

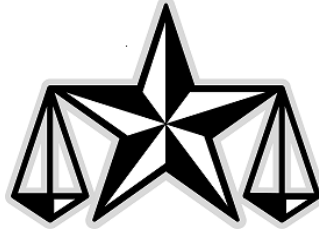
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September 9, 2025

VIA ONLINE SUBMISSION: <https://tceq.commentinput.com/>

Office of Legal Services, MC 205
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Rule Project Number 2024-003-039-LS

On behalf of our represented client, Stakeholder Better Brazoria—Clean Air & Water in Brazoria County (Better Brazoria), Lone Star Legal Aid (LSLA) provides the following formal comments to the Texas Commission on Environmental Quality (TCEQ) on the non-statutory changes included in the proposed rulemaking to amend 30 Texas Administrative Code Chapter 39, Public Notice; and Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comments.

I. INTRODUCTION

LSLA's mission is to protect and advance the civil legal rights of the millions of Texans living in poverty by providing free advocacy, legal representation, and community education to ensure equal access to justice. LSLA's service area encompasses one-third of the State of Texas, including 72 counties in the eastern and Gulf Coast regions of the state. LSLA's Environmental Justice team focuses on the right to the fair distribution of environmental benefits and burdens and the right to equal protection from environmental hazards. LSLA advocates for these rights on behalf of impacted individuals and communities in LSLA's service area. These comments are submitted on behalf of Better Brazoria, which serves and represents the low-income environmental justice community of Freeport, Brazoria County, and its residents.

Stakeholder Better Brazoria formed to educate Freeport residents about environmental issues and to advocate for solutions to protect and improve air and water quality. To accomplish this mission, Better Brazoria holds community meetings to raise awareness about potentially harmful air and water pollution events in Freeport, Texas and Brazoria County. The group communicates with TCEQ and other state and local governmental entities to remain up to date on the latest

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developments in the area. Better Brazoria continues to engage with the public participation component of the environmental permitting process by submitting comments, engaging in hearings on air, water, and waste permits, and advocating for air monitors in the region. The group's goal is to encourage protection of public health through compliance with permitting schemes and environmental laws.

Better Brazoria is a stakeholder in submitting formal comments on these proposed rule changes to 30 Texas Administrative Code Chapter 39, Public Notice; and Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comments because the group: (1) regularly receives and reviews public notices related to a diverse selection of permitting actions from TCEQ, (2) has participated in various types of permits and submitted public comments on them, (3) has requested contested case hearings from the agency on different types of permits, (4) has participated in contested cases hearings, and (5) generally followed the sunset review process of the TCEQ during the last legislative session and is familiar with many of the recommendations made by both the staff and legislators during that process. The group also submitted informal comments on potential changes to Chapters 39 and 55 on October 8, 2024.

II. PROPOSED CHANGES TO 30 TEXAS ADMINISTRATIVE CODE CHAPTER 39, PUBLIC NOTICE

Stakeholder Better Brazoria submits the following comments on the proposed changes to Chapter 39 of Title 30 of the Texas Administrative Code (30 TAC) covering Public Notices. All rule references below are to the TCEQ's rules found in Chapter 39 of 30 TAC.

A. RECOMMENDATIONS ON TIMING FOR CHANGES TO CHAPTER 39 TO TAKE EFFECT

In seeking public comment on the proposed changes to Chapter 39, the TCEQ asked for input on when changes should take effect. Better Brazoria recommends that these changes take effect as soon as possible. TCEQ has proposed an adoption date of early 2026, with an effective date of March 1, 2026. This timeline seems reasonable given the agency's need to respond to comments and then present the final rule changes to the Commission for final approval.

In addition, Better Brazoria recognizes that the TCEQ has already implemented many of the Sunset Review changes and appreciates the TCEQ taking affirmative steps to expand notice as opposed to waiting. The expedited implementation is particularly helpful since the legislature passed the Sunset Review Bill (S.B. 1397) in 2023. Specifically, Better Brazoria is glad to see that TCEQ has already implemented the ability to receive notifications through email, which includes the informal email list of certain permits. Better Brazoria and its counsel LSLA have always appreciated TCEQ's use of email as a courtesy for those on mailing lists for many permits. This email notice dramatically expands the time that stakeholders and interested parties have a chance to respond to TCEQ notices, which are already subject to short deadlines. While this notice does not substitute for the required mail notice, it provides the public and potential commenters more opportunity to respond to those permits they have already expressed interest in through an established mailing list.

As to the changes that TCEQ has proposed to delay until July 2026, it is not clear why this extra time is necessary as of the rules reference applications filed after May 1, 2026. *See e.g.*, Proposed Rule §39.422(c). It would seem that these deadlines should correspond, but if there is a reason to delay 2 months for these new applications, please address that in the response to comments.

B. NEW DEFINITIONS IN PROPOSED SECTION 39.1

Better Brazoria appreciates the addition of definitions to Section 39.1 to include guidance on the meanings of (1) administratively complete application, (2) contested case hearing, (3) notice and comment hearing, (4) public comment, (5) public meeting, (6) response to comment, (7) request for reconsideration, and (8) technically complete application. Proposed Rule §39.1(1)-(8). These definitions will assist those commenting on permits from distinguishing these various levels of public participation. It should avoid confusion over what avenues are available for certain permit challenges by explaining, e.g., the difference between a “public meeting”, a “notice and comment hearing”, and “contested case hearing.”

C. SIGNAGE AND POSTINGS

Better Brazoria is glad to see that posted signs must remain in place throughout the permit review process from beginning to final action on the project. Proposed Rule §39.604(b).

Similarly, Better Brazoria supports that documents that must be posted by applicants in a public place must remain in place through the permit review process from the beginning to the final action on the permit.

Commenter also approves of change that signage become larger so that the public posting is visible from the street. Increasing the size of the signs posted to 48x48 inches with a minimum of 3” lettering will give public a better view of public notices from afar. Proposed Rules §39.604(a)(1) and §39.510(b)(1).

D. EXTENSION OF THE COMMENT PERIOD – SUBCHAPTER H

1. Related Rules from Chapter 55

Better Brazoria definitely approves of the public comment period and deadline to submit comments and request a contested case hearing being extended for at least 36 hours at the close of a public meeting for air permits with consolidated notice. Proposed Rules §55.210(c)(4), §55.152(b), §55.251(d); TEX. HEALTH & SAFETY CODE § 382.056.¹ This extension makes good sense for several reasons. First, TCEQ and/or the applicant may disclose information at the public meeting /hearing important to their public comment or would necessitate further review. Second, many people often first learn of the permit at the public meeting and need more time to consider what comments they would like to submit. Third, often these meetings are held in the evening and by the time the meeting is over and the proposed commenter returns, it is too late to finalize comments that evening and such work necessarily needs to carry over another day.

¹ Sunset Advisory Commission, TCEQ Staff Report with Final Results, Final Results at A1.

While not part of the proposed rules available for comment, for the reasons stated above, Better Brazoria still feels that extending the comment period for 36 hours after the public meeting or notice and comment hearing makes sense on *all* permits. In this Rule Project, TCEQ has limited this change to only certain permits required under the Sunset Review Bill, and TCEQ adequately reflected these changes allowing for an extension for applications filed after March 1, 2026 in Proposed Rules §55.210(c)(4), §55.152(b), §55.251(d). Likewise, the TCEQ has integrated that the notice to extend time will comply with the procedures specified in Rule 39.422. *See* Proposed Rules §55.201(g)(3), §55.152(c), §55.251(f)(3). Rule 39.422 is discussed more below in Section I-D-3.

Better Brazoria also approves of these related changes in Chapter 39 and 55 going into effect as soon as possible. The proposed date where this requirement would apply to any application filed after March 1, 2026 seems feasible.

2. Proposed Rule §39.409(b)-(d)

Better Brazoria approves of the changes to Rule §39.409 reflected in subsections (b), (c), and (d). These provide clarity as to when comments must be received to be timely, when extensions can be granted by the Executive Director, and references a specific new rule providing for special procedures that the agency will follow in granting an extension. Proposed Rule § 39.409(c)-(d).

In Rules §39.409(c), §39.422(c), and §55.152(a)(8), TCEQ proposes that the Executive Director may extend any comment period “for good cause.” Good cause is usually granted for reasons that are outside the control of the interested parties and directly impact their ability to provide meaningful comments. Here are examples of good cause for extending a public comment period:

- **Significant public interest:** A rule is of major public interest, and a wide array of stakeholders require more time to provide input. An extension ensures a more comprehensive and robust public record.
- **Emergency or disaster:** A natural disaster, public health emergency, or other significant event affected the public's ability to participate in the rulemaking process. For example, events like hurricanes or floods are potential good causes.
- **Issues with public notification:** Interested parties did not receive adequate or timely notice of the determination or decision.
- **Public safety concerns:** An extension is needed to ensure the rule will not pose a threat to public safety.
- **Incorrect agency information:** The agency provided inaccurate or incomplete information regarding the deadline or submission process.
- **Systemic issues:** Technical difficulties, such as problems with an electronic filing system, have prevented timely submission of comments.

- **Personal emergencies:** A serious illness or death in an immediate family can be considered good cause.
- **Physical or cognitive limitations:** A commenter requires an accessible format, like Braille or large print, that causes delays in submission.

Based on the examples provided above, Better Brazoria supports any grounds for an extension would result in additional time for more inclusive public participation not less. It is important that extensions be granted in all circumstances to ensure adequate public input and to avoid potential harm.

3. *Proposed Rule §39.422*

Proposed Rule §39.422, which outlines the procedures for extension of the comment period, is direct and understandable. Better Brazoria prefers TCEQ's posting notice on its website when the comment period is extended so that the public can confirm that the extension is granted in writing and capture screenshots as needed to verify the extension. Proposed Rule §39.422(b). Sometimes it has been difficult to verify extensions that were only stated orally at a TCEQ meeting without any corresponding change to the comment period reflected on the website. It is good for the public to be able to rely on the posting of an extension online whether they were able to attend the public meeting / hearing or not.

As to the timing of implementing changes under Section §39.422. It is not understood why these changes cannot take effect earlier, such as March 1, 2026. TCEQ has delayed the date in the proposed rule to May 1, 2026, but did not provide an explanation of why an additional 2 months would be needed if these rules could be adopted by TCEQ on February 2026 as currently noticed.

Better Brazoria also recognizes that TCEQ is ensuring by Rule §39.422(d) that any notice of extension is also published in alternative languages when required. Better Brazoria appreciates this recognition of need for notification in alternative languages.

E. SUBCHAPTER K, RULE § 39.606

Proposed Rule §39.606 is a welcome addition to TCEQ regulations and tremendously clarifies when the ability to request a contested case hearing or public meeting will be available depending on the type of permit at issue. This concern typically creates much confusion within the public as there are different types of permits, and TCEQ's process varies somewhat between the type of permit at issue. Sometimes community members, elected officials, and even administrators have had difficulty interpreting what TCEQ's regulations will allow the public to request with respect to a particular permit.

Having Proposed Rules §39.606(a) (as to contested case hearings) and §39.606(b) (as to notice and comment periods) delineate which permits are eligible for contested case hearings and which are eligible for public meetings is very helpful and will reduce confusion amongst the general public substantially. Further having the deadlines applicable for contested case hearing requests stated in Proposed Rule §39.606(c) will further clarify the correct timing for making such a request depending on the permit at issue. Finally, for those applicants with poor compliance history, new

Proposed Rule §39.606(c)(1) and (2) differential those situations from deadlines for applicants with good compliance history on an air permit renewal with no increase in allowable emissions and would not result in emission of an air contaminant not previously emitted. Further, the express provisions of Proposed Rule §39.606(c)(3), (4), and (5) clarify when the comment period will run (unless extended by a public meeting) and when a contested case hearing request must be made based on particular types of permits at issue. Again, the timeline clarifications found in new Rule §39.606 are appreciated and should be adopted by the Commission.

Although Rule §39.606(d) is repetitive of contested case hearing requirements found in Section 55, it is helpful to have the information related to contested case hearing requests in the same section as the notice provisions and timelines discussed above. Commenter approves of repeating these requirements into this new section as long as they are consistent with the existing requirements in Section 55 and do not add any further hurdles for requesters.

Finally, having an express provisions on what can trigger a public meeting for particular types of permits in this same Proposed Rule §39.606(g) and (h) are also desirable. Better Brazoria repeats its concerns from its informal comments by what measure the Executive Director will determine whether “substantial public interest” is present. One question is whether Rules §39.606(g) and (h) will adopt to the same criteria for determining substantial interest in a permit found in Rules §39.501 and §39.503 discussed below.

TCEQ has a number of rules that discuss the “public interest” in permits as a threshold for triggering public meetings or further public engagement efforts. *See e.g.*, Rule §39.501, Application for Municipal Solid Waste Permit (“substantial public interest”); Rule §39.503, Application for Industrial or Hazardous Waste Facility Permit (“substantial public interest”); Rule §55.253(c)(“significant degree of public interest” to hold a public meeting). In addition, SB 1397 promulgated new requirements for engagement efforts based on the public interest to consider. *See* TEX. WATER CODE §§ 5.583(b), 5.1734(e) (“heightened public interest”). Better Brazoria offers the following thoughts that each of these standards could be similarly defined or common language used to either unite these standards or distinguish them if they are different.

For example, Rules §39.501 and §39.503 both contain criteria for determining “substantial public interest in a permit.”

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

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

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

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

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

Better Brazoria would recommend that similar criteria be attributed to the rules to be developed in

response to the public engagement required if there is “heightened public interest” in a permit under Sections 5.583(b) and 5.1734(e) of the Texas Water Code. The criteria listed above generally seems to be sufficient to define a public interest with the exceptions to subsections (C) and (D) noted below. Further, the same or similar criteria should be added to Rule §55.253(c) since that section does not include such criteria for determining whether there is significant interest in a public meeting.

Better Brazoria would note that for subsection (C) above, many organizations beyond HOAs or POA represent communities, such as tenant’s groups, civic clubs, environmental groups, and other community-based organizations. In Houston, groups called Super Neighborhoods represent areas designed by the City of Houston that are even larger areas than the average civic club and include not only residents, but business interests as well. Broadening category (C) to include organizations beyond property-based ownership organizations would be important to ensure all public interests are included and represented.

As to category (D), ten seems like a respectable number to constitute a group; however, the State of Texas only requires three individuals to form an organization and they can be related. How does TCEQ determine how many members a group has? Is this information that the group needs to share with the agency regarding its membership or does TCEQ independently verify a group’s membership? Groups are not required to share membership lists under Texas law. *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 381–82 (Tex. 1998) (protecting information concerning contributors or members of the organization from disclosure). First Amendment associational rights are the basis for a qualified privilege against disclosure of membership lists. *Ex parte Lowe*, 887 S.W.2d 1, 2 (Tex. 1994) (citing *NAACP v. Alabama*, 357 U.S. 449 (1958)); see also *Tilton v. Moye*, 869 S.W.2d 955 (Tex. 1994).

At the October 3, 2024 public meeting in Houston on this rulemaking, TCEQ staff explained that they assess public interest on a case-by-case basis understanding that significant public interest in a rural area may not be the same for a metro area of the state. However, this explanation is not sufficient since the agency needs to be consistent amongst permit applications in metro areas and permit applications in rural areas then. If there are two sets of criteria for these different areas, then those requirements should still be explicit in the rule or TCEQ needs to develop guidance to assist its permit reviewers or other staff in assessing when this threshold is met. Further, communities need to know what constitutes “critical mass” or how the agency weighs expression of public interest in permit to make these determination of “heightened public interest”, “substantial public interest”, “significant degree of public interest.”

What is most important is for TCEQ to be consistent when deploying these criteria to gauge the “public interest” across the state and across different permits. The criteria should not exclude non-property owners who reside (e.g., renters or tenants), work or recreate in the impacted area who may also have an interest in the application. So, expanding these criteria to make sure all sorts of groups representing the public should be something the agency considers not only for existing rules but also the new ones under SB 1397 concerning the “public interest.”

III. PROPOSED CHANGES TO 30 TEXAS ADMINISTRATIVE CODE CHAPTER 55, REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENTS

Stakeholder Better Brazoria submits the following comments on the proposed changes to Chapter 55 of Title 30 of the Texas Administrative Code (30 TAC) covering Requests for Reconsideration and Contested Case Hearings and Public Comments. All rule references below are to TCEQ's rules found in Chapter 55 of 30 TAC. Note our recommendations related to proposed rules found in Chapter 55 already discussed above for related rules in Chapter 39 are not repeated again below.

A. RECOMMENDATIONS ON TIMING FOR CHANGES TO CHAPTER 55 TO TAKE EFFECT

In seeking public comment on the proposed changes to Chapter 55, TCEQ asked for input on when changes should take effect. Better Brazoria recommends that these changes take effect as soon as possible. TCEQ has proposed an adoption date of early 2026, with an effective date of March 1, 2026. This timeline seems reasonable given the agency's need to respond to comments and then present the final rule changes to the Commission for final approval.

In addition, Better Brazoria recognizes that TCEQ has already implemented many of these changes and appreciates TCEQ taking affirmative steps to expand notice as opposed to waiting for the completion of this Rule Project. The expedited implementation is particularly helpful since the legislature passed the Sunset Review Bill (S.B. 1397) in 2023.

B. NEW DEFINITIONS IN PROPOSED RULE §55.103

1. Affected Person Status Definition

Better Brazoria is pleased to see the expanded definitions included in Proposed Rule §55.103. This proposed revision includes an addition to the definition of affected person in Section 55.103(1)(C) to include the statutory distance for standing as an affected person on a concrete batch plant application. TEXAS HEALTH AND SAFETY CODE §382.058(c); Proposed Rule §55.103(1)(C). Similarly, this specific distance has also been added to Rule §39.606(f).

Revisions to the Texas Clean Air Act that have not been incorporated into the Texas SIP establish distance limitations for contested case hearing requests concerning certain kinds of concrete batch plant projects. TEX. HEALTH & SAFETY CODE § 382.058(c). Pursuant to this state-law statutory provision, only people who *live within 440 yards* of a proposed plant may participate in a contested case hearing. *Id.* Thus, under the theory of administrative exhaustion advocated by TCEQ, a person who lives just outside the 440 yards, or a person who owns property within 440 yards but does not live there, would not be able to seek judicial review of such a permit. A bright line distance standard from a person's residence for determining access to judicial review of an air permit is not equivalent with the standards of Article III. *See e.g., Allen v. Wright*, 468 U.S. 737, 751-52 (1984) (the standing inquiry is case-specific and "requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted."). *See also Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 151 (1970) ("Generalizations about standing to sue are largely worthless as such.").

Moreover, TCEQ has added a provision that the contested case hearing request must include the requester's location relative to the proposed facility or activity. Proposed Rule §39.606(d). As noted in the Sunset Review process, while TCEQ rules require a request for a contested hearing to state a person's location and relative distance to the proposed facility or permitted activity, TCEQ provides no clarification of how the agency will take into account or measure that distance.² In public meetings, TCEQ commissioners discuss distance-related conditions, such as air dispersion models or tributaries between a proposed wastewater discharge point and a residence, and will deny a hearing request based on someone being "too far away," but without clarifying how they reached that determination.³ In addition to distance, TCEQ should consider the volume of emissions and their dispersion and not limit the radius of an affected person to only one mile. In its informal comments, Better Brazoria devoted 20 pages to discussing the nuances of this concern and will incorporate these earlier comments by reference.⁴ In reviewing contested case requests for most permits, TCEQ should not allow distance to predominate over all other considerations found in Rules §55.203 and §55.256.

To the extent that TCEQ plans to use this statement in Rule §55.103(1)(C) of the proposed rules to consider distance, there remains a lack of clarity in the standard for evaluating whether a requester is an affected person. *See e.g.*, TCEQ Transcript from December 15, 2021 Agenda Meeting at 42:18-19, 44:2-5; *see also* Transcript at 43:10-11, 48:2-3 (stating repeatedly that "record could have been better"); 44:19-22 ("and I don't know that the ED's map in the record on his application really accurately indicates where that proposed location would be based off of the plot plan."); and 52:6-13 ("So to the extent that process matters, clearly the – the –the location of the facility, as indicated on the ED's map, does seem to be somewhat in –in controverted by some of the comments before us in the record. I will be supportive today of moving forward with you to –to refer this to SOAH for the effectiveness determination."). To the extent that it will consider distance, TCEQ needs consistent standards on how to measure that distance and from what locations.

For instance, TCEQ's Executive Director (ED) took the position at a Commission meeting that the distance at which an individual will experience harm from the air pollution generated by a concrete batch plant should be calculated from a single arbitrarily-chosen point, rather than from the concrete batch plant itself. TCEQ Transcript from December 15, 2021 Agenda Meeting at 42:18-19, 44:2-5; *see also* Transcript at 43:10-11, 48:2-3 (stating repeatedly that "record could have been better"); 44: 19-22 ("and I don't know that the ED's map in the record on his application really accurately indicates where that proposed location would be based off of the plot plan."); and 52:6-13 ("So to the extent that process matters, clearly the – the –the location of the facility, as indicated on the ED's map, does seem to be somewhat in –in controverted by some of the comments before us in the record. I will be supportive today of moving forward with you to –to refer this to SOAH for the effectiveness determination."). The plant is defined to include all emission sources. TCEQ's Concrete Batch Plant Standard Permit (CBPSP) defines "Concrete Batch Plant", in pertinent part, as follows: Concrete batch plant – For the concrete batch plant standard permit, it is a plant that consists of a concrete batch plant facility and associated abatement equipment, **including, but not**

² TCEQ, Staff Report at 17.

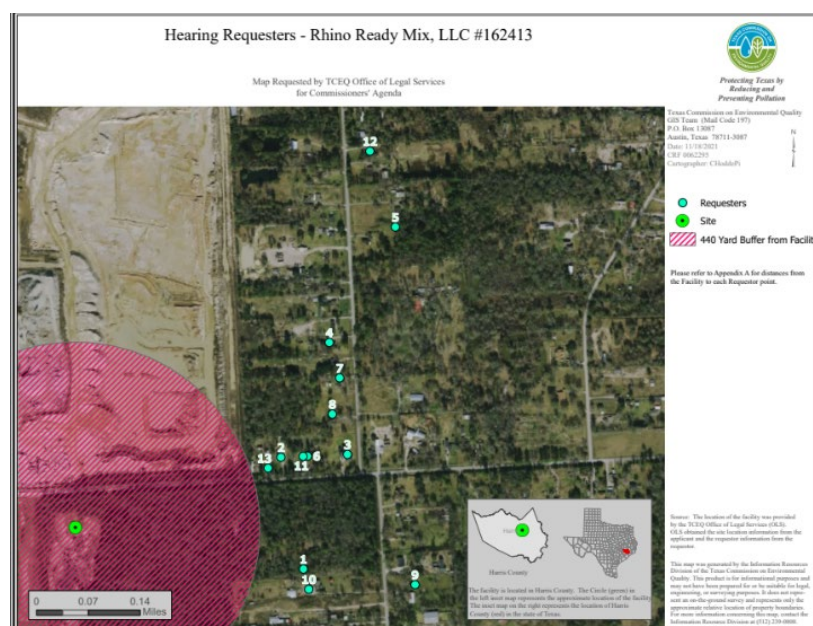
³ TCEQ, Staff Report at 17.

⁴ *See* Better Brazoria Comments dated October 8, 2024 submitted on this Rule Project.

limited to material storage silos, aggregate storage bins, auxiliary storage tanks, conveyors, weigh hoppers, and a mixer. Texas Health and Safety Code §382.058(c) states that, “[f]or purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed **plant** may request a hearing under Section 382.056 as a person who may be affected. As a result of this confusion created by the ED, the Commissioners referred the issue to a preliminary hearing at SOAH rather than decide who was an affected person. To rebut this argument at the preliminary hearing would require substantial briefing, mapping of the plant’s layout, and live testimony to resolve the referred issue of affected person status even before requesters can participate in a contested case hearing and get judicial review of the permit’s terms. SOAH Docket No. 582-22-1468 / TCEQ Docket No. 2021-1465-AIR regarding Application for CBPSP by Rhino Ready Mix, LLC in Harris County, Texas, Permit No. 319264 (Voided April 20, 2022). Requestors therefore spent months preparing for the noticed preliminary hearing and allocating resources to establish standing given the ED’s contest of requestors’ right to a hearing request only to have the applicant not show up, which luckily led to TCEQ’s voiding of the permit. *Id.*

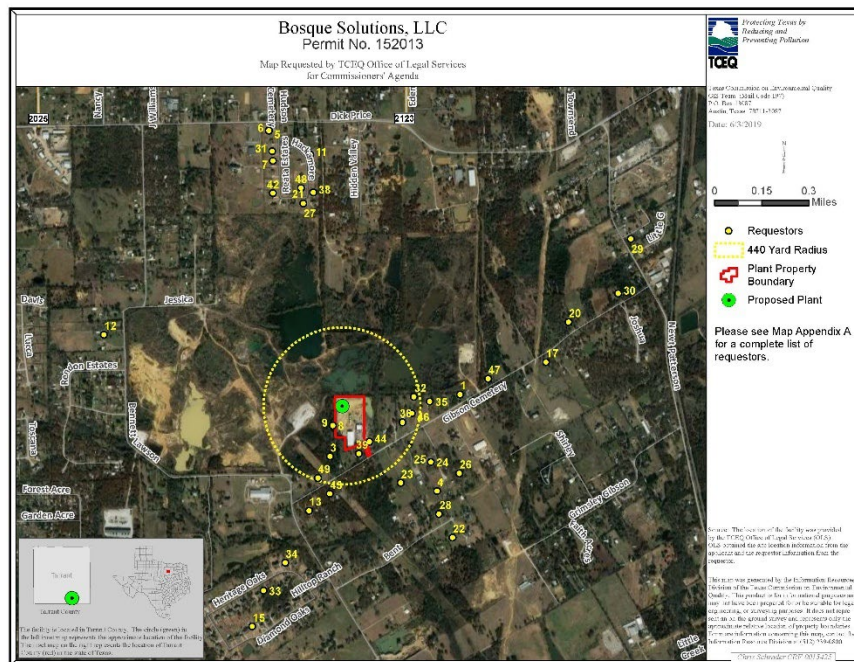
Where a permitting scheme includes distance restrictions limiting an affected person determination, the regulations must prescribe how the distance should be measured. Better Brazoria again urges the Commission to adopt regulations requiring measurements to be from the facility’s property boundary to the affected structure (home, school, place of worship, etc.) using the nearest points between the two. The need for instructive regulations on how to measure distances is well illustrated in the concrete batch plant permitting context. As proposed, the new TCEQ rules do not currently specify where to measure those 440 yards from. And, in practice, the ED’s mapping and measurements appear arbitrary illustrating the entire concrete batch plant with a single dot somewhere within the property’s boundaries. The following Figures 1-4 are maps from a variety of permitting cases, showing the varied placement and varied measurements when evaluating this distance limitation.

Figure 1: ED’s Map situating Rhino Ready Mix CBPSP No. 162413



[illegible][illegible]

Figure 4: ED's Map Situating Bosque Solutions CBPSP No. 152013



These arbitrary green dots are problematic as representative of a concrete batch plant for several reasons. First, any prescriptive distance that is defining whether a person is affected for purposes of a contested case hearing should **not** measure from a single piece of equipment. In reality, a concrete batch plant is made up of lots of equipment and many different emission points—and could never be accurately illustrated by a single dot. For example, concrete batch plants could include all the following emission points *and more*: Sand Stockpiles, Aggregate Stockpiles, Aggregate & Sand Conveyor, Sand Storage Bin/Aggregate Storage Bin, Sand & Aggregate Weighing System, Cement Silo, Fly Ash Silo, Truck Mixer, Central Dust Collector, Wind Erosion from Stockpiles, Unpaved roadways, etc. Therefore, the dot is not an adequate representation of a concrete batch plant or the corresponding emission sources that may affect a nearby community member.

Second, plant equipment layout is subject to change.⁵ And, in Harris County, where CBPs are often intermixed with community, minor changes to equipment layout could bring a community member either within range to be considered an affected person or push them outside of the 440-yard range. Accordingly, these distances must be calculated from fixed points to provide certainty. Most importantly, if the equipment/emission sources are moved post-approval, the regulations do not provide for a re-evaluation of affected persons, and the comment period is also not reopened. No analysis is required to determine whether community members who previously requested a contested case hearing should be afforded one after the configuration change.⁶ Once a concrete batch plant standard permit is issued to an Applicant, configuration changes within the property

⁵ See 30 TEXAS ADMIN. CODE § 116.615(2); *see also* TCEQ Docket No. 2021-0056-AIR; Motion for Rehearing on Application by Ameritex Pipe & Products, LLC for Standard Permit Registration No. 159336 at 2-3 (explaining that **after a permit is issued**, a plant's configuration can be changed relocating emissions sources without notice to those affected).

⁶ 30 TEX. ADMIN. CODE § 116.615(2)(B)-(C).

only require notice to the ED—not the local impacted community.⁷ This procedure unfairly prejudices those potentially affected. Accordingly, the distance must be measured from a static unchanging point at the property—like the property boundary—to the nearest residence. Moreover, the application for a concrete batch plant standard permit supports this distance measurement by requiring the application to show a 3,000-foot radius from the property’s boundary.

Figure 5: Excerpted portion of an Application for a CBPSP⁸

https://www.tceq.texas.gov/permitting/air/confidential.html	
Requested Information	Response
C. Is a current area map attached?	
Is the area map a current map with a true north arrow, an accurate scale, the entire plant property, the location of the property relative to prominent geographical features including, but not limited to, highways, roads, streams, and significant landmarks such as buildings, residences, schools, parks, hospitals, day care centers, and churches?	
Does the map show a 3,000-foot radius from the property boundary?	

Third, CBPSPs have a requirement to keep pollution inside the property boundaries.⁹ Because this requirement exists, if pollution is allowed up to the fenceline, then the measurement to an affected person must be from the furthest point the pollution could travel (while complying with permit terms) to the residence. Otherwise, the measurement disregards how close a community member may actually be to that harmful air pollution. Measuring from the property boundary of a proposed concrete batch plant is the only way to ensure impacts from all emissions are being considered.

Better Brazoria urges the Commission to adopt uniform regulations where distances must be calculated—requiring measurements to be from the facility’s property boundary to the affected structure (home, school, place of worship, etc.) utilizing the nearest points between the two. Moreover, these distances need to be fixed at the time of the application, and the permit should be denied if they are modified. Instead, the applicant should have to reapply for the permit because the public only gets one opportunity to comment on these applications. Allowing modifications to cure deficiencies after the application is publicly noticed denies the public of notice of these changes. For all of these reasons, a statement regarding how distance is measured needs to be integrated into the rules if there is a set distance to determine affected person status. A simple revision to the Proposed Rule would be the following:

§55.103(1)(C) For an air quality standard permit for a concrete batch plant, only a person actually residing within 440 yards of the proposed plant **boundary** may be an affected person.

⁷ 30 TEX. ADMIN. CODE § 116.615(2)(B)-(C).

⁸ PI-1S-CBP (version 6.0) available at

<https://www.tceq.texas.gov/permitting/air/newsourcereview/mechanical/cbp.html>

⁹ See Air Quality Standard Permit for Concrete Batch Plant, (Jan. 24, 2024) at General Requirement (5)(H). (“There shall be no visible fugitive emissions leaving the property.”)

Suggested Modifications to Proposed Rule §55.103(1)(C)(emphasis added to highlight proposed modification).

2. *Additional Definitions in Rule §55.103*

Additions of the definitions for contested case hearing (as also defined in Proposed Rule §39.1(2)), public meeting (as also defined in Proposed Rule §39.1(5)), request for reconsideration (as also defined in Proposed Rule §39.1(7)) are also welcome.

Better Brazoria also appreciates the clarifications offered in the definitions for Motion to Overturn and Motion for Rehearing found in Proposed Rules §55.103(4) and §55.103(5) respectively. However, these definitions do not eliminate the inconsistency that remains in the rules and was not part of the proposed amendments.

TCEQ rules governing Commission action on a Request for Reconsideration, Contested Case Hearing or a Hearing Request must be clarified to prescribe timing to file a petition for judicial review. Better Brazoria urges the Commission to add in additional language to the regulations clarifying that any petition for judicial review should be filed 30 days after a Motion for Rehearing is decided. The applicable regulatory text of the two rules in need of clarification is excerpted below with further rationale following.

1. *Rule §55.211, Commission Action on Request for Reconsideration and Contested Case Hearing*

(f) If all requests for reconsideration or contested case hearing are denied, § 80.272 of this title (relating to Motion for Rehearing) applies. A motion for rehearing in such a case must be filed not later than 25 days after the date that the commission's final decision or order is signed, unless the time for filing the motion for rehearing has been extended under Texas Government Code, § 2001.142 and § 80.276 of this title (relating to Request for Extension to File Motion for Rehearing), by agreement under Texas Government Code, § 2001.147, or by the commission's written order issued pursuant to Texas Government Code, § 2001.146(e). If the motion is denied under § 80.272 and § 80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable) the commission's decision is final and appealable under Texas Water Code, § 5.351 or Texas Health and Safety Code, § 361.321 or § 382.032, or under the APA.

30 TEX. ADMIN. CODE § 55.211(f).

2. *Rule §55.255, Commission Action on Hearing Request*

(e) If all requests for contested case hearing are denied, §80.272 of this title (relating to Motion for Rehearing) applies. A motion for rehearing in such a case must be filed not later than 25 days after the date that the commission's final decision or order is signed, unless the time for filing the motion for rehearing has been extended under Texas Government Code, §2001.142 and §80.276 of this title (relating to Request for Extension to File Motion for Rehearing), by agreement under Texas

Government Code, §2001.147, or by the commission's written order issued pursuant to Texas Government Code, §2001.146(e). If the motion is denied under §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable), the commission's decision is final and appealable under Texas Water Code, §5.351, Texas Health and Safety Code, §401.341, or under the APA.

30 TEX. ADMIN. CODE § 55.255(e).

Historically, protestants challenging a TCEQ decision have been taxed with filing its Motion to Rehearing at the same time its judicial review lawsuit must be filed in court. This concurrent timing is problematic for two reasons. First, the administrative record is still open during the Motion to Rehearing period because other parties may be filing responses and replies. In the Lone Star Legal Aid's experience, the Motion to Rehearing process can produce important evidence and arguments that need to be incorporated into a pleading for judicial review. Second, the concurrent timing leaves the protestant in a complicated position to file a lawsuit before administrative remedies are truly exhausted before the agency—which could potentially moot or damage the Protestant's ability to challenge the agency's decision. Because the regulations are unclear, a Protestant, despite following all prescriptive regulations and filing both a Motion to Rehearing and its pleading for judicial review, may still be left in the precarious position where an opponent is claiming their petition isn't ripe for review.

Better Brazoria urges TCEQ to adopt clarifying regulations that a petition for judicial review should be filed **30 days after** a Motion to Rehearing under Rules §80.272 and §80.273 is decided. Thus, protestant would not need to file petition under Texas Water Code, §5.351, Texas Health and Safety Code, §401.341, or under the APA until 30 days after the motion is denied under Rules §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable) as already stated in the rule.

C. EMAIL COMMUNICATIONS PREFERRED OVER FAX , BUT OUTREACH IS NEEDED TO FILL TECHNOLOGY GAPS

Better Brazoria is happy to see the agency embracing the use of email for sending public notices as well as asking for an email from the public as opposed to a number for a fax machine, which is outdated technology that is not commonly used any more. *See* Proposed Rules §55.201(d)-(e), §55.251(c)(1). Removing the requirement of a fax number for a requester is a good development. Better Brazoria is aware that not all commenters have email access or an account; but given email's ubiquitousness, it is now a preferred means of communication over fax. Obtaining an email account also requires less technology than purchasing a fax machine or finding a company such as office supply company that will charge for the use of the same.

The Texas Legislature wisely realized that with electronic requirements for notice there may be unique challenges for some members of the public, especially for low-income or rural populations. The Sunset Advisory Commission noted that TCEQ should consider and accommodate if there are affected persons in areas of the state lacking internet availability who might need assistance with access to the notices, particularly if there is heightened interest or in response to comment or

request.¹⁰ This mandate in SB 1397 and codified in both Sections 5.583 and 5.173 of the Texas Water Code, stating that “[t]he commission shall consider and accommodate residents of each area affected by a proposed permit, permit amendment, or permit renewal who may need assistance accessing notice published by electronic means because of a lack of access to Internet services, particularly when there is a heightened public interest or in response to public comment.” TEX. WATER CODE §§ 5.583(b), 5.1734(e).

Better Brazoria wholeheartedly agrees with this concern and would encourage the agency to try different forms of outreach to these areas utilizing local media, public libraries, and active community groups in the area to engage the public. SB 1397 requires TCEQ to provide outreach and education to the public on participating in the permitting process through the enactment of Section 5.136 of the Texas Water Code:

Community outreach. The commission shall provide outreach and education to the public on participating in the permitting process under the air, waste, and water programs within the commission's jurisdiction.

TEX. WATER CODE §§ 5.136. TCEQ should also consider doing community outreach as part of the public meeting process during the technical review state so that comments on a proposed permit may be generated from an awareness of permitting procedures. In addition to the stated categories covered by Section 5.136, TCEQ should also look for opportunities to do public outreach on topics that interest the public such as air monitoring and enforcement. TCEQ should also consider partnering with trusted organizations – often non-profits – already doing outreach and educational work on these topics in the community.

D. RESPONSE PERIODS RELATED TO CONTESTED CASE HEARING UNDER SECTION 55.209 AND 55.251

The proposed revisions to Rules §§55.209(d) and (g) change the frame of reference for calculating responses to contested case hearing requests. In the past, these calculations have been confusing based on the dates before the hearing, and it appears TCEQ is trying to make it less confusing and more certain by tying the response deadlines to the first notice of the agenda hearing where the matter will be considered as opposed to when it is actually heard. Proposed Rules §§55.209(d), (g). As long as the time frames are not being shortened, Commenter agrees with these changes provided that there is no change to the actual response time just how the response dates are being calculated. Better Brazoria offers the same comment to the comparable changes to Proposed Revisions to Rules §§55.251(e) and (f).

Once a hearing request has been granted, providing adequate notice of the preliminary hearing is important. In submitting its informal comments, Better Brazoria proposed that TCEQ be required to mail notice of a contested case hearing to the parties at least 30 days before the hearing. Currently the rule requires that “notice shall be mailed no less than 13 days before the hearing.” Rule §39.423. More time should be provided for parties to prepare for the hearing, and Better Brazoria suggests a minimum of 30-day notice. This change would make Rule §39.423 the same notice period as Rule §39.709 (Subchapter M).

¹⁰ Sunset Advisory Commission, TCEQ Staff Report with Final Results, Final Results at A4.

IV. ADDITIONAL CONCERNS

Although the following concerns were not addressed or included in the proposed rules for comment, Better Brazoria raises the following issues related to Public Participation and Notice under Chapter 39 for further consideration.

A. PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION

SB 1397 also required an amendment to the Texas Water Code to require that TCEQ verify that the applicant has published any required notices in the newspaper. TEX. WATER CODE § 5.584. This change is important to make sure that applicants who are required to publish notice in a newspaper provide TCEQ with a copy of the published notice and publisher's affidavit.

In its informal comments, Better Brazoria recommended that TCEQ rules concerning notice in Section 39 that must be published in a newspaper, as applicable, should include this new requirement from Section 5.584 that "if an applicant for a permit is required to publish notice in a newspaper, the applicant shall provide to the commission a copy of the published notice and an affidavit from the publisher certifying that the notice was published and the publication meets all applicable requirements, including newspaper circulation." TEX. WATER CODE § 5.584. Lone Star Legal Aid further notes that the "publication in a newspaper of general circulation" required by Rule § 39.603 regarding to general newspaper notice is being abused regularly in Harris County and elsewhere in Texas:

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

Applicants are publishing notice in remote papers in different parts of Harris County rather than where the facility is located or proposed, trying to avoid use of the Houston Chronicle. Instead, for its Pasadena facility, Intercontinental Terminals Company, LLC (ITC) has used the Pearland Journal.¹¹ For a concrete crusher in Houston near LBJ Hospital, the applicant used the Crosby Star Courier.¹² These smaller, more focused publications do not serve the area where the plant or new facility is based. That's not public notice under Rule § 39.603 and does not comply with the mandate from the legislature in SB 1397. If TCEQ is not going to integrate this requirement from the Sunset Review Bill into its proposed regulations, TCEQ should be aware of this active avoidance of required notice by certain applicants and require offending applicants to re-notice

¹¹ ITC (CN 601470222) applied for an amendment to air quality permit 95754 authorizing emissions from the Pasadena Terminal at 1030 Ethyl Road, Pasadena, Harris County, Texas 77503 (RN 106119175). ITC submitted its application to TCEQ on March 21, 2025. ITC published notice of the application on April 16, 2025 in the Pearland Journal. Lone Star Legal Aid has pending comments on this deficient public notice.

¹² Texas Coastal Materials, LLC Application for an Air Quality Standard Permit; Registration No. 173296 for Permanent Rock and Concrete Crushers located at 5875 Kelley St., Houston, Texas 77026. Texas Coastal Materials initially published notice in the Crosby Star Courier, but TCEQ required republication on or about October 14, 2023 after objections from Harris County Attorney's Office and the public.

their application if the notice is not in a “newspaper of general circulation” meeting the general newspaper notice requirements and restart the clock on public notice. Commenters should not be policing this issue, TCEQ staff should be.

B. EXPANDING RULES ON MAILED TO INCLUDE ELECTRONIC PUBLICATION OF NOTICE AND EMAILED NOTICES

Newly added Sections 5.583 and 5.1734 of the Texas Water Code require TCEQ to electronically post all permit applications on its website. Section 5.1734(a) provides that “[t]he commission shall post on its website at the time a permit application becomes administratively complete: (1) the permit application and any associated materials; and (2) for a permit application under Subchapter D, Chapter 11, any map accompanying the permit application. TEX. WATER CODE § 5.1734(a). The application must be posted on TCEQ’s website regardless of size. TEX. WATER CODE §§ 5.583(a), 5.1734(a). The Commission may only exempt associated materials if “(1) posting the materials on the website would be unduly burdensome; or (2) the materials are too large to be posted on the website.” TEX. WATER CODE §§ 5.583(a), 5.1734(c). Suggested language for revising the applicable notice rules in Chapter 39¹³ could include: “Regardless of the notice requirements in §39.XXX of this title, the commission shall make available by electronic means on the commission's website the permit application.” This Rule Project did not adopt this recommendation.

Better Brazoria further reflects that applicants have at times hosted these additional materials on their websites to make applications publicly available and any supporting materials, which is very welcome. We hope this trend will continue and that TCEQ acts to ensure that those postings are complete when TCEQ is unable to host everything itself due to size limitations. It is hard to imagine a situation where it would be too burdensome to include the additional materials if a link to an applicant-hosted website was included to ensure that the materials were readily available. Further, when meeting public notice requirements for posting the materials at public libraries, city halls, or newspapers, the commission is prohibited from failing to post relevant materials, even if deemed burdensome or too large. If TCEQ can provide all relevant materials non-electronically, and they are, there is no reason not to provide all relevant materials electronically, regardless of how large or burdensome they are deemed. Better Brazoria recommends TCEQ require all associated permit materials to be posted online at the applicant’s expense.

It is extremely important that all permit applications be available on TCEQ’s website so that the public can review a copy of the application without having to make an open records request. Again, this access expands the amount of time that the public may review an application and enhances the public’s understanding of the noticed permit.

¹³ Better Brazoria identifies the following existing rules in Chapter 39 that are impacted by these suggested and required changes: Rule §39.419, Notice of Application and Preliminary Decision; Rule §39.804, Text of Public Notice of Post-Closure Orders (Subchapter N); Rule §39.1003, Notice of Application for Minor Amendments; and Rule §39.1005(b), Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit.

C. PROPOSED CHANGES TO TEXT OF PUBLIC NOTICES TO REQUIRE THE NAME OF THE APPLICANT, TYPE OF PERMIT, AND ADDRESS OF THE PROPOSED OR EXISTING SITE

All public notices should provide notice of where the proposed or current facility is located so that the community can know where the facility is and judge how it will affect them. Too many times, the public notices have not provided a complete address of the site or failed to identify a precise location for the facility. The address for the facility needs to be part of the public notice, not just the facility's general location, particularly because the applicant's address can be completely different from the proposed facility that is being permitted. That can be confusing to the public. The Sunset Advisory Commission specifically mentioned including the address in its recommendations.¹⁴

In addition, newly amended Section 5.129 of the Texas Water Code now requires the beginning of the public notice to include a succinct statement of the subject of the notice and a summary statement designed to inform the reader of the subject matter without having to read the entire text of the notice. TEX. WATER CODE §§ 5.583(a), (a-1). These changes now need to be included in all rules concerning the text of public notices.¹⁵

D. PUBLIC MEETING ON PERMITS SHOULD BE HELD BOTH BEFORE AND AFTER ISSUANCE OF THE FINAL DRAFT PERMIT.

While TCEQ has discretion in its current Rules §§55.154(a), (b) to hold public meetings before the permit application is published during the technical review process, TCEQ does not utilize these rules enough to help educate the public regarding the permit application while it is still in the draft form. Unfortunately, only *after* the agency has already decided that the permit is administratively complete or approved draft permit does TCEQ ask for public comment. In 2023, TCEQ Staff described this dilemma in its report to the Sunset Commission:¹⁶

In fiscal year 2021, TCEQ held 24 public meetings on permits, each held after the agency had already completed its administrative and technical review and issued the draft permit. By the time TCEQ holds a public meeting for a draft permit, agency staff have often spent several months, sometimes more than a year, conducting extensive engineering, scientific, and legal research and analysis while engaging with the applicant on these matters, all to ensure the draft permit is written to federal and state requirements. As a result, by the time TCEQ proposes a draft permit, staff have essentially determined the draft permit terms comply with regulatory requirements, and only public comments on the adequacy of TCEQ's technical or administrative review are likely to affect the permit.

¹⁴ Sunset Advisory Commission, TCEQ Staff Report with Final Results, Final Results at A4.

¹⁵ Better Brazoria identifies the following existing rules in Chapter 39 that are impacted by these suggested and required changes: Rule § 39.411(e), Text of Public Notice; Rule § 39.411(h), Text of Public Notice for Contested Case Hearings; Rule § 39.603(e)(1), Newspaper Notice; Rule § 39.419, Notice of Application and Preliminary Decision; Rule § 39.804 Text of Public Notice of Post-Closure Orders (Subchapter N); Rule § 39.1003, Notice of Application for Minor Amendments; and Rule § 39.1005(b), Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit.

¹⁶ TCEQ Staff Report at 16.

Given that TCEQ already has the discretion to hold public meetings under Rule §§55.154(a), (b) before the permit’s technical review is complete, Better Brazoria would encourage TCEQ to consider the staff recommendation to the Sunset Commission to “clarify statutes relating to notices of intent, hearings, and public meetings by requiring TCEQ to hold a public meeting on a permit during the technical review of the permit application and another meeting after the issuance of the draft permit if the current statutory requirements to hold a meeting are met — significant public interest or a legislator’s request.”¹⁷ Further, as an accompanying management action, TCEQ “should clearly state, in the notices and at the meetings themselves, the purposes of the meetings and current status of the permit, such as if the permit is still undergoing review or is the final draft permit.”

Ideally, the initial public meeting would provide a more informal opportunity for the public to make suggestions about what should go into the permit during TCEQ staff’s review of the application and before finalizing the draft permit. A second meeting would allow the public a formal opportunity to submit comments to the agency on the final version of the permit, focused on whether the draft permit meets the legal and technical requirements to be issued. Holding two distinct meetings would help ensure the public has a meaningful opportunity to comment directly to TCEQ and the permit applicant before the agency finalizes the permit.¹⁸

While this recommendation would add an additional public meeting to the permit process, only a fraction of the permits TCEQ handles — 24 in fiscal year 2021 — typically generate public meetings. This small step would help reduce confusion, increase transparency, and create more opportunities for meaningful public participation in the permitting process, moving towards restoring trust that TCEQ considers public input in its decisions. Clarifying the criteria for substantial public interest as recommended above could be part of helping TCEQ determine which permits should generate public meetings.

V. CONCLUSION

Lone Star Legal Aid and Better Brazoria appreciate the opportunity that TCEQ is providing to stakeholders through this formal comment period to inform the agency on its proposed rules for 30 Texas Administrative Code Chapter 39, Public Notice; and Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comments. Please do not hesitate to contact the undersigned counsel to the extent any of these comments require additional explanation or information. In providing a response to comments on Better Brazoria’s additional concerns, it would be helpful to understand TCEQ’s process for integrating the remaining changes required by the Sunset Review Bill (SB 1397) and whether there will be additional Rules Projects to address the required changes that were not included in the proposed rules for this Rule Project. Thank you again to TCEQ staff who worked on this Rule Project to improve public notice and participation as mandated by the Sunset Review Bill.

¹⁷ TCEQ Staff Report at 22.

¹⁸ TCEQ Staff Report at 22.

Respectfully submitted,

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IN BRAZORIA COUNTY**