

US EPA ARCHIVE DOCUMENT



Texas Administrative Code

Title 30 | Environmental
Quality

2000—Part One
[Replaces 1999 Pamphlet]



WEST GROUP

Texas Administrative Code

Title 30 Environmental Quality

2000—Part One

[Replaces 1999 Pamphlet]

Amendments effective through
December 31, 1999



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chasing or acquiring a retail public utility as specified in §291.102(d) of this title (relating to Criteria for Considering and Granting Certificates or Amendments), and §291.109(c) of this title (relating to Report of Sale, Merger, Etc: Investigation; Disallowance of Transaction). A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial assurance as specified in §291.111(c) of this title (relating to Purchase of Voting Stock in Another Utility). The commission may order a utility that has failed to provide continuous and adequate service to provide financial assurance to ensure that the system will be operated as required by §291.114 of this title, (relating to Requirements to Provide Continuous and Adequate

Service). Such financial assurance will allow for payment of improvements and repairs to the water or sewer system.

(c) If rate increases or customer surcharges are determined by the executive director to be an acceptable form for demonstrating financial assurance in accordance with §290.39(n)(3) of this title, such funds shall be deposited into an escrow account with an escrow agent that has the authority to act as an escrow agent and whose escrow operations are regulated and examined by a Federal or State agency. At least annually a statement of the account shall be submitted to the executive director.

Source: The provisions of this §37.5011 adopted to be effective February 4, 1999, 24 TexReg 729

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SUBCHAPTER A. APPLICABILITY AND GENERAL PROVISIONS

§ 39.1. Applicability

Any permit applications listed below that are declared administratively complete before September 1, 1999 are subject to Subchapter A of this chapter (relating to Applicability and General Provisions), and Subchapters B-F of this chapter (relating to Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications, Public Notice of Air Quality Applications, Public Notice of Other Specific Applications, and Public Notice for Radioactive Material Licenses), as applicable. Any permit applications listed below that are declared

administratively complete on or after September 1, 1999 are subject to Subchapter H of this chapter (relating to Applicability and General Provisions), and Subchapters I-M of this chapter (relating to 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), as applicable. All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), regardless of when they were declared administratively complete. This chapter applies to:

- (1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

- (2) applications for wastewater discharge permits under Texas Water Code, Chapter 26.

(A) This paragraph includes:

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

- (ii) applications for permits under Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations).

(B) This paragraph does not include:

- (i) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), other than applications under Subchapter B of this chapter:

- (ii) applications for authorizations under Chapter 312 of this title, except applications for a permit under the chapter; and

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

- (3) applications for underground injection well permits under Texas Water Code, Chapter 27, or under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

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

- (5) hearings under Chapter 80 of this title (relating to Contested Case Hearings) concerning applications for air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification):

PUBLIC NOTICE

- (6) hearings under Chapter 8

- (7) applica-
censes under Cl
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- (8) application
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Texas Water Co
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Permit Processi

Source: The provisions of this act take effect January 8, 1997, 21 TexReg 1997, 22 TexReg 4578; 23 TexReg 12426; amended by 24 TexReg 8190

Authority: The prov.
Texas Water Code, §§5
Health and Safety Code

§ 39.3. Purpo

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Source: The [redacted] is
January 8, 1997, 21 Te

Authority: The prov
Texas Water Code, §§5
Health and Safety Code

§ 39.5. Gener

- (a) If the chief clerk determines that the publication is required by law, the chief clerk may cause the publication to be made within the time required by law.

- (b) The chief clerk
provide necessary

- (c) When this notice by hand delivery is complete upon delivery in a prepaid, registered office or official custody of the United States, delivery is by certified mail is complete upon delivery. This subsection does not apply to active material listed in the title (relating to the

- (d) Unless [REDACTED] the public notice [REDACTED] initial permits or modification, or

30 TAC § 39.5

after September 1, H of this chapter (General Provisions), (relating to applications, Public Notifications and Water Public Notice of Air Use of Injection Well and Public Notice), as applicable. All are subject to Subj to Public Notice (and Permits), regarding administratively

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ous waste permits
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er 361;

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title (relating to
Poultry Produc-

include:

- authorizations under the Federal Information Security Management Act of 2002, other than applications of this chapter;
- authorizations under the Privacy Act of 1974, except applications of this chapter; and

Chapter 332 of this
);

nd injection well
; Chapter 27, or
posal Act, Texas
361;

area authoriza-
title (relating to

of this title (regulations) concerning standards under Chapter 1 of Air Pollution Control Act (or Modification):

(6) hearings on contested enforcement cases under Chapter 80 of this title; and

(7) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules);

(8) applications for consolidated permit processing and consolidated permits processed under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing).

Source: The provisions of this §39.1 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective June 5, 1997, 22 TexReg 4578; amended to be effective December 10, 1998, 23 TexReg 12426; amended to be effective September 23, 1999, 24 TexReg 8190

Authority: The provisions of this Subchapter A issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.3. Purpose

This chapter specifies notice requirements for applications, hearings on applications, and hearings on contested enforcement cases, including requirements derived from statutes.

Source: The provisions of this §39.3 adopted to be effective January 8, 1997, 21 TexReg 12550.

Authority: The provisions of this Subchapter A issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.5. General Provisions

(a) If the chief clerk prepares a newspaper notice that is required by this chapter and the applicant does not cause the notice to be published within 30 days of receipt of the notice from the chief clerk, the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication within 30 days of publication.

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

(c) When this chapter requires 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 under the care and custody of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

(d) Unless otherwise provided in this chapter, public notice requirements apply to applications for initial permits or applications for the amendment, modification, or renewal of permits.

(e) If an applicant submits more than one application for a facility, notice may be combined to satisfy more than one section of this chapter.

(f) When this chapter requires an applicant to publish notice, the applicant must file an affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file the affidavit is the day of the public meeting for notice of public meeting, two days before a public hearing for notice of a public hearing, and 30 days after the last publication for other published notices. For notice of a public meeting, the applicant must also submit the affidavit to the executive director no later than the day of the public meeting. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.

(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice in a newspaper of the 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. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a newspaper of the largest general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.

(h) When this chapter requires notice be broadcast according to this subsection, 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. This subsection does not apply to applications for radioactive material licenses un-

30 TAC § 39.5

der Chapter 336 of this title.

Source: The provisions of this §39.5 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective June 5, 1997, 22 TexReg 4578; amended to be effective December 10, 1998, 23 TexReg 12426; amended to be effective June 17, 1999, 24 TexReg 4426

Authority: The provisions of this Subchapter A issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.7. Mailing Lists

The chief clerk shall maintain mailing lists of persons requesting public notice of certain applications. Persons, including participants in past commission permit proceedings, may request in writing to be on a mailing list. 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.

Source: The provisions of this §39.7 adopted to be effective January 8, 1997, 21 TexReg 12550.

Authority: The provisions of this Subchapter A issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.9. Deadline for Public Comment and Hearing Requests

Notice under this chapter will specify a deadline to file public comment and if applicable, hearing requests. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications).

Source: The provisions of this §39.9 adopted to be effective January 8, 1997, 21 TexReg 12550.

Authority: The provisions of this Subchapter A issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.11. Text of Public Notice

When notice by publication or by mail is required by this chapter, the text of the notice must include:

- (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 business conducted at the facility or activity described in the application or the draft permit;
- (4) the name, 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 the time and place of any public meeting or public hearing;
- (6) a statement of procedures by which the

NATURAL RESOURCE CONSERVATION COMMISSION

public may participate in the final permit decision and, if applicable, how to request a hearing, or a statement that later notice will describe procedures for public participation;

(7) for notices of public meetings or hearings, 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;

(8) the application or permit number;

(9) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless there is a (if applicable) request for hearing filed with the chief clerk;

(10) if applicable, the deadline to file comments and, if applicable, hearing requests;

(11) a statement of whether the executive director has prepared a draft permit;

(12) 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; and

(13) 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.

Source: The provisions of this §39.11 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective June 5, 1997, 22 TexReg 4578.

Authority: The provisions of this Subchapter A issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.13. Mailed Notice

(a) When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

(1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;

(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(3) the county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;

(4) the Texas Department of Health;

PUBLIC NOTICE

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Source: The provisi
January 8, 1997, 21 Tex
1997, 22 TexReg 4578;
TexReg 5872

Authority: The provi
Texas Water Code, §§5
Health and Safety Code

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PUBLIC NOTICE

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) if applicable, local, state and federal agen-
cies for which notice is required in 40 Code of
Federal Regulations (CFR), §124.10(c), as amended
and adopted in the CFR through May 2, 1989, at
54 FedReg 18786;

(8) if applicable, persons on a mailing list de-
veloped and maintained in accordance with 40
Code of Federal Regulations, §124.10(c)(1)(ix);

(9) the applicant;

(10) if the application concerns an injection
well, the Water Well Drillers Advisory Council;

(11) persons on a relevant mailing list kept
under §39.7 of this title (relating to Mailing Lists);

(12) any other person the executive director or
chief clerk may elect to include;

(13) if applicable, the secretary of the Coastal
Coordination Council; and

(14) persons who filed public comment or hear-
ing requests on or before the deadline for filing
public comment or hearing requests.

(b) This section does not apply to applications for
radioactive material licenses under Chapter 336 of
this title (relating to Radioactive Substance Rules).

Source: The provisions of this §39.13 adopted to be effective
January 8, 1997, 21 TexReg 12550; amended to be effective June 5,
1997, 22 TexReg 4578; amended to be effective August 8, 1999, 24
TexReg 5872

Authority: The provisions of this Subchapter A issued under the
Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas
Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.15. Public Notice Not Required for Cer- tain Types of Applications

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

(1) applications for the correction or endorse-
ment of permits under §305.65 of this title (relat-
ing to Corrections of Permits);

(2) permittees' voluntary requests for suspen-
sion or revocation of permits under Chapter 305,
Subchapter D of this title (relating to Amend-
ments, Modifications, Renewals, Transfers, Cor-
rections, Revocation, and Suspension of Permits);

(3) applications for transportation route special
permits under §330.32 of this title (relating to
Collection and Transportation Requirements).

(b) For the voluntary transfer of permits, no pub-
lic notice shall be required, except that:

(1) except as provided in paragraph (2) of this
subsection, notice of applications for the volun-
tary transfer of permits concerning hazardous

30 TAC § 39.17

waste facilities shall be made under §39.105 of
this title (relating to Application for a Class 1
Modification of an Industrial Solid Waste, Hazard-
ous Waste, or Municipal Solid Waste Permit);

(2) for notice of applications for the voluntary
transfer of permits concerning underground injec-
tion wells (including injection wells for the dis-
posal of hazardous waste), the chief clerk shall
mail notice to the persons listed in §39.13 of this
title (relating to Mailed Notice) and to the persons
who own mineral rights within the cone of influ-
ence, as that term is defined by §331.2 of this title
(relating to Definitions). The deadline to file public
comment is ten days after mailing; and

(3) if the executive director determines that
changes to the permit in addition to the transfer
are necessary, other notice requirements may apply.

Source: The provisions of this §39.15 adopted to be effective
January 8, 1997, 21 TexReg 12550; amended to be effective June 17,
1999, 24 TexReg 4426

Authority: The provisions of this Subchapter A issued under the
Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas
Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.17. Notice of Minor Amendment

(a) The only required notice for applications seek-
ing a minor amendment of a permit under Chapter
305, Subchapter D of this title (relating to Amend-
ments, Modifications, Renewals, Transfers, Correc-
tions, Revocation, and Suspension of Permits) is that
the chief clerk shall mail notice to the persons listed
in §39.13 of this title (relating to Mailed Notice). The
deadline to file public comment is ten days after
mailing.

(b) Subsection (a) of this section does not apply
to:

(1) applications seeking a minor amendment or
minor modification of a wastewater discharge
permit. For such applications, the notice require-
ments are in §39.151(c) of this title (relating to
Application for Wastewater Discharge Permit, In-
cluding Application for the Disposal of Sewage
Sludge or Water Treatment Sludge).

(2) applications for a minor amendment to ra-
dioactive material licenses. For such applications,
the notice requirements are specified in Subchap-
ter F of this chapter (relating to Public Notice of
Radioactive Material License Applications).

Source: The provisions of this §39.17 adopted to be effective
January 8, 1997, 21 TexReg 12550; amended to be effective June 5,
1997, 22 TexReg 4578; amended to be effective June 17, 1999, 24
TexReg 4426

Authority: The provisions of this Subchapter A issued under the
Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas
Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.19. Notice of Executive Director's Recommendation To Deny Application

Source: The provisions of this §39.19 adopted to be effective January 8, 1997, 21 TexReg 12550.

§ 39.21. Notice of Commission Meeting To Evaluate a Hearing Request on an Application

Source: The provisions of this §39.21 adopted to be effective January 8, 1997, 21 TexReg 12550.

§ 39.23. Notice of Hearing Held by SOAH, Including Hearing on Hearing Requests

(b) Other requirements in this chapter concerning notice of hearing apply. However, if the commission refers an application to SOAH and requests the judge to submit a written recommendation on the sole question of whether hearing requests meet the requirements of Chapter 55, Subchapter B of this title (relating to Hearing Requests), the only notice shall be as required in subsection (a) of this section.

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Source: The provisions of this §39.23 adopted to be effective January 8, 1997, 21 TexReg 12550.

§ 39.25. Notice of Contested Enforcement Case Hearing

Source: The provisions of this §39.25 adopted to be effective January 8, 1997, 21 TexReg 12550.

SUBCHAPTER B. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§ 39.101. Application for Municipal Solid Waste Permit

(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 must 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 shall 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 shall be by certified mail.

(1) On the executive director's receipt of an application, or notice of intent to file an applica-

(2) The app. public meeting weeks preceding of this title. T smaller than 96 inches with 10 centimeters or

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PUBLIC NOTICE

... tion, 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, the
... following actions shall be taken.

(A) The applicant shall publish notice of in-
... tent to obtain a permit at least once under
... §39.5(g) of this title (relating to General
... Provisions).

(B) The chief clerk shall publish notice of the
... application in the *Texas Register*.

(C) The chief clerk shall mail notice to the
... persons listed in §39.13 of this title (relating to
... Mailed Notice).

(D) The executive director 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 juris-
... diction 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 draft permit.

(1) The applicant shall publish notice at least
... once under §39.5(g) of this title.

(2) The chief clerk shall mail notice to the
... persons listed in §39.13 of this title (relating to
... Mailed Notice).

(3) The notice shall specify the deadline to file
... public comment or hearing requests, which shall
... be not less than 30 days after newspaper
... publication.

(e) Notice of public meeting.

(1) If the application proposes a new facility,
... the executive director shall hold a public meeting
... in the county in which the facility is to be located
... to receive public comment concerning the
... application. A public meeting is not a contested
... case proceeding under the APA. 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 under this subsection.

(2) The applicant shall publish notice of the
... public meeting once each week during the three
... weeks preceding a public meeting under §39.5(g)
... of this title. The published notice shall not be
... smaller than 96.8 square centimeters or 15 square
... inches with the shortest dimension at least 7.6
... centimeters or three inches.

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(3) The chief clerk shall mail notice to the
... persons listed in §39.13 of this title.

(f) Notice of hearing.

(1) This subsection applies if an application is
... referred to SOAH for a contested case hearing
... under Chapter 80 of this title (relating to Con-
... tested Case Hearings).

(2) The applicant shall publish notice at least
... once under §39.5(g) 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 shall 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
... must file an affidavit certifying compliance with
... this paragraph with the chief clerk. Filing an
... affidavit certifying facts that constitute compli-
... ance with the notice requirements creates a
... rebuttable presumption of compliance with this
... subparagraph.

(B) If the applicant proposes an amendment
... of a permit, the chief clerk shall mail notice to
... the persons listed in §39.13 of this title.

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

Source: The provisions of this §39.101 adopted to be effective
January 8, 1997, 21 TexReg 12550; amended to be effective Sep-
tember 23, 1999, 24 TexReg 8190

Authority: The provisions of this Subchapter B issued under the
Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas
Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.103. Application for Industrial or Hazardous Waste Facility Permit

(a) Preapplication requirements.

(1) If an applicant decides to participate in a
... local review committee process under Texas Health
... and Safety Code, §361.063, the applicant must
... 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

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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 shall also be mailed to the mayor of the municipality. Mailed notice shall 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.

44.31 (2) The requirements of this paragraph are set forth at 40 CFR §124.31(b)-(d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 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 Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), 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.

44.32 (b) Notice of receipt of application. When the executive director receives 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, and to the persons listed in §39.13 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 Code of Federal Regulations (CFR) §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 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, at 60 FedReg 63417. The requirements of this paragraph relating to 40 CFR §124.32(b)-(c) do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), 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.

44.34 (c) Review of permit application by other governmental agencies. After the executive director determines that the application is administratively complete, the executive director shall 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. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.

(d) Notice of draft permit.

(1) 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 which is adjacent or contiguous to each county in which the facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title (relating to General Provisions).

(4) The notice shall specify the deadline to file public comment or hearing requests. For industrial solid waste applications, the deadline shall 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.

PUBLIC NOTICE

(1) If the applicant is to be located in a municipality, the public meeting is to be located in the municipality. If the facility is to be located in the extraterritorial jurisdiction of a municipality, the public meeting is to be located in the municipality. The public meeting is to be held at least 14 days before the deadline for the hearing requests. The public meeting is to be held at least 14 days before the deadline for the hearing requests. The public meeting is to be held at least 14 days before the deadline for the hearing requests.

(2) The applicant shall publish notice of the public meeting in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is located. The published notice shall be at least 14 days before the deadline for the hearing requests. The published notice shall be at least 14 days before the deadline for the hearing requests.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f) Notice of hearing. (1) This subsection referred to SO/ under Chapter tested Case Hea

(2) Newspaper

(A) If the applicant is to be located in a municipality, the public meeting is to be located in the municipality. The public meeting is to be held at least 14 days before the deadline for the hearing requests. The public meeting is to be held at least 14 days before the deadline for the hearing requests.

(B) If the applicant is to be located in the extraterritorial jurisdiction of a municipality, the public meeting is to be located in the municipality. The public meeting is to be held at least 14 days before the deadline for the hearing requests. The public meeting is to be held at least 14 days before the deadline for the hearing requests.

(3) Mailed notice

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(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided under this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting. The applicant shall publish notice under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f) Notice of hearing. 124.12

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

(2) Newspaper notice.

(A) If the application concerns an industrial solid 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 which 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 §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall 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 shall 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 §39.13 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. 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 must 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 §39.13 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under §39.5(h) of this title.

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

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

(h) This section does not apply to applications for an injection well permit.

Source: The provisions of this §39.105 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective August 8, 1999, 24 TexReg 5872.

Authority: The provisions of this Subchapter B issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.105. Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit

(a) Notice requirements for Class 1 modifications are in:

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(1) §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; or

(2) §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) for municipal solid waste permits.

(b) The text of required notice shall follow the requirements of §39.11 of this title (relating to Text of Public Notice). If the application is for modification of an industrial solid waste or hazardous waste permit, the additional requirements in §305.69 of this title apply.

(c) When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

Source: The provisions of this §39.105 adopted to be effective January 8, 1997, 21 TexReg 12550.

Authority: The provisions of this Subchapter B issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§ 39.107. Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit

The notice requirements for Class 2 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), except that the text of notice shall comply with §305.69 of this title and §39.11 of this title (relating to Text of Public Notice). The notice shall specify the deadline to file with the chief clerk public comment. The deadline is specified in §305.69 of this title. When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

Source: The provisions of this §39.107 adopted to be effective January 8, 1997, 21 TexReg 12550.

Authority: The provisions of this Subchapter B issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

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

(a) Notice requirements in other commission rules. The notice requirements for Class 3 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), except that the text of notice shall follow the requirements of §305.69 of this title and §39.11 of this title (relating to Text of Public Notice). The notice shall specify the deadline to file public comment or hearing requests. The deadline is specified in §305.69 of this title. When mailed notice is required, the appli-

cant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(b) Notice of public meeting.

(1) In accordance with Texas Health and Safety Code, §361.0791, the executive director shall hold a public meeting on request of a person affected concerning a hazardous waste permit that is filed on or before the deadline to file public comment or hearing requests. The public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under Health and Safety Code, §361.063 complies with this subsection if public notice is provided in accordance with this subsection. This subsection does not apply to a public meeting held by an applicant under §305.69 of this title.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title (relating to General Provisions). The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(c) Notice of hearing.

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

(2) Newspaper notice.

(A) If the application concerns an industrial solid 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 which is adjacent or contiguous to each county wherein the proposed facility is located.

(B) If the application concerns a hazardous solid 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 §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

PUBLIC NOTICE

(4) If the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(5) Notice under this subsection shall be given at least 10 days before the hearing.

Source: The provisions of this §39.109 adopted to be effective January 8, 1997, 21 TexReg 12550.

Authority: The provisions of this Subchapter B issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

SUBCHAPTER WATER QUALITY

§ 39.151. Application for a Discharge Elimination System

(a) Applicability. This subsection applies to applications for wastewater sludge disposal applications for administrative compliance. Any permit application for a discharge elimination system is subject to Subchapter B of this title (relating to Public Notice of Water Quality Management).

(b) Notice of receipt. The applicant shall publish notice to the School of Texas Water Code that will affect the school fund. The notice shall be required by that section to mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice) to adjacent or contiguous counties required for:

(1) an applicant

(2) an applicant for a Discharge Elimination System for a discharge permit issued before the application of this condition that will be subject to the state (relating to American

(c) Notice of discharge. Except those in subsection (b) following provisions:

(1) The applicant shall mail notice to the executive director

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ns listed in §39.13
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PUBLIC NOTICE

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under §39.5(h) of this title.

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

Source: The provisions of this §39.109 adopted to be effective January 8, 1997, 21 TexReg 12550.

Authority: The provisions of this Subchapter B issued under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

SUBCHAPTER C. PUBLIC NOTICE OF WATER QUALITY APPLICATIONS

§ 39.151. Application for Wastewater Dis- charge Permit, Including Applica- tion for the Disposal of Sewage Sludge or Water Treatment Sludge

(a) **Applicability.** This subchapter applies to applications for wastewater discharge permits, including sludge disposal applications, that are declared administratively complete before September 1, 1999. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter J of this chapter (relating to Public Notice of Water Quality Applications and Water Quality Management Plans).

(b) **Notice of receipt of application and administrative completeness.** The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115(c) apply to an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), except that mailed notice to adjacent or downstream landowners is not required for:

(1) an application to renew a permit; or

(2) 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 Amendment).

(c) **Notice of draft permit.** For all draft permits except those in subsection (d) of this section, the following provisions apply.

(1) The applicant shall publish notice that the executive director has prepared a draft permit at

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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 §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit. For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.13 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.

(3) The notice must set a deadline to file public comment or hearing requests 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 or hearing requests.

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

(A) everything that is required by §39.11 of this title (relating to Text of Public Notice); and

(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.

(d) **Notice of certain draft 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 that the

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executive director has prepared a draft permit 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 draft permit, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing 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 pollutant 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 §39.7 of this title (relating to Mailing Lists);

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

(viii) if applicable, the secretary of the Coastal Coordination Council.

(C) The notice must set a deadline to file public comment, to request a public meeting, or to request a public hearing 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 §39.11 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 (c) of this section.

(e) Notice for other types of applications. Except as required by subsections (b), (c), and (d) 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, Modifications, 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 (relating to Amendment, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the following requirements apply.

(A) The chief clerk shall mail notice of the application and draft permit, 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 agen-

PUBLIC NOTICE

cies for which §124.10(c);

(iv) if applied developed an CFR §124.10

(v) the app

(vi) person: under §39.7 (Lists); and

(vii) any other or chief c

(B) For TPDES shall be publish

(C) The text §39.11 of this title section.

(D) The notice public commen

(E) The executive response to all received by the chief clerk title (relating to

(f) Notice of

(1) This subsection referred to SOAI under Chapter 8 tested Case Heari

(2) Not less than applicant shall publish newspaper regularly each county where geographical relationship hearing, a person reside who may be taken as a resident director shall provide appropriate cour

(3) Not less than chief clerk shall publish §39.13 of this title adjacent or down required for an app

(4) For TPDES include:

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(B) a general each existing the name of

(C) for application of sludge:

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PUBLIC NOTICE

cies for which notice is required in 40 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 §39.7 of this title (relating to Mailing
Lists); and

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

(B) For TPDES major facility permits, notice
shall be published in the *Texas Register*.

(C) The text shall meet the requirements in
§39.11 of this title and subsection (b)(4) of this
section.

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

(E) The executive director shall prepare a
response to all significant public comments re-
ceived by the commission under §55.25 of this
title (relating to Public Comment Processing).

(f) Notice of hearing.

(1) This subsection applies if an application is
referred to SOAH for a contested case hearing
under Chapter 80 of this title (relating to Con-
tested 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
§39.13 of this title, except that mailed notice to
adjacent or downstream landowners is not re-
quired for an application to renew a permit.

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

(A) everything that is required by §39.11 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:

30 TAC § 39.201

(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 library of the agency,
Park 35, 12100 North Interstate 35, Austin.

Source: The provisions of this §39.151 adopted to be effective
January 8, 1997, 21 TexReg 12550; amended to be effective June 17,
1999, 24 TexReg 4426; amended to be effective September 23,
1999, 24 TexReg 8190

Authority: The provisions of this Subchapter C issued under the
Texas Water Code, §§5.103, 5.105, 26.011, and 27.019.

SUBCHAPTER D. PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

§ 39.201. Application for a Preconstruction Per- mit

(a) Applicability. This section applies to the fol-
lowing types of air actions that are declared admin-
istratively complete before September 1, 1999:

(1) hearings under Chapter 80 of this title (re-
lating to Contested Case Hearings) on applica-
tions for permits, permit amendments or permit
renewals under Chapter 116 of this title (relating
to Control of Air Pollution by Permits for New
Construction or Modification); and

(2) hearings under Chapter 80 of this title on
applications for a registration for a standard ex-
emption required to provide public notice under
Chapter 116 of this title.

(b) Notice of hearing. The applicant shall publish
notice of the hearing 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. The notice must be published
not less than 30 days before the hearing.

(c) Any application listed in subsection (a) of this
section that is declared administratively complete
on or after September 1, 1999 is subject to Subchap-
ter K of this chapter (relating to Public Notice of Air
Quality Applications).

Source: The provisions of this §39.201 adopted to be effective
January 8, 1997, 21 TexReg 12550; amended to be effective Sep-
tember 23, 1999, 24 TexReg 8190

30 TAC § 39.251

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SUBCHAPTER E. PUBLIC NOTICE OF OTHER SPECIFIC APPLICATIONS

§ 39.251. Application for Injection Well Permit

(a) Applicability. This section applies to applications for injection well permits that are declared administratively complete before September 1, 1999. Any permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapter L of this chapter (relating to Public Notice of Injection Well and Other Specific Applications).

(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 must 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 shall be mailed to the mayor of the municipality.

(c) Notice of receipt of application. When the executive director receives an application for, 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.

(d) Notice of administratively complete application.

(1) The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115 apply concerning an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(2) After the executive director determines that the application is administratively complete, the executive director shall 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. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and

the health authority of the county in which the facility is located.

(e) Notice of draft permit.

(1) 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 which is adjacent or contiguous to each county in which the facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title, to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title, and to local governments located in the county of the facility. "Local governments" shall have the meaning provided for that term in Texas Water Code, Chapter 26.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title (relating to General Provisions).

(4) The notice shall specify the deadline to file public comment or hearing requests. The deadline shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(f) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. 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.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the

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persons listed in

(g) Notice of hearing

(1) This subsection referred to SOA under Chapter 8 tested Case Hear

(2) Newspaper

(A) If the applicant is not a hazardous waste facility, the applicant shall publish notice of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is located.

(B) If the applicant is a hazardous waste facility, the applicant shall publish notice of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is located. The notice shall be published at least one session before the hearing on the application. The notice shall be at least 7.6 square inches in size and shall contain at least one session before the hearing on the application.

(3) Mailed notice

(A) For all applications for a hazardous waste facility, the applicant shall mail notice to the persons listed in §39.13 of this title and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(B) If the applicant is a hazardous waste facility, the applicant shall mail notice to the persons listed in §39.13 of this title and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions). The notice shall be published at least one session before the hearing on the application. The notice shall be at least 7.6 square inches in size and shall contain at least one session before the hearing on the application.

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persons listed in §39.13 of this title.

(g) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH 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 which is adjacent or contiguous to each county wherein 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 §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall 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 §39.13 of this title, and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(B) 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 shall 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 must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an af-

fidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subsection.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title.

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

Source: The provisions of this §39.251 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective December 10, 1998, 23 TexReg 12426; amended to be effective September 23, 1999, 24 TexReg 8190

Authority: The provisions of this Subchapter E issued under Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and the Texas Health and Safety Code, §§361.011, 361.017, and 361.024.

§ 39.253. Application for Production Area Authorization

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control) that is declared administratively complete before September 1, 1999. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter L of this chapter (relating to Public Notice of Injection Well and Other Specific Applications).

(b) Notice of administratively complete application. The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(c) Notice of executive director's preparation of draft production area authorization. The chief clerk shall mail notice to the persons listed in §39.13 of this title. The notice shall specify the deadline to file with the chief clerk public comment, which is 30 days after mailing.

(d) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH 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 §39.5(g) of this title.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

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

Source: The provisions of this §39.253 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective Sep-

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September 23, 1999, 24 TexReg 8190

Authority: The provisions of this Subchapter E issued under Texas Water Code, §§5.103, 5.105, 26.011, and 27.019; and the Texas Health and Safety Code, §§361.011, 361.017, and 361.024.

SUBCHAPTER F. PUBLIC NOTICE OF RADIOACTIVE MATERIAL LICENSE APPLICATIONS

§ 39.301. Notice of Declaration of Administrative Completeness

When an application under Chapter 336 of this title (relating to Radioactive Substance Rules) has been declared administratively complete, the chief clerk shall mail notice in accordance with the requirements of this subchapter.

Source: The provisions of this §39.301 adopted to be effective June 5, 1997, 22 TexReg 4578.

Authority: The provisions of this Subchapter F issued under the Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103.

§ 39.302. Applicability

Applicability. This subchapter applies to applications for radioactive material licenses, under Chapter 336 of this title, that are declared administratively complete before September 1, 1999. Any applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapter M of this chapter (relating to Public Notice of Radioactive Material License Applications).

Source: The provisions of this §39.302 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.303. Notice of License Applications Upon Completion of Technical Review

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules) or for minor amendments issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), notice shall be mailed and published in accordance with the requirements of this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For an application for minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), notice shall be mailed in accordance with the requirements of this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

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Source: The provisions of this §39.303 adopted to be effective June 5, 1997, 22 TexReg 4578; amended to be effective September 3, 1998, 23 TexReg 8835.

Authority: The provisions of this Subchapter F issued under the Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103.

§ 39.305. Mailed Notice for Radioactive Material Licenses

When notice by mail is required under this subchapter, the chief clerk shall mail notice to:

(1) the mayor and health authorities of the city in which the facility is or will be located;

(2) the county judge and health authorities of the county in which the facility is or will be located;

(3) any person who submitted a written request in advance to be notified of any licensing action on this type of license;

(4) the applicant;

(5) each owner of property adjacent to the proposed site. For the purposes of determining property ownership under this subsection, the applicant shall provide the chief clerk the names of the relevant landowners from the county tax rolls that are available no more than 30 days before the date of newspaper publication of the notice; and

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

Source: The provisions of this §39.305 adopted to be effective June 5, 1997, 22 TexReg 4578; amended to be effective September 3, 1998, 23 TexReg 8835.

Authority: The provisions of this Subchapter F issued under the Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103.

§ 39.307. Published Notice

(a) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), 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 Radioactive Waste), when notice is required to be published under this subchapter, the applicant shall publish notice in a newspaper published in the county or counties in which the facility is or will be located. If no newspaper is published in the county or counties in which the facility is or will

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be located, a written notice shall be posted at the courthouse places in the immediate vicinity of the facility. The notice shall be posted in a conspicuous place.

(c) In addition to the notice required in subsection (b) of a license under Chapter 336, the chief clerk shall mail notice to the Texas Register.

Source: The provisions of this §39.307 adopted to be effective June 5, 1997, 22 TexReg 4578; amended to be effective September 3, 1998, 23 TexReg 8835.

Authority: The provisions of this Subchapter F issued under the Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103.

§ 39.309. Notice of Application

(a) The requirements for an application for a license, major amendment, or renewal of a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste) shall be mailed no later than 30 days before the date of publication of the notice.

(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 Radioactive Waste), when notice is required to be published under this subchapter, the applicant shall publish notice in a newspaper published in the county or counties in which the facility is or will be located. If no newspaper is published in the county or counties in which the facility is or will

Source: The provisions of this §39.309 adopted to be effective June 5, 1997, 22 TexReg 4578; amended to be effective September 3, 1998, 23 TexReg 8835.

Authority: The provisions of this Subchapter F issued under the Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103.

§ 39.311. Prohibited

(a) Notice shall be required to be published in a newspaper of largest general circulation in the county in which the facility is located. The notice shall be published in a conspicuous place.

(b) The applicant shall file public comment, protests, or hearing requests with the chief clerk of the Texas Register. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

(c) The applicant shall file public comment, protests, or hearing requests with the chief clerk of the Texas Register. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

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be located, a written copy of the notice shall be posted at the courthouse door and five other public places in the immediate locality to be affected. The notice shall be posted for at least 31 days.

(c) In addition to published notice requirements in subsection (b) of this section, for an amendment of a license under Chapter 336, Subchapter H of this title, the chief clerk shall publish notice once in the Texas Register.

Source: The provisions of this §39.307 adopted to be effective June 5, 1997, 22 TexReg 4578; amended to be effective September 3, 1998, 23 TexReg 8835.

Authority: The provisions of this Subchapter F issued under the Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103.

§ 39.309. Notice of Contested Case Hearing on Application

(a) The requirements of this section apply when an application is referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal), notice shall be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

Source: The provisions of this §39.309 adopted to be effective June 5, 1997, 22 TexReg 4578; amended to be effective September 3, 1998, 23 TexReg 8835.

Authority: The provisions of this Subchapter F issued under the Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103.

§ 39.311. Proof and Certification of Notice

(a) Notice shall be mailed by certified mail, return receipt requested. Proof of mailing to the proper address on the return receipt shall be accepted as conclusive evidence of the fact of the mailing.

(b) The applicant shall file proof of publication with the chief clerk within 30 days after publication. Acceptance of an affidavit executed by the publisher accompanied by a printed copy of the notice as published creates a rebuttable presumption of compliance with the requirement to publish notice.

(c) The applicant shall file proof of posting with the chief clerk within 30 days of posting. Proof of posting may be made by the return affidavit of the sheriff or constable, or, by the affidavit of a credible person made on a copy of the posted notice showing the fact of the posting.

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Source: The provisions of this §39.311 adopted to be effective June 5, 1997, 22 TexReg 4578.

Authority: The provisions of this Subchapter F issued under the Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103.

§ 39.313. Public Notification and Public Participation

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site under §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions) or §336.609 of this title (relating to Alternate Criteria for License Termination), or whenever the commission deems notice to be in the public interest, the commission shall:

(1) notify and solicit comments from:

(A) local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(B) the United States Environmental Protection Agency for cases where the licensee proposes to release a site under §336.609 of this title (relating to Alternate Criteria for License Termination); and

(2) publish a notice in the Texas Register and in a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

Source: The provisions of this §39.313 adopted to be effective September 3, 1998, 23 TexReg 8835.

Authority: The provisions of this Subchapter F issued under the Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103.

SUBCHAPTER G. PUBLIC NOTICE FOR APPLICATIONS FOR CONSOLIDATED PERMITS

§ 39.351. Public Notice for Applications for Consolidated Permits

(a) Applicability. This section applies to applications for consolidated permits, which combine authorizations under two or more program areas.

(b) Combined public notices shall be given for applications consolidated under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing) only when:

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(1) combined notice is requested by the applicant; and

(2) combined notice satisfies all statutory and regulatory requirements that would apply if each application had been processed separately, including, without limitation, all requirements for notice content, publication, mailing, broadcasting, and the posting of signs.

Source: The provisions of this §39.351 adopted to be effective September 23, 1999, 24 TexReg 8190

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

§ 39.401. Purpose H-M of this chapter. Additionally, in Subchapters

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) specify notice requirements for applications and certain other actions described in these subchapters such as notices for public meetings, contested case hearings on permit applications and enforcement cases, comment hearings, and Water Quality Management Plan (WQMP) updates.

Source: The provisions of this §39.401 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.403. Applicability

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A-F 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 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).

(2) applications for wastewater discharge permits under Texas Water Code, 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 Texas Water Code, Chapter 27, or under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(4) applications for production area authorizations 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):

(1) **Explanation of Applicability.** Subsection (b) of this section lists all the types of applications to which Subchapters H-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), but that are specifically excluded. Subsections (d) and (e) of this section specify that only certain sections apply to applications for radioactive materials licenses or voluntary emission reduction permits.

(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 H-M of this chapter or Subchapter G of this chapter, public notice requirements apply to applications for new permits, concrete batch plant air quality exemptions from permitting or permits by rule, and applications to amend, modify, or renew permits.

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

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code, 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 Texas Water Code, Chapter 27, or under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(4) applications for production area authorizations 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);

PUBLIC NOTICE

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(8) applications for §382.0518 and §382.0519 of the Safety Code. In all amendments under this title relating to Changes to flexible permits under this title (relating to amendments to flexible permits) and (3) of this title, an action involving

(A) construction defined in §116.1 to General Def

(B) modification defined in § 106.4(a)(1) increase in all pollutant or contaminant emission quantities from this title (relations from Per § 106.4(a)(2) and

(C) other cl
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(ii) there are no nuisance potentialities or facilities;

(iii) the site for which the violation is alleged constitutes a regulatory

(iv) there is no significant purpose or

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bility. Subsection (b) of applications to this chapter apply. certain types of included in the applica- b), but that are spe- as (d) and (e) of this ain sections apply to materials licenses or permits.

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PUBLIC NOTICE

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

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

(8) applications for air quality permits under §382.0518 and §382.055 of the Texas Health and Safety Code. In addition, applications for permit amendments under §116.116(b) of this title (relating to Changes to Facilities), initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), amendments to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) when an action involves:

(A) construction of any new facility as defined in §116.10(4) and (10) of this title (relating to General Definitions);

(B) modification of an existing facility as defined in §116.10(9) of this title which result in an increase in allowable emissions of any air contaminant emitted equal to or greater than the emission quantities defined in §106.4(a)(1) of this title (relating to Requirements for Exemptions from Permitting) and of sources defined in §106.4(a)(2) and (3) of this title; or

(C) other changes 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 or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process;

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

(9) applications subject to the requirements of Chapter 116, Subchapter C 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;

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(10) concrete batch plants registered under Chapter 106 of this title (relating to Exemptions from Permitting) unless the facility is to be temporarily located in or contiguous to the right-of-way of a public works project;

(11) applications for voluntary emission reduction permits under Texas Health and Safety Code, §382.0519;

(12) applications for permits for electric generating facilities under §39.264 of the Utilities Code;

(13) Water Quality Management Plan (WQMP) updates processed under Texas Water Code, Chapter 26, Subchapter B.

(c) Notwithstanding 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 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 Subchapter B of that chapter;

(2) applications for registrations and notifications under Chapter 312 of this title;

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

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

(5) applications under Chapter 116, Subchapter F of this title (relating to Standard Permits);

(6) applications under Chapter 106 of this title, except for concrete batch plants specified in §39.403(b)(10) of this title (relating to Applicability).

(7) applications under §39.15 of this title (relating to Public Notice Not Required for Certain Types of Applications) without regard to the date of administrative completeness;

(8) applications for minor amendments under §305.62 (c)(2) of this title (relating to Amendment). Notice for minor amendments shall comply with the requirements of §39.17 of this title (relating to Notice of Minor Amendment) without regard to the date of administrative completeness;

(9) applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid

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Waste, Hazardous Waste, or Municipal Solid Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;

(10) applications for Class I modifications of municipal solid waste permits under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications). Notice for Class I modifications shall comply with the requirements of §39.105 of this title, without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title;

(11) applications for Class 2 modifications of industrial or hazardous waste permits under §305.69(c) (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 2 modifications shall comply with the requirements of §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title and §305.69(c) of this title;

(12) 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);

(13) applications for minor modifications of Texas Pollutant Discharge Elimination System (TPDES) permits under §305.62(c)(3) of this title; or

(14) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice).

(d) Applications for initial issuance of voluntary emission reduction permits under Texas Health and Safety Code, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Voluntary Emission Reduction Permits), except that any reference

to requests for reconsideration or contested case hearings in §39.409 of this title or §39.411 of this title shall not apply.

(e) Applications for Radioactive Materials Licenses under Chapter 336 of this title are not subject to §§39.405(c) and (e), 39.418, 39.419, 39.420, and certain portions of 39.413 of this title (relating to Mailed Notice).

Source: The provisions of this §39.403 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.405. General Notice Provisions

(a) Failure to Publish Notice. If the chief clerk prepares a newspaper notice that is required by 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) or Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits) 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; 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. When Subchapters H-L of this chapter or Subchapter G 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.

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(d) Combined Notice. A notice may satisfy more than one chapter.

(e) Notice and Affidavit. A notice of this chapter or Subchapter G of this chapter require an applicant to file a copy of the publisher's affidavit of facts that constitute compliance. The deadline to file a copy of the affidavit which shows the date of publication of the newspaper is 10 business days after the date of publication of each notice. Filing a copy of the affidavit constitutes compliance with the requirement to file a copy of the affidavit. If the chief clerk publishes notice of this section, the chief clerk shall publish notice and

(f) Published Notice. A notice to be published

(1) the applicant shall cause the notice to be published in a newspaper of general circulation in the county in which the facility is located, except for a facility located in a municipality under the Newspaper Notice

(2) for applications for injection well permits, the notice in the newspaper shall be published in the newspaper that is published in the county in which the facility is located or proposed to be located, or in the newspaper of general circulation in the county in which the facility is located or proposed to be located, if the newspaper is published in the county and is of general circulation in the county

(g) The applicant shall cause the notice to be published in the newspaper of general circulation in the county in which the facility is located or proposed to be located, or in the newspaper of general circulation in the county in which the facility is located or proposed to be located, if the newspaper is published in the county and is of general circulation in the county

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PUBLIC NOTICE

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

(e) Notice and Affidavit. When Subchapters H-L of this chapter or Subchapter G 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 10 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, except for air applications required to publish in a newspaper of general circulation in a municipality under §39.603 of this title (relating to Newspaper Notice); and

(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 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.

(g) 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 is required to indicate in the public file that there is additional information in a confidential file. The copy of the application shall comply with the following:

(1) A copy of the administratively complete

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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 publications' designated comment period; and

(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 newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to SOAH.

Source: The provisions of this §39.405 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 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. 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.

Source: The provisions of this §39.407 adopted to be effective September 23, 1999, 24 TexReg 8190

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

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) 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).

Source: The provisions of this §39.409 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 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 given.

(b) When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H-L of this chapter (relating to Applicability and General Provisions, Public

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Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, 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 Mailed 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 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 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;

(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) for notices of air applications:

(A) 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 (NAAQS) or under state standards in Chapters 111, 112, 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, Control of Air Pollution from Toxic Materials, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(B) if notice is for applications described in §39.403(b)(11) or (12) of this title (relating to Applicability), a statement that any person is entitled to request a notice and comment hearing from the commission. If notice is for any other air application the following information which must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

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

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

(iv) and that only relevant and material issues raised during the comment period can

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be considered request is granted (C) notification 440 yards of a exemption from adopted by the commission who is entitled to hearing;

(D) the statement, if any exists, the regional office source Conservation

(11) for notices of applications, a statement affected by the facility entitled to request the commission. The font style or size and distinguishes notice; and

(12) any additional executive director notice required for program; or

(13) for radioactive Chapter 336 of the Substance Rules), written environmental has been prepared available to the public comments may be

(14) for Class I industrial solid waste permittees completing the permit being agency contact person

(c) Unless mailed under this section, of Application and listed in §39.413 (Notice). When notified decision by public Subchapters G-L notice must include

(1) the information (12) of this section

(2) a brief description of procedures, including which comment requestor's preliminary statement in the (for which there

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be considered if a contested case hearing request is granted; and

(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a contested case hearing;

(D) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Natural Resource Conservation Commission;" and

(11) 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

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

(13) 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.

(14) for Class 3 modifications of hazardous industrial solid waste permits the statement "The permittees 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-L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1)-(12) 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

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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;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), 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; and

(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;

(7) 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.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G-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 (12) 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;

(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 prelimi-

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nary 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.

Source: The provisions of this §39.411 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.413. Mailed Notice

Unless otherwise specified in Subchapters I-M of this chapter (relating to 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), when this chapter requires mailed notice, the chief clerk shall mail notice to:

- (1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;
- (2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;
- (3) The county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;
- (4) the Texas Department of Health;
- (5) the Texas Parks and Wildlife Department;
- (6) the Texas Railroad Commission;
- (7) if applicable, local, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c), as amended and adopted in the CFR through May 2, 1989 at 54 FedReg 18786;
- (8) if applicable, persons on a mailing list developed and maintained in accordance with 40 CFR §124.10(c)(1)(ix);
- (9) the applicant;
- (10) if the application concerns an injection well, the Water Well Drillers Advisory Council;
- (11) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists);
- (12) any other person the executive director or chief clerk may elect to include;
- (13) if applicable, the secretary of the Coastal Coordination Council; and
- (14) persons who filed public comment or hearing requests on or before the deadline for filing

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public comment or hearing requests.

Source: The provisions of this §39.413 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.418. Notice of Receipt of Application and Intent to Obtain Permit

(a) When the executive director determines that an application is administratively complete, the chief clerk shall mail this determination concurrently with the Notice of Receipt of Application and Intent to Obtain Permit to the applicant.

(b) Not later than 30 days after the executive director declares an application administratively complete:

(1) the applicant shall publish Notice of Receipt of Application and Intent to Obtain Permit once under §39.405(f)(1) of this title (relating to General Notice Provisions) and, for solid waste applications and injection well applications, also under §39.405(f)(2) of this title;

(2) the chief clerk shall mail Notice of Receipt of Application and Intent to Obtain Permit to those listed in §39.413 of this title (relating to Mailed Notice), and to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(B) the river authority in which the facility is located or proposed to be located if the application is under Texas Water Code, Chapter 26.

(3) for air applications, paragraphs (1) and (2) of this subsection do not apply. Instead the applicant shall provide notice as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Applications). Specifically, publication in the newspaper shall follow the requirements under §39.603 of this title (relating to Newspaper Notice), sign posting shall follow the requirements under §39.604 of this title (relating to Sign-Posting), and the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice); and

(4) the notice must include the applicable information required by §39.411(b) of this title (relating to Text of Public Notice).

Source: The provisions of this §39.418 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 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 chief clerk, except for air

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applications under :
The chief clerk shall concurrently with Preliminary Decision requires notice under given as required by

(b) The applicant tion and Preliminary same newspaper as cation and Intent to different requirements subchapter in this permit.

(c) Unless mailed under this section, of Application and listed in §39.413 Notice).

(d) The notice required by §39.411

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applications under subsection (e)(1) of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. Then, when this chapter requires notice under this section, notice shall be given as required by subsections (b)-(e) of this section.

(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.

(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) The notice must include the information required by §39.411(c) of this title.

(e) For air applications:

(1) the applicant is not required to publish Notice of Application and Preliminary Decision, if:

(A) no hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit;

(B) a hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued;

(C) the application is for any amendment, modification, or 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 contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations; or

(D) the application is for initial issuance of a permit described in §39.403(b)(11) or (12) of this title (relating to Applicability);

(2) If notice under this section is required, the agency shall mail notice according to §39.602 of this title (relating to Mailed Notice); and

(3) Notice of Application and Preliminary Deci-

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sion shall be published as specified in Subchapter K of this chapter (relating to Public Notification of Air Quality Applications) for permits that are not exempt under paragraph (1)(A)-(C) of this subsection or are for the following federal preconstruction approvals:

(A) applications under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review);

(B) applications under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review); and

(C) applications under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

Source: The provisions of this §39.419 adopted to be effective September 23, 1999, 24 TexReg 8190

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

(a) When required by and subject to §55.156 of this chapter (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) Office of Public Assistance.

(c) For air applications which meet the following conditions, items listed in subsection (a)(3) and (4) of this section are not required to be included in the transmittals:

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(1) applications for initial issuance of voluntary emission reduction permits under Texas Health and Safety Code, §382.0519;

(2) applications for initial issuance of electric generating facility permits under Texas Utilities Code, §39.264;

(3) applications where a hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued; or

(4) the application is for any amendment, modification, or 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 contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

Source: The provisions of this §39.420 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.421. Notice of Commission Meeting to Evaluate a Request for Reconsideration or Hearing on an Application

If, under Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment), a request for reconsideration or hearing on an application is set for consideration during a commission meeting, the chief clerk shall mail notice to the applicant, executive director, public interest counsel, all persons who commented (or a representative of a group or association), and the persons making the request, no later than 30 days before the first meeting at which the commission considers the request.

Source: The provisions of this §39.421 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.423. Notice of Contested Case Hearing

(a) The 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 SOAH on the sole question of whether the requestor is an affected person, the notice in this subsection shall be the only notice required.

(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.

Source: The provisions of this §39.423 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 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 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).

Source: The provisions of this §39.425 adopted to be effective September 23, 1999, 24 TexReg 8190

SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§ 39.501. Application for Municipal Solid Waste Permit

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

(b) Preapplication local review committee process. If an applicant for an MSW permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The execu-

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ive director shall mail notice to the county in which the proposed facility is to be located, the extrajurisdictional jurisdiction of the municipality. The notice shall be published in the county in which the proposed facility is located. The notice shall be published in the county in which the proposed facility is located. The notice shall be published in the county in which the proposed facility is located.

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

(1) On the execution of the application, or notice of receipt, the chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making the request, no later than 30 days before the first meeting at which the commission considers the request.

(2) After the execution of the application is received, the chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making the request, no later than 30 days before the first meeting at which the commission considers the request.

(A) notice shall be published in the county in which the proposed facility is located. This notice shall be published in the county in which the proposed facility is located. This notice shall be published in the county in which the proposed facility is located.

(B) the chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making the request, no later than 30 days before the first meeting at which the commission considers the request.

(C) the executive director shall mail notice of receipt of application and intent to obtain a permit to the applicant, executive director, public interest counsel, and the persons making the request, no later than 30 days before the first meeting at which the commission considers the request.

(d) Notice of Application and Intent to Obtain a Permit. The notice required by this section shall be published in the county in which the proposed facility is located. The notice shall be published in the county in which the proposed facility is located. The notice shall be published in the county in which the proposed facility is located.

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

(1) If the ap

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tive 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 shall 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 shall be by certified mail.

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

(1) On 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 shall 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)-(9), (11), and (12) 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 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) shall be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). The notice shall 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) If the application proposes a new facility,

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the agency shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided under this subsection.

(2) The applicant shall publish notice of the public meeting, as required by §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice shall be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters).

(3) 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 SOAH 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 shall 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 must 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 shall be completed at least 30 days before the hearing.

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Source: The provisions of this §39.501 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 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 must 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 shall also be mailed to the mayor of the municipality. Mailed notice shall 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 at 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, at 60 FedReg 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 Amendment), correction under §50.45 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 hazard-

ous 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) On 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 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, at 60 FedReg 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, at 60 FedReg 63417. The requirements of this paragraph relating to 40 CFR §124.32(b)-(c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.45 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 shall be given as required by §39.418 of this title. Notice under §39.418 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).

(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

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authority of the located.

(d) Notice of Application. The notice required published once as required by this title. In addition to this title, the following

(1) The application shall be published once in a newspaper of general circulation in the county in which the facility is located, or in a newspaper that may satisfy the requirements of this title and of the rules of the commission.

(2) If the application is for a hazardous waste facility, the notice shall be published in the newspaper of general circulation of the county in which the facility is located, or in a newspaper that may satisfy the requirements of this title and of the rules of the commission.

(3) The notice shall be published in the newspaper of general circulation of the county in which the facility is located, or in a newspaper that may satisfy the requirements of this title and of the rules of the commission, 30 days after the date of the application, or 30 days after the date of the notice of receipt of application.

(e) Notice of public meeting.

(1) If the application is for a hazardous waste facility, the notice of public meeting shall be published in the newspaper of general circulation of the county in which the facility is located, or in a newspaper that may satisfy the requirements of this title and of the rules of the commission, 30 days after the date of the application, or 30 days after the date of the notice of receipt of application.

(2) The notice of public meeting shall be published in the newspaper of general circulation of the county in which the facility is located, or in a newspaper that may satisfy the requirements of this title and of the rules of the commission, 30 days after the date of the application, or 30 days after the date of the notice of receipt of application.

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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 shall be published once as required by §39.405(f)(2) of this title. In addition to the requirements of §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county which 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 shall comply with §39.411 of this title. The deadline for public comments on industrial solid waste applications shall 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) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided under this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting. The applicant shall publish notice under §39.405(f)(2) of this title. The published notice shall be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters).

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

(f) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (concerning 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 which 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 shall be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters) or have a total size of at least 9 column inches (18 square inches). The text of the notice shall 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 shall 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 paragraph (1) of that section. 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 must 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.

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

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

(g) 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, at 60 FedReg 63417, apply to all applications for hazardous waste permits.

Source: The provisions of this §39.503 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 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 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 this title (relating to Notice of Application and Preliminary Decision).

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

Source: The provisions of this §39.509 adopted to be effective September 23, 1999, 24 TexReg 8190

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

§ 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 (12) 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; or

(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 Amendment).

(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 as required by §39.411(b)(1)-(3), (5)-(7), (9), and (12), and (c)(2)-(6). In addition to §39.419 of this title, for all applications except applications to renew permits and those in subsection (c)(1) of this section, 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.

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(2) The chief persons listed in Mailed Notice). average daily discharge more, in addition of this title, the each county judged within 10 discharge who commission give into or adjacent to be discharged discharge.

(3) The notice comment with 30 days after the notice may under paragraph than 20 days comment.

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(B) a general each existing the name of

(C) for application of sludge:

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

(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 (12), 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.

(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 (relating to Amendment), 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

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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 (12), 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, Modifications, 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 con-

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financed 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 EPA 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 (12), and (c)(4)-(6).

(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 Processing).

(f) Notice of contested case hearing.

(1) This subsection applies if an application is referred to SOAH 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 (relating to Mailed Notice), 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 library of the agency, Park 35, 12015 North Interstate 35, Austin.

Source: The provisions of this §39.551 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 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

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persons requesting notice on mailing lists in accordance with Mailing Lists).

(3) Section 39.551 of Public Notice).

However, the notice

(A) include agency;

(B) provide comments on

(C) describe and the time and

(D) include number of an interested person

(4) The notice public comment

(5) Any public notice conducted in accordance with procedures of the Public Commission

(c) The executive director's response to all sign by the commission period. The executive update based on

(d) As described in Executive Directive Update), the executive update.

(e) After the executive update, the Chief Response to Commission to all persons who

Source: The provisions of this §39.551 adopted to be effective September 23, 1999, 24 TexReg 8190

SUBCHAPTER AIR QUALITY

§ 39.601. Air

Air application administratively are subject to this Subchapter B, Emission and Control (21, 1999) or §10 Notice) (e.g., emissions or registrations) or registrations to be complete

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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, 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 shall mail a copy of the Response to Comments and certified WQMP update to all persons who submitted timely comments.

Source: The provisions of this §39.553 adopted to be effective September 23, 1999, 24 TexReg 8190

SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

§ 39.601. Applicability

Air applications or registrations that are declared administratively complete before September 1, 1999 are subject to the requirements of Chapter 116, Subchapter B, Division 3 (relating to Public Notification and Comment Procedures) (effective March 21, 1999) or §106.5 of this title (relating to Public Notice) (effective December 24, 1998). Air applications or registrations that are declared administratively complete by the executive director on or after

September 1, 1999 are subject to this subchapter.

Source: The provisions of this §39.601 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.602. Mailed Notice

When this chapter requires notice for air applications, the chief clerk shall mail notice only to those persons listed in §39.413 (9), (11), (12), and (14) of this title (relating to Mailed Notice). When Notice of Receipt of Application and Intent to Obtain Permit is required, mailed notice shall be sent to the state senator and representative who represent the area in which the facility is or will be located.

Source: The provisions of this §39.602 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.603. Newspaper Notice

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) 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(b)(1)-(6) and (8)-(10) of this title (relating to Text of Public Notice).

(b) Notice of Application and Preliminary Decision 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 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 (relating to Text of Public Notice).

(c) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air application, the applicant 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 shall be published in the public notice section of the newspaper and shall comply with §39.411 of this title (relating to Text of Notice).

(2) Another notice with a total size of at least 6 column inches, with a vertical dimension of at least 3 inches and a horizontal dimension of at least 2 column widths, or a size of at least 12 square inches, shall be published in a prominent location elsewhere in the same issue of the

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newspaper. This notice shall contain the following information:

- (A) permit application 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.

(d) Alternative language newspaper notice.

(1) This subsection applies whenever notice is required to be published under §39.418 of this title, §39.419 of this title, and this section 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 waives out of this requirement under 19 TAC §89.1205(g).

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

(3) The notice shall 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.

(4) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located. Notice under this subsection shall only be required to be published within the United States.

(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.

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

(7) If a waiver is received under this section, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies).

(e) Alternative publication procedures for small businesses.

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

(A) the applicant and source meets the definition of a small business stationary source in §382.0365 of the Texas Health and Safety Code 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 site meets the emission limits in §106.4(a) of this title (relating to Requirements for Exemption from Permitting) 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.

(f) If an air application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant shall publish notice once in a newspaper as described in (c) of this section, containing the information under §39.411(d) of this title. This notice shall be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

Source: The provisions of this §39.603 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.604. Sign-Posting

(a) At the applicant's expense, a sign or signs shall be placed at the site of the existing or proposed facility declaring the filing of an application for a

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permit and stating mission may be co Such signs shall be shall substantially r

(1) Signs shall white background inches by 28 inc less than one and printed capital l

(2) Signs shal below:

(A) "PROPC new permits a

(B) "PROPC ITY PERMIT"

(3) Signs sha TION NO." ar application. Mo may be include public comment

(4) Signs sha information cor

(5) Sign sha ral Resour address of the office;

(6) Signs sha the appropriate

(b) The sign or of publication of t and Intent to Of place and legible period. The appli must provide a ve conducted accor

(c) Each sign within ten feet o public highway, s from the street a foot intervals. A than three signs erty line paralle road. The execut from these requ alternative sign cant are more public. This sect to properties un noncontiguous highway, street, the perm pl

(d) The execu from the requ

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permit and stating the manner in which the commission may be contacted for further information. Such signs shall be provided by the applicant and shall substantially meet the following requirements:

(1) Signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches and all lettering shall be no less than one and one-half inches in size and block printed capital lettering;

(2) Signs shall be headed by the words listed below:

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

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

(3) Signs shall 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 shall include the words "for further information contact";

(5) Signs shall include the words "Texas Natural Resource Conservation Commission," and the address of the appropriate commission regional office;

(6) Signs shall 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 throughout that public comment period. The applicant must 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 shall 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 which 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 §39.603 of this title (relating to Newspaper Notice). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs shall be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection shall be satisfied without regard to whether alternative language newspaper notice is waived under §39.703(d)(5) of this title (relating to Newspaper Notice). The alternative language signs shall meet all other requirements of this section.

Source: The provisions of this §39.604 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.605. Notice to Affected Agencies

In addition to the requirements in §39.405(f) 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; and

(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;

(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 required under this section, the applicant

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shall furnish a copy to those listed in paragraph (2)(A)-(C) of this section.

Source: The provisions of this §39.605 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.606. Alternative Means of Notice for Voluntary Emission Reduction Permits

(a) An applicant for a voluntary emission reduction permit, under Texas Health and Safety Code, §382.05191, for a facility that constitutes or is part of a small business stationary source, as defined in Texas Health and Safety Code, §382.0365(g)(2), may request that the executive director approve an alternative means from the notice methods required under this subchapter.

(b) The executive director may approve the request upon a determination that the alternative means will result in equal or better communication with the public, considering the following factors:

- (1) the effectiveness of the method of notice in reaching potentially affected persons;
- (2) the cost of the method of notice; and
- (3) whether the method is consistent with federal requirements.

(c) The applicant may not use the alternative means of notice until the executive director gives written approval.

(d) Notice of hearing. The applicant shall publish notice of the hearing 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. The notice must be published not less than 30 days before the hearing.

Source: The provisions of this §39.606 adopted to be effective September 23, 1999, 24 TexReg 8190

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

§ 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 must 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 shall 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 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 shall be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit). This notice must contain the text as required by §39.411(b)(1)-(9) and (12) of this title (relating to Text of Public Notice). Notice under §38.418 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, the following persons shall be notified:

(A) 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); and

(B) the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(4) 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 extra-territorial 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 Application and Preliminary Decision) shall 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
following requiremer

(1) The applicant shall publish the notice at least once in a newspaper of general circulation in the county in which the property is located. One notice may satisfy the requirements of 405(f)(2) of this title if the notice is published in a newspaper that meets the requirements of 405(f)(2) of this title.

(2) The chief of persons listed in the Mailed Notice), to rights within the defined by §331.22.21 elements located in "governments" shall for that term in T

(3) If the app waste facility, the under §39.503(d) cation for Indust Permit).

(4) The [redacted] industrial solid waste 30 days after [redacted] hazardous waste days after news]

(e) Notice of pu

(1) If the app waste facility, tl public meeting. is to be located cerning the app a major amen waste facility p hold a public with the chief concerning the file public cor tion or hearin tested case pr meeting held a process under the requiremen is provided in

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centimeters).

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to the requirements of §39.419 of this title, the following requirements apply:

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county which 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) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice), to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title, and to local governments located in the county of the facility. "Local governments" shall have the meaning provided for that term in Texas Water Code, Chapter 26.

(3) 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).

(4) The deadline for public comments on industrial solid waste applications shall 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) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment or requests for reconsideration or hearing. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(2) 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 shall be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters).

30 TAC § 39.651

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

(f) Notice of contested case hearing.

(1) This subsection applies if an application is referred to SOAH 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 which is adjacent or contiguous to each county wherein 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 shall be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters). The text of the notice shall 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, and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title.

(B) 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 shall 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 must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts

COMMISSION NOTICE FOR LICENSES

Chapter 336 of this title (relating to the Rules) that is on or after September 23, 1999, Subchapter and Chapter H of this title, and General

adopted to be effective

of Administra-

Chapter 336 of this title (relating to the Rules) has completed, the chief clerk of the subchapter.

adopted to be effective

Applications Upon Technical Review

has completed on for a license, a license issued relating to Radioactive Material, an amendment to this title relating to Near-Surface Land Disposal of Radioactive Waste), notice of this subchapter. ent, protests, or publication.

a minor amendment to Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), notice shall be filed no later than 30 days before the hearing. The deadline to file requests is ten

adopted to be effective

Radioactive Mate-

Under this subchapter, notice under only this title (relating to the ownership of property and purposes of deter-

PUBLIC NOTICE

mining the ownership of property adjacent to the proposed site under this subchapter, the applicant shall provide the chief clerk with the names of the landowners from the county tax rolls that are available no more than 30 days before the date of newspaper publication of the notice.

Source: The provisions of this §39.705 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.707. Published Notice

(a) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), 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 Radioactive Waste), when notice is required to be published under this subchapter, the applicant shall publish notice in a newspaper published in the county or counties in which the facility is or will be located. If no newspaper is published in the county or counties in which the facility is or will be located, a written copy of the notice shall be posted at the courthouse door and five other public places in the immediate locality to be affected. The notice shall be posted for at least 31 days.

(c) In addition to published notice requirements in subsection (b) of this section, for an amendment of a license under Chapter 336, Subchapter H of this title, the chief clerk shall publish notice once in the *Texas Register*.

Source: The provisions of this §39.707 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.709. Notice of Contested Case Hearing on Application

(a) The requirements of this section apply when an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), notice shall be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

(c) When notice is required under this section, the text of the notice must include the applicable information specified in §39.411(b)(13) and (d) of this title (relating to Text of Public Notice).

Source: The provisions of this §39.709 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.711. Proof and Certification of Notice

(a) Notice shall be mailed by certified mail, return receipt requested. Proof of mailing to the proper address on the return receipt shall be accepted as conclusive evidence of the fact of the mailing.

(b) The applicant shall file proof of publication with the chief clerk within 30 days after publication. Filing an affidavit executed by the publisher accompanied by a printed copy of the notice as published creates a rebuttable presumption of compliance with the requirement to publish notice.

(c) The applicant shall file proof of posting with the chief clerk within 30 days of posting. Proof of posting may be made by the return affidavit of the sheriff or constable, or, by the affidavit of a credible person made on a copy of the posted notice showing the fact of the posting.

Source: The provisions of this §39.711 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.713. Public Notification and Public Participation

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site under §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions) or §336.609 of this title (relating to Alternate Criteria for License Termination), or whenever the commission deems notice to be in the public interest, the commission shall:

(1) notify and solicit comments from:

(A) local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(B) the United States Environmental Protection Agency for cases where the licensee proposes to release a site under §336.609 of this title (relating to Alternate Criteria for License Termination); and

(2) publish a notice in the *Texas Register* and in a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the

30 TAC § 39.713

vicinity of the site, and solicit comments from affected parties.

NATURAL RESOURCE CONSERVATION COMMISSION

Source: The provisions of this §39.713 adopted to be effective September 23, 1999, 24 TexReg 8190

CHAPTER 40. ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

Section

- 40.1. Policy.
- 40.2. Definitions.
- 40.3. Referral of Contested Matter for Alternative Dispute Resolution Procedures.
- 40.4. Appointment of Mediator.
- 40.5. Qualifications of Mediators.
- 40.6. Commencement of ADR.
- 40.7. Stipulations.
- 40.8. Agreements.
- 40.9. Confidentiality of Communications in Alternative Dispute Resolution Procedures.

§ 40.1. Policy

It is the commission's policy to encourage the resolution and early settlement of all contested matters through voluntary settlement procedures. It is the affirmative responsibility of each commission employee to effectuate this policy.

Source: The provisions of this §40.1 adopted to be effective June 6, 1996, 21 TexReg 4726.

Authority: The provisions of this Chapter 40 issued under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006; and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§ 40.2. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) ADR—Alternative dispute resolution.
- (2) Alternative dispute resolution procedure or ADR procedure—A nonjudicial and informally conducted forum for the voluntary settlement of contested matters through the intervention of an impartial third party.
- (3) Alternative dispute resolution director or ADR director—The director of the agency office empowered by the commission to coordinate and oversee ADR procedures and mediators.
- (4) Contested matter—A request for a license, permit, order, or other formal authorization from the commission that is opposed.
- (5) Mediator—The person appointed by the ADR office director to preside over ADR proceedings regardless of which ADR method is used.
- (6) Participant—The executive director, the public interest counsel, the applicant, and the persons who timely filed hearing requests which gave rise

to the dispute or if parties have been named, the named parties.

(7) Private mediator—A person in the profession of mediation who is not a Texas state employee and who has met all the qualifications prescribed by Texas law for mediators.

Source: The provisions of this §40.2 adopted to be effective June 6, 1996, 21 TexReg 4726.

Authority: The provisions of this Chapter 40 issued under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006; and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§ 40.3. Referral of Contested Matter for Alternative Dispute Resolution Procedures

The commission or the ADR director may seek to resolve a contested matter through any ADR procedure. Such procedures may include, but are not limited to, those applied to resolve matters pending in the state's district courts.

Source: The provisions of this §40.3 adopted to be effective June 6, 1996, 21 TexReg 4726.

Authority: The provisions of this Chapter 40 issued under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006; and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§ 40.4. Appointment of Mediator

(a) For each matter referred for ADR procedures, the ADR director shall assign a mediator, unless the participants agree upon the use of a private mediator. The ADR director may assign a substitute or additional mediator to a proceeding as the ADR director deems necessary.

(b) A private mediator may be hired for commission ADR procedures provided that:

- (1) the participants unanimously agree to use a private mediator;
- (2) the participants unanimously agree to the selection of the person to serve as the mediator;
- (3) the mediator agrees to be subject to the direction of the commission's ADR director and to all time limits imposed by the director, the judge, statute, or regulation.

(c) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the participants, unless otherwise agreed upon by the participants, and shall be paid directly

ALTERNATIVE

to the mediator. In costs be apportioned or entity that is a

(d) All mediator proceedings shall submit mediators adopted Bar of Texas.

Source: The provisions of this §40.4 adopted to be effective June 6, 1996, 21 TexReg 4726.

Authority: The provisions of this Chapter 40 issued under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006; and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§ 40.5. Qualifications

(a) The commission staff mediator shall be experienced through ADR procedures.

(1) To the extent possible, the mediator shall receive 40 hours of ADR procedures through the ADR director.

(2) Other than an ADR director, an individual with experience who has completed individual conflict resolution training.

(b) SOAH mediator who are mediators who may be assigned

(1) Each mediator shall have a minimum of 40 hours of Texas ADR procedures.

(2) Each mediator shall have a minimum of 40 hours of the area of the dispute.

(3) If the mediator will not also be a mediator in a contested matter.

Source: The provisions of this §40.5 adopted to be effective June 6, 1996, 21 TexReg 4726.

Authority: The provisions of this Chapter 40 issued under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006; and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§ 40.6. Commencement

(a) The commission staff mediator shall not be a mediator in a proceeding at the discretion of the application of the mediator. The mediator shall be assigned to the proceeding if the mediator has been