

## Appendix to Texas Industry Project Comments on Rule Project No. 2024-003-039-LS

### I. 39.405(g)(1)-(3) General Notice Provisions

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

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

(2) A copy of the technically complete application (including any subsequent revisions to the administratively complete application) and executive director's preliminary decision must be available for review and copying beginning on the first day of ~~the first~~ newspaper publication required by ~~this section~~ §39.419 of this title (relating to Notice of Application and Preliminary Decision) and remain ~~continuously~~ available until the public comment period has ended as provided in Section 55.152 of this title ~~the commission has taken action on the application or the commission refers the application [issues] to State Office of Administrative Hearings;~~ and

(3) where applicable, for air quality permit applications, the applicant shall also make available the executive director's draft permit, preliminary determination summary, and air quality analysis for review and copying beginning on the first day of newspaper publication required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) and remain available until the public comment period has ended as provided in Section 55.152 of this title ~~commission has taken action on the application or the commission refers the application [issues] to State Office of Administrative Hearings.~~

### II. 39.405(l) Electronic Copy of Application

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

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

(2) make an electronic copy of the technically complete application and the executive director's draft permit available on the commission's website within five business days of transmitting the notice of

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the technically complete application and the executive director's draft permit to the applicant; materials may be exempted if posting the materials on the website would be unduly burdensome or the materials are too large to be posted on the website; ~~and~~

(3) indicate on the commission's website that there is additional information in a confidential file if the application is submitted with confidential information marked as confidential by the applicant;

(4~~3~~) retain these postings until the public comment period has ended as provided in Section 55.152 of this title ~~final action is taken on the application or the commission refers the application to State Office of Administrative Hearings, whichever is earlier~~ and there is no further opportunity to request commission or judicial review; and

(5) verify that the electronic posting of the application was conducted in substantial compliance according to this section.

### III. 39.411(b)-(d) Text of Public Notice

(b)(4)(C) a statement that if no comments are timely submitted by a person or association meeting the requirements under §55.203 (relating to Determination of Affected Person) or §55.205 (relating to Request by Group or Association) of this title during the public comment period, then that person or association may not be named an affected person or affected association by the commission or the State Office of Administrative Hearings.

(b)(5) a description printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice of procedures by which the public may participate in the final permit including, when applicable:

(b)(5)(B) how to request a contested case hearing, including that a requester must specifically request a contested case hearing;

(c)(2)(C) a statement that if no comments are timely submitted by a person or association meeting the requirements under §55.203 (relating to Determination of Affected Person) or §55.205 (relating to Request by Group or Association) of this title during the public comment period, then that person or association may not be named an affected person or affected association by the commission or the State Office of Administrative Hearings.

(d)(3)(D) a statement that if no comments are timely submitted by a person or association meeting the requirements under §55.203 (relating to Determination of Affected Person) or §55.205 (relating to Request by Group or Association) of this title during the public comment period, then that person or association may not be named an affected person or affected association by the commission or the State Office of Administrative Hearings.

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

(e)(5) printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of this notice, a brief description of procedures by which the public may participate in the final permit decision and, if applicable:

(e)(5)(B) how to request a contested case hearing, including that a requester must specifically request a contested case hearing;

### IV. 39.604 Sign-Posting

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

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

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

- (A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or
- (B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

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

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

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

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

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible until the public comment period has ended as provided in Section 55.152 of this title ~~final action has been taken on the permit action~~

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

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

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

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

### V. 39.606 Contested Case Hearings and Public Meetings

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

(1) air quality permit applications and ~~for~~ permit amendment applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title [except for applications to authorize greenhouse gas emissions as set forth in section 382.05102 of the Texas Clean Air Act](#);

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

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(3) for registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits);

(4) air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapter G of this title (relating to Flexible Permits) **except for air permit amendments that are not subject to the opportunity for a contested case hearing as set forth in section 55.101(e) or that are not subject to public notice requirements as set forth in section 39.402(a)(5);**

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

~~(5) ~~(6)~~ all other permit applications subject to the requirements of Chapter 116, Subchapter B (relating to New Source Review Permits) **except for air permit amendments that are not subject to the opportunity for a contested case hearing as set forth in section 55.101(e) or that are not subject to public notice requirements as set forth in sections 39.402(a)(3);**~~

~~(6) ~~(7)~~ applications for renewals of air quality permit applications listed in this subsection **except for air permit renewals that are not subject to the opportunity for a contested case hearing as set forth in section 55.101(e).**~~

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

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

(2) a permit under chapter 116, Subchapter L of this title (relating to Permits for Specified Designated Facilities); **and**

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

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

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

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

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- (1) the requester's location relative to the proposed facility or activity;
- (2) a description of how the requester will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requester's uses of property which may be impacted by the proposed facility or activity; and
- (3) an identification of the relevant and material issues raised by the requester during the comment period and not withdrawn; and
- ~~(3)~~ (4) the form requirements of Chapter 55 of this title

(h) For public meetings, the following requirements apply:

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

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

(j) Air quality permit amendment applications that are not subject to public notice requirements as set forth in section 39.402(a)(3) are not subject to public comment, public meeting, reconsideration or contested case hearing opportunities.

## VI. 55.103 Definitions

The following words and terms, when used in Subchapters D - G of this chapter (relating to Applicability and Definitions; Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) shall have the following meanings.

(1) Affected person--A person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

(A) The determination of whether a person is affected shall be governed by §55.203 of this title (relating to Determination of Affected Person), or, if applicable, under §55.256 of this title (relating to Determination of Affected Person).

(B) Notwithstanding any other law, a state agency, except a river authority, may not file a request for a contested case hearing or request for reconsideration, nor may it be considered an affected person or

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named a party, or otherwise contest ~~[of a permit or license on]~~ an application for a permit or license received by the commission on or after September 1, 2011 unless the state agency is the applicant.

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

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

~~(3) Personal justiciable interest—A legally protected interest related to a legal right, duty, privilege, power or economic interest potentially impacted by a draft or proposed permit that is within the jurisdiction and authority of the commission and that can be considered in an administrative hearing or judicial appeal that is related to the draft or proposed permit. An interest common to members of the general public does not qualify as a personal justiciable interest.~~

(3-4) Motion to overturn—A request for the commission to overturn a final decision made by the executive director under §50.139 of this title (relating to Motion to Overturn the Executive Director's Decision). A motion to overturn is a prerequisite to judicial review of a final decision by the executive director.

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

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

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