30 days following the publication of the combined notice for the opportunity to request a hearing to continue to exist unless a public meeting is held on the application. If a public meeting is held, then the opportunity to comment and request a contested case hearing is extended for at least 36 hours following the end of the public meeting. Additionally, a request for a contested case hearing can be submitted for up to 30 days following the mailing of the executive director's Response to Comment, if an otherwise timely hearing request is received.

Proposed new §39.606(c)(4) and (5) allow for a request for a contested case hearing to be received by the end of the comment period or within 30 days after the executive director's Response to Comments is mailed for air quality applications and amendments subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B, or the requirements of Chapter 116, Subchapter E. These are major New Source Review permit applications and amendments. Proposed new §39.606(c)(6) applies to all other applicable air quality permit applications and requires that the request for a contested case hearing must be received by the end of the 30-day comment period following the final publication of the Notice of Receipt of Application and Intent to Obtain Permit. If no hearing request is received during this time, then there is no longer an opportunity to request a contested case hearing. If a request is received during the required time frame, then the right to request a hearing is extended to 30 days after the mailing of the executive director's Response to Comments.

Proposed new §39.606(d) lists the things that must be included in a request for a contested case hearing (CCH): (d)(1) requester's location; (d)(2) description of how the requester is impacted differently than the general public; and (d)(3) the form requirements of Chapter 55. Proposed new (e) specifies that only relevant and material issues raised during the comment period can be considered if a CCH is granted. Proposed new (f) specifies that for an application for a registration to use a concrete batch plant standard permit, only someone who resides within 440 yards of the

proposed plant is an affected person who is entitled to a contested case hearing. Proposed new (g) states that the executive director may hold a public meeting on permits listed in (a)(3), (4), and (6) if requested by a member of the legislature who represents the general area where the facility is to be located or if there is substantial public interest in the proposed activity; and proposed new (h) states that the executive director may hold a public meeting on permits listed in a(1), (2), and (5) if requested by a legislator or any interested person or if there is substantial public interest.

Subchapter L

The proposed amendment to §39.651(a) will delete obsolete language related to the applicability date.

Subchapter M

A minor grammar fix is proposed for §39.713(2).

Subchapter N

An amendment is proposed for §39.803(a) to provide clarity. The proposed amendment to §39.803(f) and proposed new §39.804(b)(10) add citations to §39.405(l), requiring that the application be posted on the commission's website. The proposed amendment to §39.804(a)(1) adds a requirement for an email for the agency contact. The proposed amendment to §39.804(b) replaces the word remediation with remedial for clarity. The proposed amendments to §39.807(b)(1) and (2) add language to clarify

that it is the post-closure order and preliminary decision that is being published and mailed. The proposed amendment to §39.809(b) removes extra words for clarity.

Subchapter O

Proposed amendments to §39.902 adds the requirement for an email address for the agency contact to (b)(12). The proposed amendment to add the requirement for an email address for the agency contact is added to §39.903(b)(9).

Subchapter P

The proposed amendment to add the requirement for an email address for the agency contact is added to §39.1003(b)(4) and §39.1005(b)(4). The commission proposes to amend 39.1009(a) to delete the requirement to include in the public notice the location and phone number of a regional office to be contacted for information about accessing a public copy of the application because the commission posts a copy of the application on the commission's website, the TCEQ public education program provides customer service to the public regarding pending applications, and the location of a public copy of the application is not readily available to the individual who answers the phone at a region office. Proposed amendment to §39.1011(b)(4) adds the requirement for an email address for the agency contact.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the

first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public will benefit from improved public participation opportunities that are consistent with requirements and recommendations resulting from the Sunset review of TCEQ during the 88th Legislative Session. Additionally, the public will benefit from the removal of obsolete information, clarifications, and other nonsubstantive changes. The proposed rulemaking is not anticipated to result in fiscal implications for individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first

five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The

proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis 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 proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Tex. Gov't Code Ann., §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed 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 proposed rulemaking 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 proposed rulemaking is to update and clarify the requirements for public participation in the permitting process for air quality, water quality, and waste permit applications. The proposed rulemaking would implement 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. The Sunset bill also required TCEQ to post permit applications electronically on its website and make these available for the public. Following extensive stakeholder outreach, the commission is proposing that the comment period and opportunity to request a contested case hearing will be extended for at least 36 hours following a public meeting for air quality permit applications that

have a consolidated notice. The proposed rulemaking will update and clarify language relating to public meetings, comment periods, and contested case hearings, update what language is required in the text of notices, and clarify other information related to public participation in the permitting process.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code (TGC), Chapter 2007, is applicable. The proposed amendments are procedural in nature and would not burden private real property. The proposed 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 proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action would not constitute a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor would the amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed amendments, new sections, and repealed sections would not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on Monday, September 8, 2025, at 2:00pm in building F room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration.

Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 1:30pm.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by September 4, 2025. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on September 5, 2025, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:
https://events.teams.microsoft.com/event/e8de5895-29fd-4bae-9e74-2e1714305675@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Corey Bowling, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-003-039-LS. The comment period closes on September 9, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Amy Browning, Environmental Law Division, (512) 239-0891.

SUBCHAPTER A: DEFINITIONS

§39.1

Statutory Authority

The new section is proposed 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 amendment is also proposed 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 amendment is also proposed 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 amendment is proposed 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 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.

§39.1. DEFINITIONS.

The following words and terms, when used in this chapter (relating to Public Notice) shall have the following meanings.

(1) Administratively complete application – an application that includes all necessary information for the agency to begin reviewing that application and for the initial notice of the application to be issued by the executive director.

(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) Notice and comment hearing – a meeting held to allow the public to submit formal oral comments on a permit application. A notice and comment hearing is not a contested case hearing.

(4) Public comment – Statements, questions, or other information submitted on a pending permit application for the consideration of the commission when reviewing that permit application.

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

(6) Response to comment – A written document prepared by the executive director that responds to timely submitted public comments.

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

(8) Technically complete application – an application that has been reviewed by the executive director, the executive director has made a preliminary decision that the application meets all statutory and regulatory requirements, and a draft permit is available for public review.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§§39.402, 39.403, 39.405, 39.407, 39.409, 39.411, 39.412, 39.419, 39.420, 39.422, 39.423, 39.425, 36.426

Statutory Authority

The amendments and new section are proposed 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 and new section are also proposed 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 and new section are also proposed 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 and new section are proposed 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 proposed rulemaking 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.

§39.402. Applicability to Air Quality Permits and Permit Amendments.

(a) As specified in those subchapters, Subchapters H and K of this chapter (relating to Applicability and General Provisions; and Public Notice of Air Quality Permit Applications, respectively) apply to applications for:

(1) new air quality permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits);

(2) a new major source or a major modification for facilities subject to the requirements of Chapter 116, Subchapter B, Division 5 or 6 of this title (relating to New Source Review Permits, Nonattainment Review Permits and Prevention of Significant Deterioration Permits);

(3) air quality permit amendments under Chapter 116, Subchapter B of this title when the amendment involves:

(A) a change in character of emissions or release of an air contaminant not previously authorized under the permit;

(B) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit

exceeds public notice de minimis levels by being greater than any of the following levels:

(i) 50 tpy of carbon monoxide (CO);

(ii) ten tpy of sulfur dioxide (SO_2);

(iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NO_x), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(C) a facility affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NO_x ;

(ii) 25 tpy of VOC, SO_2, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions); or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(D) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History); or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(4) new air quality flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits);

(5) air quality permit amendments to flexible permits under Chapter 116, Subchapter G of this title when the amendment involves:

(A) change in character of emissions or release of an air contaminant not previously authorized under the permit;

(B) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds public notice de minimis levels by being greater than any of the following levels:

(i) 50 tpy of carbon monoxide (CO);

(ii) ten tpy of sulfur dioxide (SO_2);

(iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NO_x), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(C) a facility affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NO_x ;

(ii) 25 tpy of VOC, SO_2, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title; or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(D) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title; or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(6) renewal of air quality permits under Chapter 116, Subchapter D of this title (relating to Permit Renewals);

(7) applications subject to the requirements of 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)), whether for construction or reconstruction;

(8) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116, Subchapter C of this title (relating to Plant-Wide Applicability Limits).

(9) applications for multiple plant permits (MPPs) under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits);

[(10)] [applications for permits, registrations, licenses, 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), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.]

(10) [11] concrete batch plants without enhanced controls authorized by an air quality standard permit 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; and

(11) [12] change of location or relocation of a portable facility, consistent with the requirements of §116.178 of this title (relating to Relocations and Changes of Location of Portable Facilities).

(b) Regardless of the applicability of subsection (a) of this section, Subchapters H and K of this chapter do not apply to the following applications where notice or opportunity for contested case hearings is not otherwise required by law:

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

(2) applications under Chapter 116, Subchapter F of this title, except applications for concrete batch plants authorized by standard permit as referenced in subsection (a)(10) [11] of this section; and

(3) registrations under Chapter 106 of this title (relating to Permits by Rule).

§39.403. Applicability.

(a) Permit applications that [are declared administratively complete on or after September 1, 1999] are subject to Subchapters H - J, L, and M of this chapter (relating

to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits).

(1) Explanation of applicability. Subsection (b) of this section lists all the types of applications to which Subchapters H - J, L, and M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsection (d) of this section specifies that only certain sections apply to applications for radioactive materials licenses. Subsection (e) of this section lists the types of applications for which public notice is not required.

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - J, L, and M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

(4) applications for production area authorizations or exempted aquifers under Chapter 331 of this title (relating to Underground Injection Control);

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (d) of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing); and

(8) Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.

(c) Regardless of the applicability of subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications

where notice or opportunity for contested case hearings is [are] otherwise not required by law:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Chapter 321, Subchapter B of this title;

(2) applications for registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(3) applications under Chapter 332 of this title (relating to Composting);

(4) applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title (relating to Amendments), except as provided by §39.551 of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge);

(5) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); or

(6) applications listed in Subchapter P of this chapter (relating to Other Notice Requirements).

(d) Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title (relating to General Notice Provisions); §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice) that are not listed in §39.705 of this title (relating to Mailed Notice for Radioactive Material Licenses).

(e) Public notice is not required for the following:

(1) applications for the correction or endorsement of permits under §50.145 of this title (relating to Corrections of Permits);

(2) permittees' voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(3) applications for special collection route permits under §330.7(c)(2) of this title (relating to Permit Required); or

(4) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee).

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the Office of the Chief Clerk (chief clerk) prepares a newspaper notice that is required by Subchapters G - J, L, and M of this chapter (relating to Public Notice for Applications for Consolidated Permits; Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. When Subchapters G - L of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and affidavit. When Subchapters G - J and L of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the

last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality;

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in any newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county; and

(3) air quality permit applications required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications, respectively) to publish notice shall comply with the requirements of §39.603 of this title (relating to Newspaper Notice).

(g) Copy of application. The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public file that there is additional information in a confidential file. The copy of the application must comply with the following.

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the entirety of the [publications' designated] comment period for the application.

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of the first newspaper publication required by this section and remain continuously available until the

commission has taken action on the application or the commission refers the application [issues] to State Office of Administrative Hearings; and

(3) where applicable, for air quality permit applications, the applicant shall also make available the executive director's draft permit, preliminary determination summary, and air quality analysis for review and copying beginning on the first day of newspaper publication required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) and remain available until the commission has taken action on the application or the commission refers the application [issues] to State Office of Administrative Hearings.

(h) Failure to publish notice of air quality permit applications. If the chief clerk prepares a newspaper notice that is required by Subchapters H and K of this chapter for air quality permit applications and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or, for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (i) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(i) Notice and affidavit for air quality permit applications. When Subchapters H and K of this chapter require an applicant for an air quality permit action to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (h) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(j) For applications filed on or after September 1, 2015, and subject to providing notice as prescribed by Texas Water Code, §5.115, the commission shall make available on the commission's website notice of administratively complete applications for a

permit or license authorized under the Texas Water Code and the Texas Health and Safety Code.

(k) Summary of application. For permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022, the applicant will provide a plain-language summary of the application, no more than two pages long, that will describe the following:

(1) the function of the proposed plant or facility;

(2) the expected output of the proposed plant or facility;

(3) the expected pollutants that may be emitted or discharged by the proposed plant or facility; and

(4) how the applicant will control those pollutants, so that the proposed plant will not have an adverse impact on human health or the environment.

(l) Electronic copy of application. For permit applications that are declared by the executive director to be administratively complete on or after June 1, 2024, the executive director shall:

(1) make an electronic copy of the administratively complete application available on the commission's website in accordance with Texas Water Code, §5.1734 within five business days of transmitting the notice of the administratively complete application to the applicant; materials may be exempted if posting the materials on the website would be unduly burdensome or the materials are too large to be posted on the website;

(2) make an electronic copy of the technically complete application and the executive director's draft permit available on the commission's website within five business days of transmitting the notice of the technically complete application and the executive director's draft permit to the applicant; materials may be exempted if posting the materials on the website would be unduly burdensome or the materials are too large to be posted on the website; and

(3) retain these postings until final action is taken on the application and there is no further opportunity to request commission or judicial review.

§39.407. Mailing Lists.

The chief clerk shall maintain mailing lists of persons requesting notice of an application. Persons [, including participants in past agency permit proceedings,] may request in writing to be on a mailing list and must provide a complete and valid United States Postal Service mailing address with their request. The chief clerk may from time

to time request confirmation that persons on a list wish to remain on the list [,] and may delete from the list the name of any person who fails to respond to such request.

§39.409. Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing.

(a) Notice given under this chapter will specify any applicable deadline to file public comment specified under §55.152 of this title (relating to Public Comment Period) and, if applicable, any deadlines to file requests for reconsideration, contested case hearing, or notice and comment hearing. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

(b) Comments are considered timely if filed between the date an application is received and the end of the comment period, including comments received between publications of the Notice of Receipt of Application and Intent to Obtain Permit and the Notice of Application and Preliminary Decision.

(c) The executive director may extend any comment period for good cause.

(d) When a comment period is extended, the requirements of §39.422 (relating to Notice of Extension of Comment Period) will apply.

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice [being] is given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or [for] Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number and email address of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location, type of permit applied for, and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) [a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for

public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;] A description printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice of procedures by which the public may participate in the final permit decision including, when applicable:

(A) how to request a public meeting, including a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(B) how to request a contested case hearing,

(C) how to request reconsideration of the executive director's decision,

(D) how to request a notice and comment hearing, or

(E) a statement that later notice will describe procedures for public participation, and

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying and for permit applications that are declared to be administratively complete by the executive director on or after May 1, 2026, a statement that a copy of the administratively complete application may be viewed online at the commission's website and the location of the website where the copy can be found;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font

style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) 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, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The 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;] printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, including:

(A) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted; and

(B) a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the

application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, [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 and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.] the following information must be included:

(A) a brief description of public comment procedures,

(B) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted;

(C) a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the name and address of the agency and the telephone number and email address of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(ii) all comments regarding applications subject to the requirements of 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)), whether for construction or reconstruction; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are

raised during the comment period can be considered if a contested case hearing is granted;

(5) printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, a brief description of procedures by which the public may participate in the final permit decision and, if applicable, [a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located if there is substantial public interest in the proposed activity when requested by any interested person for the following applications:]

[(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;]

[(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and]

[(C) applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction;]

(A) how to request a public meeting,

(B) how to request a contested case hearing,

(C) how to request reconsideration of the executive director's decision,

(D) how to request a notice and comment hearing, or

(E) a statement that later notice will describe procedures for public participation; and

(F) a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located, if there is substantial public interest in the proposed activity, or for the following types of applications, when requested by any interested person;

(i) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(ii) air quality permit applications subject to the requirements of 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)), whether for construction or reconstruction; and

(iii) air quality permit applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards or under state standards in Chapters 111 - 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(iv) for initial registrations for concrete batch plants 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) received [on or after January 1, 2017] before March 1, 2026, the following statements:

(I) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(II) if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing; and

(III) if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(v) for initial registrations for concrete batch plants 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) received on or after March 1, 2026, the following statements:

(I) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(II) if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing unless a public meeting is held on the application;

(III) if a public meeting is held on the application, the end of the comment period and opportunity to request a contested case hearing will be extended for at least 36 hours following the end of the public meeting; and

(IV) if any hearing requests are received before the close of the 30-day comment period or the extended comment period following a public meeting, the opportunity to file a request for a contested case hearing is

extended to 30 days after the mailing of the executive director's response to comments;

(vi) [(v)] for new air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits), for which the executive director has declared the application administratively and technically complete and prepared a draft permit within 15 days of receipt of the application, the following information:

(I) the date the application was received and the date the draft permit was completed; and

(II) for applications submitted before March 1, 2026, a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(d) of this title. If no hearing requests are received by the end of the 30-day comment period, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a

contested case hearing is extended to 30 days after the mailing of the executive director's response to comments; or

(III) for applications declared administratively complete by the executive director on or after March 1, 2026, a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(d) of this title. If no hearing requests are received by the end of the 30-day comment period, there is no further opportunity to request a contested case hearing, unless a public meeting is held on the application. If a public meeting is held, then the opportunity to request a contested case hearing is extended for at least 36 hours following the close of the public meeting. If any hearing requests are received before the close of the 30-day comment period or the close of a comment period extended following a public meeting, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(vii) [(vi)] for all air quality permit applications other than those in clauses (i) - (vi) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt

of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

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

(D) a statement that a contested case hearing request should include a description of how the requester [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 [requestor's] uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) if notice is for air quality permit applications described in subparagraph (A)(vi) of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title is an affected person who is entitled to request a contested case hearing;

[(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;"]

(14) [(15)] if notice is for an application for an air quality permit 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), a statement that any interested person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(15) [(16)] any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision, or the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, as provided for in §39.603(c) or (d) of this title, to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county with internet access in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying and, for applications administratively complete on or after May 1, 2026, a statement that the technically complete application and draft permit may be viewed online at the commission’s website and the location of the website where these can be found;

(4) a brief description of public comment procedures, [including a description of the manner in which comments regarding the executive director's draft permit and, where applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The 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;]

(A) a description of the manner in which comments regarding the executive director's draft permit and, as applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted; or

(B) a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted; and

(C) the 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;

(5) the deadline to file comments or request a public meeting, including: [The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity. The notice must include a statement that the comment period

will be for at least 30 days following publication of the Notice of Application and Preliminary Decision;]

(A) a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(B) a statement that the comment period will be for at least 30 days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's website;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications for permits under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits and Prevention of Significant Deterioration Review):

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (15) [(16)] of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including [a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, and, as applicable, preliminary determination summary, and air quality analysis may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.]

(A) a description of the manner in which comments regarding the executive director's draft permit and preliminary decision and, as applicable, preliminary determination summary and air quality analysis may be submitted and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9), and (15) [(16)] of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§39.412. Combined Notice for Certain Greenhouse Gases Permit Applications.

(a) This section applies to a permit application transferred from the United States Environmental Protection Agency (EPA) or filed with the commission for initial issuance of a Prevention of Significant Deterioration (PSD) permit to authorize only emissions of Greenhouses Gases, as defined in §101.1 of this title (relating to Definitions) which, prior to receipt of the application with the commission, was filed with EPA and for which notice of draft permit was published as required by EPA.

(b) In lieu of compliance with all other applicable requirements of this chapter regarding PSD permit applications, an applicant may fulfill the requirements of this chapter by:

(1) Complying with the requirements of §39.405(f)(3), (h), (i), and (k) of this title (relating to General Notice Provisions) and §39.426(a), (b)(1), (3), and (5) - (8) of this title (relating to Alternative Notice Requirements);

(2) Publishing Notice of Receipt of Application and Intent to Obtain Permit combined with Notice of Application and Preliminary Decision (Combined Notice) as follows:

(A) The published Combined Notice must comply with §39.411(e)(1) - (3), (4)(A)(i), (5)(A), (6) - (9), and (15) [(16)] of this title (relating to Text of Public Notice);

(B) The published Combined Notice must include the following information:

(i) a list of the individual Greenhouse Gases proposed to be emitted;

(ii) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit, and a statement that the executive director's draft permit and preliminary decision,

preliminary determination summary, and air quality analysis, if applicable, are available electronically on the commission's website;

(iii) the location, at a public place with internet access in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(iv) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable, may be submitted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the Combined Notice;

(v) a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located, there is substantial public interest in the proposed activity or at the request of any interested person;

(vi) a statement that the comment period will be for at least 30 days following the last publication of the Combined Notice together with the deadline to file comments or request a public meeting;

(vii) a statement that any comments submitted to EPA regarding the application will not be included in the executive director's response to comments unless the comments are timely submitted to the commission; and

(viii) a statement if the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the Office of the Chief Clerk (chief clerk) will make the executive director's response to public comments available on the commission's website; and

(C) The Combined Notice must meet the requirements of §39.603(c) and (d) of this title (relating to Newspaper Notice) and is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the notice to the applicant;

(3) Making a copy of the application and certain other documents, as applicable, available for review and copying according to the following requirements:

(A) A copy of the application must be available at a public place with internet access in the county in which the facility is located or proposed to be located;

(B) The copy of the application must be updated as changes are made, if any, to the application; and the entire application must be available for review and copying;

(C) A copy of the executive director's preliminary decision, draft permit, preliminary determination summary and air quality analysis, if applicable, must be made available on the first day of newspaper publication of the Combined Notice required by this section and must remain available until the commission has taken action on the application; and

(D) If the application is submitted with confidential information indicate in the public file that there is additional information in a confidential file marked as confidential by the applicant;

(4) Complying with the requirements of §39.604(a) and (c) - (e) of this title (relating to Sign-Posting), except that the sign or signs must be in place on the first day of publication of the Combined Notice. The signs must remain in place and legible throughout the public comment period until final action is taken on the permit

application. The applicant shall provide verification that the sign posting was conducted according to §39.604 of this title; and

(5) Complying with §39.605 of this title (relating to Notice to Affected Agencies).

(c) The chief clerk shall be responsible for the following additional requirements.

(1) Mailing the Combined Notice as required by §39.602 of this title (relating to Mailed Notice).

(2) Transmitting the executive director's response to comments as provided for in §39.420(c)(1)(A) and (B), (2), and (d) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision).

(d) The public comment period shall automatically be extended to the close of any public meeting or notice and comment hearing.

(e) After the deadline for submitting public comment, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the Office of the Chief Clerk (chief clerk) [except for air applications under subsection (e) of this section]. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. For applications filed on or after September 1, 2015, this mailing will occur no earlier than 30 days after written notification of the draft permit is provided by the executive director to the state senator and state representative of the area in which the facility which is the subject of the application is or will be located. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(1) Additionally, for the specific types of air quality applications listed in clauses (i) and (ii) of this subparagraph, the executive director shall file the executive director's draft permit and preliminary decision, the preliminary determination summary, and air quality analysis, as applicable, with the chief clerk; and the chief clerk shall post these on the commission's website. Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications) and, as applicable, under §39.426 of this title. This applies to the following:

(A) air applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits); and

(B) air applications subject to Chapter 116, Subchapter E (Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(2) This section does not apply to any renewal application of an air quality permit that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History).

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.426 of this title (relating to Alternative Language Requirements), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) For air quality applications, the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice).

(e) [d] The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

[(e) For air applications the following apply.]

[(1) After technical review is complete for applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the executive director shall file the executive director's draft permit and preliminary decision, the preliminary determination summary and air quality analysis, as applicable, with the chief clerk and the chief clerk shall post these on the commission's website. Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications) and, as applicable, under §39.426 of this title, unless the application is for any renewal application of an air quality permit that would not result in an increase

in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History).]

[(2) If notice under this section is required, the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice).]

[(3) If the applicant is seeking authorization by 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), any application submitted on or before January 1, 2018, shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).]

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

(a) Except for air quality permit applications, when required by and subject to §55.156 of this title (relating to Public Comment Processing), after the close of the comment period, the chief clerk shall transmit to the people listed in subsection (b) of this section the following information:

(1) the executive director's decision;

(2) the executive director's response to public comments;

(3) instructions for requesting that the commission reconsider the executive director's decision; and

(4) instructions for requesting a contested case hearing.

(b) The following persons shall be sent the information listed in subsection (a) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) the director of the External Relations Division.

(c) When required by and subject to §55.156 of this title, for air quality permit applications, after the close of the comment period, the chief clerk shall:

(1) transmit to the people listed in subsection (d) of this section the following information:

(A) the executive director's decision;

(B) the executive director's response to public comments;

(C) instructions for requesting that the commission reconsider the executive director's decision; and

(D) instructions, which include the statements in clause (ii) of this subparagraph, for requesting a contested case hearing for applications:

(i) for the following types of applications:

(I) permit applications which are subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits) as described in §39.402(a)(2) of this title (relating to Applicability to Air Quality Permits and Permit Amendments);

(II) permit and permit amendment applications which are not subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, and for which hearing requests were received by the end of the 30-day comment period following the final publication of Notice of Receipt of Application and Intent to Obtain Permit, and these requests were not withdrawn as described in:

(-a-) §39.402(a)(1), (3), (11) and (12) of this title; and

(-b-) §39.402(a)(4) and (5) of this title;

(III) applications [described in §39.402(7) of this title; and] subject to the requirements of 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)), whether for construction or reconstruction; and

(IV) applications for any renewal 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 and the application involves a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History);

(ii) the following statements must be included:

(I) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;

(II) that a contested case hearing request must include the requester's [requestor's] location relative to the proposed facility or activity;

(III) that a contested case hearing request should include a description of how and why the requester [requestor's] 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 [requestor's] uses of property which may be impacted by the proposed facility or activity;

(IV) that only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted; and

(V) that 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; and

(2) for applications subject to the requirements [of requirements] for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, make available by electronic means on the commission's website the executive director's draft permit and preliminary decision, the executive director's response to public comments, and, as applicable, preliminary determination summary and air quality analysis.

(d) The following persons shall be sent the information listed in subsection (c) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) the director of the External Relations Division.

(e) For air quality permit applications which meet the following conditions, items listed in subsection (c)(1)(C) and (D) of this section are not required to be included in the transmittals:

(1) applications for which no timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain a Permit;

(2) applications for which one or more timely hearing requests are submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and for which this is the only opportunity to request a hearing, and all of the requests are withdrawn before the date the preliminary decision is issued;

(3) the application is for any renewal 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 unless the application involves a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History); or

(4) applications for a Prevention of Significant Deterioration permit that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions).

(f) For applications for which all timely comments and requests have been withdrawn before the filing of the executive director's response to comments, the chief clerk shall transmit only the items listed in subsection (a)(1) and (2) of this section and the executive director may act on the application under §50.133 of this title (relating to Executive Director Action on Application or WQMP Update).

(g) For post-closure order applications under Subchapter N of this chapter (relating to Public Notice of Post-Closure Orders), the chief clerk shall transmit only items listed in subsection (a)(1) and (2) of this section to the people listed in subsection (b)(1) - (3), (5), and (6) of this section.

(h) For applications for air quality permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk will not transmit the item listed in subsection (a)(4) of this section.

§39.422. Notice of Extension of Comment Period.

(a) The executive director may extend any comment period for good cause.

(b) Notice of comment period extensions will be posted on the commission's website when a comment period is extended for an application that has been declared administratively complete on or after May 1, 2026.

(c) For an application that has been declared administratively complete on or after May 1, 2026, when a comment period is extended, the commission will provide electronic notice of comment period extensions to persons who subscribed to receive informal electronic notices through the permit notice by email system.

(d) When notice of a comment period extension is required, §39.426 of this title

(relating to Alternative Language Requirements) applies.

§39.423. Notice of Contested Case Hearing.

(a) The Office of the Chief Clerk (chief clerk) shall mail notice of a contested case hearing to the applicant, executive director, and public interest counsel. The chief clerk shall also mail notice to persons who filed public comment, or requests for reconsideration or contested case hearing. The notice shall be mailed to the parties no less than 13 days before the hearing. The chief clerk may combine the mailed notice required by this section with other mailed notice of hearing required by this chapter. If the commission refers an application to the State Office of Administrative Hearings on the sole question of whether the requester [requestor's] is an affected person, the notice in this subsection shall be the only notice required. The requirements of §39.426 of this title (relating to Alternative Language Requirements) shall be met, as applicable.

(b) For specific types of applications, additional requirements for notice of hearing are in Subchapters H - M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses).

(c) After an initial preliminary hearing, the judge shall give reasonable notice of subsequent prehearing conferences or the evidentiary hearing by making a statement on the record in a prehearing conference or by written notice to the parties.

§39.425. Notice of Contested Enforcement Case Hearing.

For any contested enforcement case hearing, the chief clerk shall mail notice to the statutory parties, respondents, and persons who have requested to be on a mailing list for the pleadings in the formal enforcement action no less than 13 days before a hearing in accordance with the Administrative Procedures Act [APA], §2001.052. In addition, public notice and opportunity for comment before the commission regarding a proposed enforcement action shall be given under Chapter 10 of this title (relating to Commission Meetings).

§39.426. Alternative Language Requirements.

(a) Applicability.

(1) The following are subject to this section:

(A) air quality permit applications; and

(B) permit applications other than air quality permit applications that are required to comply with §39.418 or §39.419 of this title (relating to Notice of

Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) [that are filed on or after November 30, 2005.].

(2) This section applies whenever notice is required to be published under §39.418 or §39.419 of this title, and either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) the school that otherwise would be required to provide a bilingual education program has been granted an exception from the requirements to provide the program as provided for in 19 TAC §89.1207(a) (relating to Bilingual Education Exceptions and English as a Second Language Waivers).

(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this section.

(4) This section also applies when the executive director determines that alternative language notice is necessary to provide proper notice and meaningful access to affected communities.

(b) Alternative language newspaper notice.

(1) The notice required by §39.418 or §39.419 of this title must be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.

(2) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title (relating to Newspaper Notice).

(3) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.

(A) One notice must be published in the public notice section of the newspaper and must comply with the applicable portions of §39.411 of this title (relating to Text of Public Notice).

(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(i) permit application number;

(ii) company name;

(iii) type of facility;

(iv) description of the location of the facility; and

(v) a note that additional information is in the public notice section of the same issue.

(4) Waste and water quality alternative language must be published in the public notice section of the alternative language newspaper and must comply with §39.411 of this title.

(5) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(A) For permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022, if this notice is waived, the applicant will provide the alternative language notice required in paragraph (3)(A) of this subsection to the Office of the Chief Clerk (chief clerk), and this notice will be posted electronically on the commission's website;

(B) The published English language notice will include instructions in the alternative language explaining how to access the electronic version of the alternative language notice.

(6) Notice under this subsection will only be required to be published within the United States.

(7) Each alternative language publication must follow the requirements of this chapter that are consistent with this section.

(8) If a waiver is received under this section on an air quality permit application, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies). If a waiver is received under this section on a waste or water quality application, the applicant shall complete a verification and submit it to the chief clerk and the executive director.

(c) Alternative language requirement for applicant's summary of application. For permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022, when an application is subject to the requirements of this section, the applicant shall also provide an alternative language version of the summary of application that is required by §39.405(k) of this title (relating to General Notice Provisions). This summary shall be posted on the commission's website.

(d) Alternative language requirements for public meetings:

(1) When a public meeting is held under §55.154 of this title (relating to Public Meetings), the chief clerk shall mail notice of that public meeting in the alternative language, if alternative language notice is required to be published by subsection (b) of this section.

(A) 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.

(B) For air quality permit applications, this notice shall be mailed by the chief clerk's office at least 30 calendar days prior to the date of the public meeting.

(C) The alternative language notice of the public meeting will be published on the commission's website.

(2) The applicant shall provide for competent interpretative services in the same alternative language at the public meeting. Interpretation services must be provided if:

(A) the chief clerk has received comments in the alternative language at least two weeks before the public meeting is scheduled; or

(B) there is substantial or significant public interest that would be served by having translation services available.

(3) This subsection will apply to permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022.

(e) Alternative language requirements for response to comments.

(1) The executive director is required to evaluate the need to provide a written response to comments in accordance with §55.156(b)(1) of this title (relating to Public Comment Processing) in an alternative language when formal written or oral comments are received on the permit application in the alternative language; the executive director will consider the following factors when making this determination:

(A) if the comments received on the application were substantive;

(B) how many comments in an alternative language were received on the proposed application;

(C) if the language in which the comments were received is commonly spoken in the community in which the proposed application would be located;

(D) if a notice was required by this section to be published in that language; and

(E) if an alternative language response is necessary to ensure that the commenter can fully participate in the processes of the commission related to the permit application.

(2) The executive director may also provide the response to comments in the alternative language when there is significant public interest that would be served by the response to comments in the alternative language.

(3) When a translated response to comments is provided, the transmittal letter mailed out by the chief clerk in accordance with §55.156(c) of this title shall:

(A) also be provided in the alternative language; and

(B) the instructions for further public participation that are required by §55.156(d) and (e) of this title shall also be provided in the alternative language.

(4) When a translated response to comments is necessary, the executive director may use any resources available to translate the response; the translated response to comments may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation.

(5) When the executive director determines that it is not necessary to translate a response to comments even though comments have been received in an alternative language, the transmittal letter will include information in both English and the alternative language about how to use available translation tools to translate the response into an alternative language.

(6) This subsection will apply to permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022.

(f) Alternative language requirements for response to requests for reconsideration or hearing requests. This subsection applies whenever requests for reconsideration or hearing requests are received in accordance with §55.201 of this

title (relating to Requests for Reconsideration or Contested Case Hearing) in an alternative language.

(1) the notice transmitted by the chief clerk in accordance with §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) concerning commission action on hearing requests shall be provided in the alternative language;

(2) any written responses to the requests for reconsideration or hearing requests submitted by the executive director, the Office of Public Interest Counsel, and the applicant shall be provided in the alternative language;

(3) when a translated response to requests for reconsideration or hearing is required, the executive director, the Office of Public Interest Counsel, and the applicant may use any resources available to translate the response; the translated response may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation;

(4) written commission orders on hearing requests subject to this subsection shall also be provided in the alternative language;

(5) when hearing requests that require alternative language documents are heard by the commissioners at agenda, the commission shall provide oral interpretation of the agenda consideration in the alternative language;

(6) notice required in accordance with §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), shall also be provided in the alternative language when this subsection applies;

(7) notice required in accordance with §39.423 of this title (relating to Notice of Contested Case Hearing), shall also be provided in the alternative language; and

(8) this subsection will apply to permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022.

(g) Remedy for Alternative Language Translation Errors.

(1) For notices, only substantive errors in translation require that notice be re-published or re-mailed. Substantive errors include, but are not limited to, errors in deadlines, meeting locations, log-in information for virtual meetings, time of meetings, information relating to means to obtain further information about the subject of the notice, and information about the permit applicant.

(2) Absent a demonstration of willful misconduct in connection with the translation, a minor translation error shall not be grounds for preventing, vacating, delaying, or otherwise impairing the effectiveness of an action by the executive director or the commission.

(3) In the event of an alleged translation error, the original English version of a document shall be deemed conclusive.

(4) A complainant's remedy shall be to receive a revised translation within a reasonable period of time.

(5) This subsection will apply to permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022.

SUBCHAPTER I: PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§§39.501, 39.503, 39.509, 39.510

Statutory Authority

The amendments are proposed 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; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed 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; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. In addition, the amendments are proposed under Texas Government Code (TGC), §2001.004, which requires state agencies to adopt procedural rules; and TGC, §2001.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102,

5.103, 5.122, and 27.019; and THSC, §361.024.

§39.501. Application for Municipal Solid Waste Permit.

(a) Applicability. This section applies to applications for municipal solid waste permits [that are declared administratively complete on or after September 1, 1999].

(b) Preapplication local review committee process. If an applicant for a municipal solid waste permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing must be by certified mail.

(c) Notice of Receipt of Application and Intent to Obtain a Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located. This notice must contain the text as required by §39.411(b)(1) - (11) of this title (relating to Text of Public Notice);

(B) the chief clerk shall publish Notice of Receipt of Application and Intent to Obtain Permit in the Texas Register; and

(C) the executive director or chief clerk shall mail the Notice of Receipt of Application and Intent to Obtain Permit, along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). The notice must be published after the chief clerk has mailed the Notice of Application and Preliminary Decision to the applicant. The notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(e) Notice of public meeting.

(1) For an application for a new facility, the agency:

(A) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) if the executive director determines that there is substantial public interest in the proposed facility.

(2) The applicant may hold a public meeting in the county in which the facility is proposed to be located.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) of this subsection if public notice is provided under this subsection.

(5) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (2) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(6) For public meetings held by the agency under paragraph (1) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(f) Notice of hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(f)(2) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend a permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Notice under paragraphs (2) and (3)(B) of this subsection must be completed at least 30 days before the hearing.

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits [that are declared administratively complete on or after September 1, 1999].

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth in 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), and apply to all

hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendments), correction under §50.145 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the Office of the Chief Clerk (chief clerk) shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed

Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417). The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.145 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by

§281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of §39.419 of this title and §39.426 of this title (relating to Alternative Language Requirements), the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that

broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice must comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) For an application for a new hazardous waste facility, the agency:

(A) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning this application:

(i) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) if the executive director determines that there is substantial public interest in the proposed facility.

(2) For an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, the agency:

(A) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is located; or

(ii) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowner's or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) For an application for a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(5) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) or (2) of this subsection if public notice is provided under this subsection.

(6) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) or §39.410(e) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(7) For public meetings held by the agency under paragraph (1) or (2) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) or have a total size of at least nine column inches (18 square inches). The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as

owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in §39.413(1) of this title. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the hearing.

(g) Injection wells. This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), apply to all applications for hazardous waste permits.

§39.509. Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit.

(a) Applicability. This section applies to applications for Class 3 modification of industrial or hazardous waste permits [that are declared administratively complete on or after September 1, 1999].

(b) Notice shall be given under §39.418 of [the] this title (relating to Notice of Receipt of Application and Intent to Obtain Permit)[instead of giving notice under §305.69(d)(2) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee)]. Notice shall also be given under §39.419 of the title (relating to Notice of Application and Preliminary Decision).

(c) Notice of the [public] meeting required by §305.69(d) [§305.69(d)(4)] shall be included with the Notice of Receipt of Application and Intent to Obtain Permit under §39.418.

§39.510. Notice Requirements for Inactive Municipal Solid Waste Permit.

(a) This section applies to the owners or operators of inactive permitted municipal solid waste (MSW) facilities, which are those facilities that have not accepted waste within two years of permit issuance or have ceased accepting waste for at least two consecutive years. For the purposes of this section, permit issuance means the date that a permit is issued by the commission or the date of a final, non-appealable decision regarding the permit. This section applies to facilities permitted before, on, or after the effective date of this rule.

(1) Within two years of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owner or operator of an inactive MSW facility shall notify the executive director, in writing, that the facility is inactive and that the owner or operator intends to operate the facility in the future. In the event that the owner or operator does not intend to operate the facility, the owner or operator should begin voluntary permit revocation procedures.

(2) Within two years of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owner or operator of an inactive permitted MSW facility shall publish notice of intent to operate the facility, at least once, in a newspaper of the largest circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, then the owner or operator shall publish notice in a

newspaper of general circulation in the county in which the facility is located or proposed to be located, and such notice may be satisfied by a one-time publication if the publishing newspaper meets the circulation requirements. Thereafter, notice must be published annually in accordance with this paragraph, until the facility begins accepting waste or voluntary permit revocation is requested.

(3) Within two years of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owner or operator of an inactive permitted MSW facility shall provide, by certified mail, the notice of intent to operate the facility to:

(A) landowners within 500 feet of the facility property line, as determined by county tax rolls or other reliable sources;

(B) the mayor and health authorities of the city or town in which territorial limits or extraterritorial jurisdiction the facility is located or proposed to be located;

(C) the county judge and health authorities of the county in which the facility is located or proposed to be located; and

(D) the council of governments that serves or covers the area or county in which the facility is located or proposed to be located. Thereafter, notice must be sent annually in accordance with this paragraph, until the facility begins accepting waste.

(4) The owner or operator shall file an affidavit with the executive director certifying facts that constitute compliance with the notice requirements of paragraphs (2) and (3) of this subsection within 30 days of the last publication of the published notice required by paragraph (2) of this subsection. The owner or operator shall also file a copy of the published notice required by paragraph (2) of this subsection with the executive director that shows the date of publication and the name of the newspaper within ten business days after its publication. The deadline to file a copy of the published notice that shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with the public notice requirements of paragraphs (2) and (3) of this subsection creates a rebuttable presumption of compliance with the requirement to publish notice.

(5) The text of the newspaper notice and the mailed notice must include:

(A) the name and address of the agency and the telephone number and email address of an agency contact from whom interested persons may obtain further information;

(B) the name, address, and telephone number of the owner or operator and a contact person from whom interested persons may obtain further information and, if different, the location of the facility or activity to be regulated by the permit;

(C) a brief description of the activity authorized by the permit;

(D) the permit number and permit issuance date; and

(E) a statement indicating that the permitted facility may begin construction or operation at a future time, and an estimated date of when the facility is expected to begin construction and operation.

(b) Within six months of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owners or operators of permitted MSW facilities that are not receiving waste shall provide signs specifying the facility's status. At the owner's or operator's expense, a sign or signs must be placed at the site of the permitted facility declaring that the permit has been

issued and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements. Signs must:

(1) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(2) be headed by the words "AUTHORIZED MUNICIPAL SOLID WASTE DISPOSAL FACILITY";

(3) include the words "PERMIT NO.", the number of the permit, and the type of permit;

(4) include the words "for further information contact";

(5) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate commission regional office;

(6) include the name of the owner or operator, and the address of the appropriate responsible official;

(7) include the telephone number of the owner or operator;

(8) include the expected start-up date for beginning operation; and

(9) remain in place and legible until the facility is opened. The owner or operator shall provide a verification to the executive director that the sign posting was conducted according to the requirements of this section.

(c) Each sign placed at the site must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the permitted facility.

(d) The executive director may approve variances from the requirements of subsections (b) and (c) of this section if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. Approval from the executive director under this

subsection must be received before posting alternative signs for purposes of satisfying the requirements of this section.

SUBCHAPTER J: PUBLIC NOTICE OF WATER QUALITY APPLICATIONS AND WATER QUALITY MANAGEMENT PLANS

§39.551, §39.553

Statutory Authority

The amendments are proposed 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 amendment is 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 proposed 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 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.

§39.551. Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

(a) Applicability. This section applies to applications for wastewater discharge permits, including disposal of sewage sludge or water treatment sludge applications [that are declared administratively complete on or after September 1, 1999]. This subchapter does not apply to registrations and notifications for sludge disposal under §312.13 of this title (relating to Actions and Notice).

(b) Notice of receipt of application and intent to obtain permit.

(1) Notice under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director deems an application administratively complete. This

notice must contain the text as required by §39.411(b)(1) - (9) and (11) of this title (relating to Text of Public Notice). In addition to the requirements of §39.418 of this title, the chief clerk shall mail notice to the School Land Board if the application will affect lands dedicated to the permanent school fund. The notice shall be in the form required by Texas Water Code, §5.115(c).

(2) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit;

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendments); or

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system (MS4).

(3) For permits listed in paragraph (2)(C) of this subsection, the executive director will require the applicant to post a copy of the notice of receipt of application and intent to obtain a permit. The notice must be posted within 30 days of the application being declared administratively complete and remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(c) Notice of application and preliminary decision. Notice under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) of this title. In addition to §39.419 of this title, for all applications except applications to renew permits, the following provisions apply.

(1) The applicant shall publish notice of application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(A) For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.413 of this title, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(B) If the notice of the receipt of application and intent to obtain a permit was mailed more than two years prior to the time that notice of application and preliminary decision is scheduled by the executive director to be mailed, the applicant must submit an updated landowner map, landowner list, and any associated information for mailing the notice of application and preliminary decision. Notwithstanding this requirement, the Executive Director may require an updated landowner map, landowner list, and any associated information for mailing the notice of the application and preliminary decision if circumstances in the area have significantly changed that warrant updated lists.

(3) The notice must set a deadline to file public comment with the chief clerk that is not less than 30 days after newspaper publication. However, the notice

may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment.

(4) For TPDES permits, the text of the notice shall include:

(A) everything that is required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(5) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit;

(B) an application for a new TPDES permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title; or

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system.

(6) For permits listed in paragraph (5)(C) of this subsection, the executive director will require the applicant to post a copy of the notice of application and preliminary decision. The notice must be posted on or before the first day of published newspaper notice and must remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(d) Notice of application and preliminary decision for certain TPDES permits. For a new TPDES permit for which the discharge is authorized by an existing state permit issued before September 14, 1998, the following shall apply:

(1) If the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the following mailed and published notice is required.

(A) The applicant shall publish notice of the application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(B) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing to those listed in §39.413 of this title.

(C) The notice must set a deadline to file public comment, or to request a public meeting, with the chief clerk that is at least 30 days after newspaper publication.

(D) The text of the notice shall include:

(i) everything that is required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) of this title;

(ii) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(iii) for applications concerning the disposal of sludge:

(I) the use and disposal practices;

(II) the location of the sludge treatment works treating domestic sewage sludge; and

(III) the use and disposal sites known at the time of permit application.

(2) If the application proposes any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the applicant must follow the notice requirements of subsection (b) of this section.

(e) Notice for other types of applications. Except as required by subsections (a), (b), and (c) of this section, the following notice is required for certain applications.

(1) For an application for a minor amendment to a permit other than a TPDES permit, or for an application for a minor modification of a TPDES permit, under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice, that the executive director has determined the application is technically complete and has prepared a draft permit, to the mayor and health authorities for the city or town, and to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment, which shall be no earlier than ten days after mailing notice.

(2) For an application for a renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, for which the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal, no notice is required.

(3) For an application for a minor amendment to a TPDES permit under Chapter 305, Subchapter D of this title, the following requirements apply.

(A) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments and to request a public meeting to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutants are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists); and

(vii) any other person the executive director or chief clerk may elect to include.

(B) For TPDES major facility permits as designated by the United States Environmental Protection Agency on an annual basis, notice shall be published in the Texas Register.

(C) The text shall meet the requirements in §39.411(b)(1) - (4)(A), (6), (7), (9), and (11) and (c)(4) - (6) of this title.

(D) The notice shall provide at least a 30-day public comment period.

(E) The executive director shall prepare a response to all relevant and material or significant public comments received by the commission under §55.152 of this title (relating to Public Comment Period).

(f) Notice of contested case hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.413 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) everything that is required by §39.411(d)(1) and (2) of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(g) Notice for discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 CFR Part 124, Subsection D, §124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the agency's library located at the commission's central office located at 12100 Park 35 Circle, Building A, Austin.

§39.553. Water Quality Management Plan Updates.

(a) Applicability. This section applies to Water Quality Management Plan (WQMP) Updates.

(b) Notice of WQMP updates.

(1) The chief clerk shall publish notice of the WQMP update in the Texas Register.

(2) The chief clerk shall mail the notice of the WQMP update to persons known to the commission to be interested in the WQMP update, and to persons requesting notices of the WQMP identified on mailing lists maintained by the chief clerk, in accordance with §39.407 of this title (relating to Mailing Lists).

(3) Section 39.411 of this title (relating to Text of Public Notice) does not apply to WQMP updates. However, the notice of the WQMP update shall:

(A) include the name and address of the agency;

(B) provide an opportunity to submit written comments on the proposed WQMP update;

(C) describe the public comment procedures and the time and place of any public meeting; and

(D) include the name, address, email, and telephone number of an agency contact person from whom interested persons may obtain information.

(4) The notice shall provide at least a 30-day public comment period.

(5) Any public meeting shall be held and conducted in accordance with the requirements and procedures of §55.156 of this title (relating to Public Comment Processing).

(c) The executive director shall prepare a response to all significant public comments received by the commission before the end of the comment period. The executive director may revise the WQMP update based on public comment, if appropriate.

(d) As described in §50.133 of this title (relating to Executive Director Action on Application or WQMP Update), the executive director may certify the WQMP update.

(e) After the executive director certifies a WQMP update, the chief clerk [Chief Clerk] shall mail a copy of the Response to Comments and certified WQMP update to all persons who submitted timely comments.

SUBCHAPTER K: PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

§§39.601, 39.603, 39.604, 39.605, 39.606

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (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, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; 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; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; 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 also proposed under Texas Government Code (TGC), §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and TGC, §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission; 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 adopted amendments implement THSC, §382.056.

§39.601. Applicability.

Air quality permit applications or registrations [that are declared administratively complete by the executive director on or after September 1, 1999] are subject to this subchapter.

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit (NORI) under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as

required by §39.411(e) of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications.

(b) Notice of Application and Preliminary Decision (NAPD) under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the NAPD to the applicant. This notice must contain the text as required by §39.411(f) of this title.

(c) Owners and operators who submit initial registration applications [on or after January 1, 2017,] for authorization to construct and operate 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) shall publish a consolidated NORI under §39.418 of this title and a NAPD under §39.419 of this title no later than 30 days after the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. This notice must contain the text as required by §39.411(f) of this title.

(d) Owners and operators who submit applications that are declared administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application shall publish a consolidated NORI under §39.418 of this title and a NAPD under §39.419 of this title

no later than 30 days after the executive director notifies the applicant of the declaration of administrative completeness and the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the applicant. This notice must contain the text as required by §39.411(e) of this title.

(e) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air quality permit application or registration, the applicant or registrant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows:

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application or registration number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(f) Alternative publication procedures for small businesses.

(1) The applicant or registrant does not have to comply with subsection (e)(2) of this section if all of the following conditions are met:

(A) the applicant or registrant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's or registrant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(g) If an air application or registration is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant or registrant shall publish notice

once in a newspaper as described in subsection (e) of this section, containing the information under §39.411(h) of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs must be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must be provided by the applicant and must substantially meet the following requirements:

(1) Signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1-1/2 inches in size and block printed capital lettering; for permit applications declared administratively complete by the executive director on or after May 1, 2026, the signs must consist of dark lettering on a white background and must be no smaller than 48 inches by 48 inches and all lettering must be no less than 3 inches in size and block printed capital lettering;

(2) Signs must be headed by the words listed in the following subparagraph:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must include the words "APPLICATION NO." and the number of the permit application. More than one application number may be included on the signs if the respective public comment periods coincide;

(4) Signs must include the words "for further information contact";

(5) Signs must include the words "Texas Commission on Environmental Quality" and the address of the appropriate commission regional office;

(6) Signs must include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible until final action has been taken on the permit application [throughout that

public comment period]. The applicant shall provide a verification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign but no more than three signs must be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.426 of this title (relating to Alternative Language Requirements). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must be satisfied without regard to whether alternative language newspaper notice is waived under §39.426 of this title. The alternative language signs must meet all other requirements of this section.

§39.605. Notice to Affected Agencies.

In addition to the requirements in §39.405(f)(3) of this title (relating to General Notice Provisions):

(1) when newspaper notices are published under this section, the applicant shall furnish a copy of the notices and affidavit to:

(A) the EPA regional administrator in Dallas;

(B) all local air pollution control agencies with jurisdiction in the county in which the construction is to occur;

(C) the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility; and

(D) [if notice is for an application filed on or after the effective date of this section]for a Prevention of Significant Deterioration or Nonattainment permit under Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the chief executives of the city and county where the source would be located, and any State or Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification;

(2) when sign posting is required under this section, the applicant shall furnish a copy of sign posting verification, within 10 business days after the end of the comment period associated with the notice under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), to:

(A) the chief clerk;

(B) the executive director; and

(C) those listed in paragraph (1)(A) - (C) of this section; and

(3) when alternative language waiver verification [are] is required under this section, the applicant shall furnish a copy to those listed in paragraph (2)(A) - (C) of this section.

§39.606. Contested Case Hearings and Public Meetings.

(a) A contested case hearing may be requested for the following types of air quality permit applications:

(1) air quality permit applications and for permit amendment applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title

(2) air quality permit applications and for permit amendment applications subject to the requirements of Chapter 116, Subchapter E of this title

(3) for registrations for concrete batch plants 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)

(4) air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapter G of this title (relating to Flexible Permits)

(5) air quality permit applications subject to the requirements of Chapter 116, Subchapter C of this title (relating to Plant-wide Applicability Limits).

(6) all other permit applications subject to the requirements of Chapter 116, Subchapter B (relating to New Source Review Permits).

(7) applications for renewals of air quality permit applications listed in this subsection.

(b) A notice and comment hearing may be requested for the following types of air quality permit applications:

(1) a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits); and

(2) a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

(c) For a request for a contested case hearing to be considered timely it must be received by:

(1) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History, by the end of the 15-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(2) for renewals that involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title, by the end of the comment period or within 30 days after the mailing of the executive director's response to comments.

(3) for initial registrations for concrete batch plants 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) and for new air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits), for which the executive director has declared the application administratively

and technically complete and prepared a draft permit, within 15 days of receipt of the application:

(A) for applications received before March 1, 2026:

(i) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(ii) if no hearing requests are received before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, there is no further opportunity to request a contested case hearing; and

(iii) if any hearing requests are received before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) for applications received on or after March 1, 2026:

(i) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision;

(ii) if no hearing requests are received before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision there is no further opportunity to request a contested case hearing unless a public meeting is held on the application;

(iii) if a public meeting is held on the application, the end of the comment period and opportunity to request a contested case hearing will be extended for at least 36 hours following the end of the public meeting; and

(iv) if any hearing requests are received before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision or the extended comment period following a public meeting,

the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(4) for all air quality permit applications and for permit amendment applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(5) for all air quality permit applications and for permit amendment applications subject to the requirements of Chapter 116, Subchapter E of this title, by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(6) for all other applicable air quality permit applications:

(A) a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(B) if no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing;

(C) if any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments.

(d) Requests for contested case hearings must be timely, in writing, and must include the following information:

(1) the requester's location relative to the proposed facility or activity;

(2) a description of how 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; and

(3) the form requirements of Chapter 55 of this title.

(e) Only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted.

(f) For applications for a concrete batch plant authorized by the Air Quality

Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title, only a person residing within 440 yards of the proposed plant is an affected person entitled to request a contested case hearing.

(g) The executive director may hold a public meeting on permit applications listed in (a)(3) – (5) of this section if requested by a member of the legislature who represents the general area where the facility is to be located or if there is substantial public interest in the proposed activity.

(h) The executive director shall hold a public meeting on permit applications listed in (a)(1) – (2) and (6) of this section if requested by a member of the legislature who represents the general area where the facility is to be located, if there is substantial public interest in the proposed activity, or if requested by any interested person.

SUBCHAPTER L: PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

§39.651

Statutory Authority

The amendments are proposed 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; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. Additionally, the amendments are proposed 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; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. The amendments are also proposed to comply with Title VI of the Civil Rights Act of 1964, 42 United States Code, §§2000d *et seq.*, and United States Implementing Regulations at 40 Code of Federal Regulations Parts 5 and 7, which prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation and retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance. The commission receives financial

assistance from the United States Environmental Protection Agency (EPA) and, therefore, must ensure nondiscrimination in its programs and activities pursuant to federal nondiscrimination laws and EPA's implementing regulation.

The proposed amendments implement TWC, Chapter 5, Subchapter M, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019, and THSC, §361.024.

§39.651. Application for Injection Well Permit.

(a) Applicability. This subchapter applies to applications for injection well permits [that are declared administratively complete on or after September 1, 1999].

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the Office of the Chief Clerk (chief clerk) shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (11) of this title (relating to Text of Public Notice). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For Notice of Receipt of Application and Intent to Obtain a Permit concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.419 of this title (relating to Notice of Application and Preliminary Decision) and §39.426 of this title (relating to Alternative Language Requirements), the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local [governments] government" [have] has the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste, Class III, or Class V injection well permit applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) For an application for a new hazardous waste facility, the agency:

(A) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) if the executive director determines that there is substantial public interest in the proposed facility.

(2) For an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, the agency:

(A) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is located; or

(ii) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(5) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters); and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice

must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility;

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(v) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

(h) Applications for individual Class V injection well permits for aquifer storage and recovery (ASR) projects and aquifer recharge (AR) projects. Notwithstanding the requirements of subsections (c) and (d) of this section, this subsection establishes the public notice requirements for an application for an individual Class V injection well permit application for either an ASR project or an AR project. Issuance of the Notice of Receipt of Application and Intent to Obtain a Permit is not required for an individual Class V injection well permit application for an ASR project or an AR project. The notice required by §39.419 of this title must be published by the applicant once in a newspaper of general circulation in the county in which the injection well will be located after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. The chief clerk shall provide notice by first class mail to any groundwater conservation district in which the wells associated with the ASR project or AR project will be located. The chief clerk shall also

mail notice to the persons listed in §39.413(7) - (9) of this title. This notice must contain the text as required by §39.411(c)(1) - (6) of this title.

SUBCHAPTER M: PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

§39.707

Statutory Authority

The amendments are proposed 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 proposed 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; and THSC, §401.051, which authorizes the commission to adopt rules relating to control of sources of radiation. In addition, the amendment is 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 implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§39.707. PUBLISHED NOTICE.

(a) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), Subchapter L of this title (relating to Licensing of Source Material Recovery and By-Product Material Disposal Facilities), or Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), on

completion of technical review and preparation of the draft license, the commission shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice must include a statement that the draft license is available for review on the commission's website [Web site] and that the draft license and application materials are available for review at the offices of the commission and in a public place in the county or counties in which the proposed disposal facility site is located. Notice must be published in a newspaper of general circulation in each county in which the proposed disposal facility site is located.

(c) In addition to published notice requirements in subsection (b) of this section, for an initial notice of draft license and opportunity to comment and for any subsequent license amendment of a license under Chapter 336, Subchapter H of this title or Subchapter M of this title, the chief clerk shall publish notice once in the *Texas Register*.

SUBCHAPTER N: PUBLIC NOTICE OF POST-CLOSURE ORDERS

§§39.803, 39.804, 39.807, 39.808, 39.809, 39.810

Statutory Authority

The amendments are proposed 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; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendments are also proposed 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; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§39.803. General Notice Provisions.

(a) Failure to publish notice. If the chief clerk prepares a newspaper notice that is required by this subchapter and the applicant does not cause the notice to be published within 30 days after the executive director has declared the application administratively complete, has not filed the proposed post-closure order or proposed decision that remedial action is complete with the chief clerk, or fails to submit the copies of notices or affidavit required in subsection (d) of this section, the executive director may cause one of the following actions to occur:

(1) the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication; or

(2) the executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it shall be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. Notice by hand delivery may be substituted for mailed notice. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States

Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Notice and affidavit. When this subchapter requires an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice, which shows the date of publication and the name of the newspaper, is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(e) Published notice. When notice is required to be published under §39.802 of this title (relating to Public Comment and Notice), the owner or operator shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both

published in the county and is the newspaper of largest general circulation in the county.

(f) Copy availability. The owner or operator shall make a copy of the application, preferred response action and/or the proposed post-closure order, or proposed decision that remedial action is complete available for review and copying at a public place in the county in which the facility is located or proposed to be located. An electronic copy will be posted on the commission's website in accordance with §39.405(l) of this title. The copy of the document compelling public notice shall comply with the following:

(1) A copy of the application, proposed post-closure order, or proposed decision that remedial action is complete must be available for review and copying beginning on the first day of newspaper publication of notice of receipt of application and intent to obtain post-closure order and remain available for the publication's designated comment period.

(2) A copy of the complete application, proposed post-closure order, or proposed decision that remedial action is complete (including any subsequent revisions to the application) must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until

the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings[SOAH].

§39.804. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice is given.

(b) When notice of receipt of application and intent to obtain post-closure order, notice of proposed order, or notice of proposed decision that remedial [remediation]action is complete, by publication or by mail as required by this subchapter, the text of the notice must include the following information:

(1) the name, address, email address, and telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures including a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant;

(5) the application, solid waste registration number, or post-closure order number;

(6) if applicable, a statement that the application or requested action is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies;

(7) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(8) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application; [and]

(9) any additional information required by the executive director or needed to satisfy public notice requirements of any federally-authorized program; and

(10) information that an electronic copy will be posted on the commission's website in accordance with §39.405(l) of this title.

§39.807. Notice of Proposed Post-Closure Order and Preliminary Decision.

(a) Prior to final approval of the proposed order, the executive director shall file the proposed post-closure order with the chief clerk.

(b) Not later than 30 days after the executive director files the proposed post-closure order with the chief clerk:

(1) the applicant shall publish the notice of the proposed post-closure order and preliminary decision once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of a proposed post-closure order and preliminary decision to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice of a proposed post-closure order must include the applicable information required by §39.804 of this title (relating to Text of Public Notice), including the assumptions the response action was based on, in particular those related to land use characterization.

§39.808. Notice of a Proposed Decision that Remedial Action is Complete.

(a) Prior to the executive director's determination that the remedial action is complete, the executive director shall file the proposed decision that remedial action is complete with the chief clerk.

(b) Not later than 30 days after the executive director files the proposed decision that remedial action is complete with the chief clerk:

(1) the applicant shall publish notice of the [a] proposed decision that remedial action is complete once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of the [a] proposed decision that remedial action is complete to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice of the [a] proposed decision that remedial action is complete must include the applicable information required by §39.804 of this title (relating to Text of Public Notice).

§39.809. Notice for Amendments to Post-Closure Orders.

(a) When the executive director determines that an application for an amendment to a post-closure order is technically complete, the chief clerk shall mail the notice of application and preliminary decision to the applicant.

(b) Not later than 30 days after the executive director declares an application technically complete [the notice of application and preliminary decision]:

(1) the applicant shall publish the notice of application and preliminary decision once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of [receipt of an] application and preliminary decision to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice must include the information required by §39.804 of this title (relating to Text of Public Notice).

§39.810. Notice of Post-Closure Order Contested Case Hearing.

For any post-closure order contested case hearing, the chief clerk shall mail notice to the statutory parties, applicant, and persons who have requested to be on a mailing list for the pleadings in the action no less than 13 days before a hearing in accordance with the Administrative Procedures Act [APA], §2001.052. In addition, public notice and opportunity for comment before the commission relating to a proposed action shall be given under Chapter 10 of this title (relating to Commission Meetings).

SUBCHAPTER O: PUBLIC NOTICE FOR MARINE SEAWATER DESALINATION PROJECTS

§39.902, §39.903

Statutory Authority

The amendments are proposed under Texas Water Code (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 TWC, §5.103; 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, §5.120 which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011 which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the commission in the public interest; TWC, §26.027 and §26.041 which authorize the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state, and to set standards to prevent the discharge of waste that is injurious to the public health; and TWC, §18.005(e) which directs the commission to adopt rules to expedite permitting and related processes for the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC, Chapter 18.

The proposed rules implement TWC, §18.005.

§39.902. Public Notice and Comment for Treated Marine Seawater Discharges.

(a) Filing the administrative record. After the technical review is completed, the executive director shall file the application, draft permit, technical summary, and draft notice of application and preliminary decision with the chief clerk.

(b) Notice text. The notice of application and preliminary decision must contain the following information:

(1) the permit number;

(2) the name, address, and telephone number of the applicant;

(3) a brief description of the location and nature of the proposed marine seawater desalination project, including the location of each outfall and the total quantity of water proposed to be discharged by the facility;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) if applicable, a statement that the application is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(6) the website address where the administratively and technically complete application, the draft permit, and the technical summary are posted for public review;

(7) a brief description of public comment procedures, including:

(A) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted;

(B) the deadline to file comments; and

(C) the deadline to request a public meeting or a contested case hearing;

(8) a statement that the executive director will respond to comments raising issues that are timely received and are relevant, material, or otherwise significant;

(9) a brief description of procedures by which the public may request a public meeting and a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility will be located or there is substantial public interest in the proposed activity;

(10) a statement that there is an opportunity for a contested case hearing, the procedures by which the public may request a contested case hearing, and that only disputed issues of fact or mixed issues of fact and law that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(11) a statement that the executive director may issue final approval of the application unless a timely contested case hearing request is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(12) the name, email address, and telephone number of an agency contact that interested persons may contact for further information; and

(13) any additional information required by the executive director.

(c) Publication of the notice. The notice of application and preliminary decision, the administratively and technically complete application, the draft permit, and the technical summary, excluding oversized documents, will be posted on the TCEQ website for public review and comment. Concurrently with posting on the website, the notice of application and preliminary decision will be emailed to the email address on file with the Office of the Chief Clerk for the following individuals and agencies:

(1) the state senator and the state representative who represent the area where the facility is or will be located;

(2) the Texas Parks and Wildlife Department;

(3) the Texas General Land Office;

(4) the county judge who represents the area where the facility is or will be located; and

(5) persons on the mailing lists required by §39.407 of this title (relating to Mailing Lists) that have provided a valid email address.

(d) Amendment after notice. No amendments to an application which would constitute a major amendment under the terms of §318.6 of this title (relating to

Amendment of a Permit) can be made by the applicant after the notice of application and preliminary decision has been posted on the TCEQ website, unless new notice is posted on the TCEQ website which includes a description of the proposed amendments to the application. For purposes of this subsection, an attempted transfer of an application shall constitute an amendment requiring additional notice.

(e) Public comment. Public comments must be filed with the chief clerk within the time period specified in the notice. The public notice period shall end 15 calendar days after the date of posting on the TCEQ website unless extended by the executive director for good cause. The public comment period shall be extended to the close of any public meeting.

(f) Public meeting notice. Notice of a public meeting must include the following information:

(1) the information required by subsection (b)(1) - (3) and (12) of this section;

(2) the date, time, and place of the meeting;

(3) a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(4) 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 and a statement in the notice for any permit application for which there is an opportunity for contested case hearing [,] that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(g) Recipients of public meeting notice. Notice of a public meeting will be mailed or emailed to any person who submitted comments or requested a public meeting; emailed to the state senator and the state representative who represent the area where the facility is or will be located, the Texas Parks and Wildlife Department, and the Texas General Land Office; emailed to the county judge who represents the area where the facility is or will be located; and posted on the TCEQ website at least 14 calendar days prior to the meeting date. The chief clerk need not mail or email notice of the public meeting to persons submitting public comment or public meeting requests who have not provided a return mailing address or email address.

§39.903. Public Notice and Comment for Off-Shore Discharges.

(a) Filing the administrative record. After the technical review is completed, the executive director shall file the application, draft permit, technical summary, and draft notice of application and preliminary decision with the chief clerk.

(b) Notice text. The notice of application and preliminary decision must contain the following information:

(1) the permit number;

(2) the name, address, and telephone number of the applicant;

(3) a brief description of the location and nature of the proposed marine seawater desalination project, including the location of each outfall and the total quantity of water proposed to be discharged by the facility;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) a statement that the application is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(6) the website address where the administratively and technically complete application, the draft permit, and the technical summary are posted for public review;

(7) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and the deadline to submit[file] comments;

(8) a statement that the executive director will evaluate comments raising issues that are timely received and are relevant, material, or otherwise significant and develop a final technical summary;

(9) the name, email address, and telephone number of an agency contact that interested persons may contact for further information; and

(10) any additional information required by the executive director.

(c) Publication of the notice. The notice of application and preliminary decision, the administratively and technically complete application, the draft permit, and the technical summary, excluding oversized documents, will be posted on the TCEQ website for public review and comment. Concurrently with posting on the website, the notice of application and preliminary decision will be emailed to the email address on file with the Office of the Chief Clerk for the following individuals and agencies:

(1) the state senator and the state representative who represent the area where the facility is or will be located;

(2) the Texas Parks and Wildlife Department;

(3) the Texas General Land Office;

(4) the county judge who represents the area where the facility is or will be located; and

(5) persons on the mailing lists required by §39.407 of this title (relating to Mailing Lists) that have provided a valid email address.

(d) Amendment after notice. No amendments to an application which would constitute a major amendment under the terms of §318.6 of this title (relating to Amendment of a Permit) can be made by the applicant after the notice of application and preliminary decision has been posted on the TCEQ website, unless new notice is posted on the TCEQ website which includes a description of the proposed amendments to the application. For purposes of this subsection, an attempted transfer of an application shall constitute an amendment requiring additional notice.

(e) Public comment. Public comment must be filed with the chief clerk within the time period specified in the notice. The public notice period shall end 15 calendar days after the date of posting on the TCEQ website unless extended by the executive director for good cause. A public comment that is not filed with the chief clerk by the deadline provided in the notice shall be accepted by the chief clerk and placed in the application file, but the chief clerk shall not process it.

(f) Response to comments and final decision. After the close of the comment period, the executive director shall:

(1) evaluate all timely received and relevant, material, or otherwise significant issues raised in public comments;

(2) develop a final technical summary which includes:

(A) a summary of all timely received and relevant, material, or otherwise significant issues raised in public comments;

(B) a response to the issues raised in public comments; and

(C) a summary of the executive director's final decision;

(3) revise the draft permit in response to comments, if necessary; and

(4) file the final technical summary and revised draft permit, if applicable, with the chief clerk within the shortest practical time after the comment period ends.

SUBCHAPTER P: OTHER NOTICE REQUIREMENTS

§§39.1003, 39.1005, 39.1009, 39.1011

Statutory Authority

The amendments are proposed 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 proposed 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; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. In addition, amendments are proposed under Texas Government Code (TGC), §2001.004, which requires state agencies to adopt procedural rules; and TGC, §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of

Administrative Hearings to conduct hearings for the commission.

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

§39.1003. Notice of Application for Minor Amendments.

(a) Except as provided in subsection (d) of this section, the only required notice for applications for a minor amendment of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits) is that the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice). For an application for a minor amendment of an injection well permit, the chief clerk shall also mail notice to the persons entitled to receive notice under §39.651(c)(4) of this title (relating to Application for Injection Well Permit).

(b) The text of the notice of application for minor amendment of a permit must provide:

(1) the name and address of the agency;

(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;

(3) a brief description of the application and business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, email address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of public comment procedures;

(6) the application or permit number;

(7) a statement that the executive director may issue final approval of the application;

(8) a statement of whether the executive director has prepared a draft permit; and

(9) the deadline to file comments.

(c) The deadline to file public comment is ten days after mailing.

(d) Subsection (a) of this section does not apply to applications for a minor amendment or minor modification of a wastewater discharge permit. For such applications, the notice requirements are in §39.551 of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).

§39.1005. Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit.

(a) Notice requirements for applications for Class 1 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits.

(b) The text of required notice shall follow the requirements of §305.69 of this title and provide:

(1) the name and address of the agency;

(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;

(3) a brief description of the application and business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, email address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of public comment procedures; and

(6) the application or permit number.

(c) When mailed notice is required, the applicant shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

§39.1009. Notice of Modification of a Municipal Solid Waste Permit or Registration.

(a) When mailed notice is required under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), the mailed notice shall be mailed by the permit or registration holder and the text of the notice shall comply with §39.411(b)(1) - (3), (6), (7), (9), and (11) of this title (relating to Text of Public Notice) [, and shall provide the location and phone number of the appropriate regional office of the commission to be contacted for information on the location where a copy of the application is available for review and copying.]

(b) When mailed notice is required by §305.70 of this title, notice shall be mailed by the permit or registration holder to the persons listed in §39.413 of this title (relating to Mailed Notice).

§39.1011. Notice of Application for Voluntary Transfer of Injection Well Permit.

(a) For notice of application for the voluntary transfer of an injection well permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice). The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(3) persons who own mineral rights underlying the existing or proposed injection well facility; and

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(b) The text of the notice of application for the voluntary transfer of an injection well permit must provide:

(1) the name and address of the agency;

(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;

(3) a brief description of the application and business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, email address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of public comment procedures;

(6) the application or permit number;

(7) a statement that the executive director may issue final approval of the application;

(8) a statement of whether the executive director has prepared a draft permit; and

(9) the deadline to file comments.

(c) The deadline to file public comment for the voluntary transfer of an injection well permit is ten days after mailing.

(d) If the executive director determines that changes to the injection well permit in addition to the transfer are necessary, other notice requirements may apply.