PERALES, ALLMON & ICE, P.C.
ATTORNEYS AT LAW
1206 San Antonio Street
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
info@txenvirolaw.com

Of Counsel:
David Frederick
Vic McWherter
Claire Krebs

September 9, 2025

Gwen Ricco
Program Supervisor, MC 205
Texas Register/Rule Development Team – Office of Legal Services
Texas Commission on Environmental Quality
Austin, Texas 78711-3087

Via TCEQ Public Comment System

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

Dear Ms. Ricco:

I am submitting this letter on behalf of Perales, Allmon & Ice, P.C. ("PAI") regarding the TCEQ's Proposed Rulemaking to amend 30 TAC Chapter 39, Public Notice; and Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment.

I. PAI supports many of the changes.

PAI is supportive of many of the changes in the proposed rules. While simple, the creation of a consistent spelling of the word "requester" that is in line with common usage will aid in discussion of hearing requests. The ability of a requester to provide notice of a reply, rather than serve a reply on all relevant persons, will make this process less burdensome.

As noted below, PAI supports extension of the comment period for certain air applications, but believes this improvement should be applied more broadly.

II. The proposed rules inappropriately define "personal justiciable interest."

The rulemaking proposal includes a new definition in 30 Tex. Admin. Code § 55.103(3) of the term "personal justiciable interest." The definition inappropriately limits the potential interests of relevance to only those which are "within the jurisdiction and authority of the commission." The commission is an agency of limited jurisdiction and authority. For example, the commission lacks the authority to adjudicate property rights. Yet, an impact upon an interest such as a person's property rights is properly considered a personal justiciable interest.

The proposed rule adds limitations upon who may be considered an affected person that are not included within Texas Water Code Section 5.115. Such limitations not contained in statute are inappropriate to add, and limit the rights of persons particularly impacted by an application in ways that the Legislature has not intended.

Additionally, these limitations raise concern for whether Texas' program would meet the minimum requirements for Texas to maintain delegated authority over certain federal programs, such as the TPDES program. Texas has represented to the EPA that Texas' definition of "affected person" is as broad as Article III standing. Since obtaining a hearing is a prerequisite to pursuit of an administrative appeal, Texas law must ensure that all persons who would have Article III standing with regard to a permit would qualify as an "affected person." The limitations proposed to be added to what constitute a justiciable interest would result in Texas' treatment of who may be considered an "affected person" to be more narrow than that allowed under Article III standing.

III. PAI supports extension of the public comment period, but this should be applicable to more permits and effective sooner.

It is appropriate to extend the public comment period to 36 hours after a public meeting is held for an air quality permit with a consolidated notice. However, this requirement should apply earlier than only to those applications submitted on or after March 1, 2026.

Furthermore, a lack of time is a problem for many types of permit applications, and not just air permits. The comment period should extend to 36 hours after the close of the public meeting for all air quality, water quality, and solid waste permit applications.

IV. Additional time for formulation of a reply to responses to hearing requests is warranted.

The proposed rules maintain the same interval of time between the filing of responses to hearing requests and the submission of a reply by hearing requesters, while keying these deadlines off of the date that the chief clerk mails notice of the first meeting at which the commission will consider the hearing request. This interval provides only 14 days for a hearing requester to provide a reply to the responses to hearing requests.

The issues to be addressed in a hearing request may be complex, and on occasion substantial time may have passed after the initial submission of the hearing request and the commission's consideration of the request. Organizations seeking a hearing may include many members whom would require contacting and coordinating in order to develop a reply. In some circumstances, the response to a hearing request may present new contentions that require expert evaluation, and, potentially, the development of an expert report. Fourteen days does not ensure sufficient time for the development of a reply under such circumstances. It would be more appropriate to establish that a reply will be due 30 days after the chief clerk mails the notice of the first meeting at which the commission will consider the hearing request. This would better ensure that requesters are able to evaluate responses to the hearing requests, and develop replies to the contentions forwarded in those responses.

V. Conclusion

PAI appreciates the opportunity to submit comments to this revision of the TCEQ's procedural rules relating to notice, comment, and the consideration of hearing requests. If you have any questions, please feel free to contact me.

Sincerely,

Eric Allmon
State Bar No. 24031819
eallmon@txenvirolaw.com
PERALES, ALLMON & ICE, P.C.
1206 San Antonio Street
Austin, Texas 78701
Tel: (512) 469-6000
Fax: (512) 482-9346