

Texas Commission on Environmental Quality

Chapter 55 - Requests for Reconsideration and Contested Case Hearings; Public Comment

**SUBCHAPTER E: PUBLIC COMMENT AND PUBLIC MEETINGS**

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Outline:

**§55.150. Applicability. TXd146**

**§55.152. Public Comment Period. TXd146**

SIP includes 55.152(a)(1), (a)(2), (a)(5), (a)(6), and (b).

**§55.154. Public Meetings. TXd146**

SIP includes 55.154(a), (b), (c)(1)-(3) and (5), and (d)-(g).

**§55.156. Public Comment Processing. TXd146**

SIP includes 55.156(a), (b), (c)(1), (e) and (g).

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**SUBCHAPTER E: PUBLIC COMMENT AND PUBLIC MEETINGS**  
**§§55.150, 55.152, 55.154, 55.156**  
**Effective June 24, 2010**

**§55.150. Applicability.**

This subchapter applies only to applications filed under Texas Water Code, Chapter 26, 27, or 32 or Texas Health and Safety Code, Chapter 361 or 382 that are declared administratively complete on or after September 1, 1999.

Adopted June 14, 2006

Effective July 5, 2006

**§55.152. Public Comment Period.**

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of 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), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or a concrete batch plant without enhanced controls authorized by a air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project;

~~(3) 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;~~

~~(4) 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);~~

(5) the time specified in commission rules for other specific types of applications; or

(6) as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended to the close of any public

meeting.

Adopted June 2, 2010

Effective June 24, 2010

**§55.154. Public Meetings.**

(a) A public meeting is intended for the taking of public comment, and is not a contested case under the Texas Administrative Procedure Act.

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or Office of Public Assistance may hold public meetings. The executive director or Office of Public Assistance shall hold a public meeting if:

(1) the executive director determines that there is a substantial or significant degree of public interest in an application;

(2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held;

(3) for applications filed on or after the effective date of this section, for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph will be held after Notice of Application and Preliminary Decision is published; applications filed before the effective date of this section for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title are governed by the rules as they existed immediately before the effective date of this section, and those rules are continued in effect for that purpose;

~~(4) for applications filed on or after the effective date of this section, for Hazardous Air Pollutant permits subject to Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this subparagraph will be held after Notice of Application and Preliminary Decision is published; applications filed before the effective date of this section for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title are governed by the rules as they existed immediately before the effective date of this section, and those rules are continued in effect for that purpose; or~~

(5) when a public meeting is otherwise required by law.

(d) Notice of the public meeting shall be given as required by §39.411(d) or (g) of this title

(relating to Text of Public Notice), as applicable.

(e) The applicant shall attend any public meeting held by the executive director or Office of Public Assistance.

(f) A tape recording or written transcript of the public meeting shall be made available to the public.

(g) The executive director will respond to comments as required by §55.156(b) and (c) of this title (relating to Public Comment Processing).

Adopted June 2, 2010

Effective June 24, 2010

**§55.156. Public Comment Processing.**

(a) The chief clerk shall deliver or mail to the executive director, the Office of Public Interest Counsel, the Office of Public Assistance, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents filed with the chief clerk in response to public notice of an application.

(b) If comments are received, the following procedures apply to the executive director.

(1) Before an application is approved, the executive director shall prepare a response to all timely, relevant and material, or significant public comment, whether or not withdrawn, and specify if a comment has been withdrawn. Before any air quality permit application for a Prevention of Significant Deterioration or Nonattainment permit subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits) or for applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), filed on or after the effective date of this section, is approved, the executive director shall prepare a response to all comments received. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes.

(2) The executive director may call and conduct public meetings, under §55.154 of this title (relating to Public Meetings), in response to public comment.

(3) The executive director shall file the response to comments with the chief clerk within the shortest practical time after the comment period ends, not to exceed 60 days.

(c) After the executive director files the response to comments, the chief clerk shall mail (or otherwise transmit) the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing. The chief clerk shall provide the information required by this section to the applicant, any person who submitted comments during the public comment period, any person who requested to be on the mailing list for the permit action, any person who timely filed a request for a contested case hearing in response to the Notice of Receipt of Application and Intent to Obtain a

Permit for an air application, the Office of Public Interest Counsel, and the Office of Public Assistance. Instructions for requesting reconsideration of the executive director's decision or requesting a contested case hearing are not required to be included in this transmittal for the applications listed in:

(1) §39.420(e) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision); and

~~(2) §39.420(f) and (g) of this title.~~

~~(d) The instructions sent under §39.420(a) of this title regarding how to request a contested case hearing shall include at least the following statements, however, this subsection does not apply to post-closure order applications:~~

~~(1) that a contested case hearing request must include the requestor's location relative to the proposed facility or activity;~~

~~(2) that a contested case hearing request should include a description of how and why 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;~~

~~(3) that only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted; and~~

~~(4) that a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.~~

(e) The instructions sent under §39.420(c) of this title regarding how to request a contested case hearing shall include at least the following statements:

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

(2) that a contested case hearing request should include a description of how and why 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;

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

(4) that a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to

the filing of the Executive Director's Response to Comment.

~~(f) For applications referred to State Office of Administrative Hearings under §55.210 of this title (relating to Direct Referrals):~~

~~(1) for air quality permit applications filed on or after the effective date of this section subsections (c) and (d) of this section do not apply; and~~

~~(2) for all other permit applications, subsections (b)(2), (c), and (d) of this section do not apply.~~

(g) Notwithstanding the requirements in §39.420 of this title, the commission shall make available by electronic means on the commission's Web site the executive director's decision and the executive director's response to public comments.

Adopted June 2, 2010

Effective June 24, 2010