

Issue 9: Public Notice for Permit Applications

A. Brief Description of Issue

Effective notice of pending environmental permit applications is crucial to robust public participation in TCEQ's permitting process. The percentage of people reading print newspapers is small and continues to decline. According to the Pew Research Center, more than 80% of U.S. adults get their news from electronic devices. If the only notice provided for the general public is by publication in a newspaper, then only the small percentage of individuals who receive and read the classified section of a paper will be aware that an application for an environmental permit is pending at TCEQ.

B. Discussion

To continue to be effective, public notice requirements need to keep pace with changes in how the intended audience obtains its information. Public notice by electronic publication reflects the public's widespread use of the internet, email, and other electronic means of communication. A common comment the agency receives regarding notices for permit applications is that the notice was deficient because it was only published in a newspaper, and that people only became aware of the application by mailed notice or word of mouth.

Federal rules require newspaper publication for permits issued under RCRA and UIC, however, they allow electronic publication of notice relating to NPDES and air quality permits. Texas statutes require newspaper publication. TCEQ also provides mailed notice of permit applications to specific individuals, including certain state, county, and city officials, and individuals who have requested to be placed on a mailing list. The reach of this notice is more limited than the broad dissemination possible with newspaper notice, however, as noted above, for newspaper notice to be effective, the public must receive and read the newspaper on the specific day that a notice was published. Required sign-posting at the proposed location of a facility or site also provides notice, but again, its reach is limited to only those members of the public who actually see the posted signs.

C. Possible Solutions and Impact

A possible solution to the issue of ensuring continued effectiveness of public notice of permit applications would be to expand TCEQ's statutory authority to include the option of electronic publication of notice. If given that authority, TCEQ could propose a rule change to require electronic publication of notice in lieu of newspaper notice for those applications for which newspaper publication is not a federal program requirement. Because TCEQ's rules are a required component of federal program delegation, EPA's approval of any rule changes would be required. Electronic publication of notice will reach a wider segment of the public, thus providing the potential for more public participation in the permitting process⁷. For some agency program areas, the use of an electronic notice option would result in greater efficiency of communication and streamline the processing of permits by eliminating publication delays due to newspaper publication schedules, publication errors, and the time required to confirm proof of each publication. Additionally, allowing for electronic publication of notice will increase the opportunity

⁷ <https://www.pewresearch.org/fact-tank/2021/01/12/more-than-eight-in-ten-americans-get-news-from-digital-devices/> (accessed August 2, 2021).

for the agency to receive valuable input by various public interest groups and an increased awareness of environmental permitting issues and participation in the permitting process.