

SUBCHAPTER F: ACTION BY THE COMMISSION

§§50.113, 50.115, 50.117, 50.119
Effective December 31, 2015

§50.113. Applicability and Action on Application.

(a) Applicability. This subchapter applies to applications that are declared administratively complete on or after September 1, 1999. Applications that are declared administratively complete before September 1, 1999, are subject to Subchapter B of this chapter (relating to Action by the Commission).

(b) This chapter does not create a right to a contested case hearing where the opportunity for a contested case hearing does not exist under other law.

(c) After the deadline for filing a request for reconsideration or contested case hearing under §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing), the commission may act on an application without holding a contested case hearing or acting on a request for reconsideration, if:

(1) no timely request for reconsideration or hearing has been received;

(2) all timely requests for reconsideration or hearing have been withdrawn, or have been denied by the commission;

(3) a judge has remanded the application because of settlement; or

(4) for applications under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382, the commission finds that there are no issues that:

(A) involve a disputed question of fact;

(B) were raised during the public comment period; and

(C) are relevant and material to the decision on the application.

(d) Without holding a contested case hearing, the commission may act on:

(1) an application for any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted;

(2) an application for any initial issuance of an air permit for a voluntary emission reduction or electric generating facility;

(3) an application for a hazardous waste permit renewal under §305.631(a)(8) of this title (relating to Renewal);

(4) an application for a wastewater discharge permit renewal or amendment under Texas Water Code, §26.028(d), unless the commission determines that an applicant's compliance history as determined under Chapter 60 of this title (relating to Compliance History) raises issues regarding the applicant's ability to comply with a material term of its permit;

(5) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(6) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(7) an application for pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(8) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018; and

(9) other types of applications where a contested case hearing request has been filed but no opportunity for hearing is provided by law.

Adopted June 18, 2008

Effective July 10, 2008

§50.115. Scope of Contested Case Hearings.

(a) Subsections (b) - (d) of this section apply to applications under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382. Subsection (e)(1) of this section applies to all applications under this subchapter. Subsections (e)(2) and (f) of this section apply as stated in the subsection.

(b) When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearings (SOAH) for a hearing.

(c) The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

(1) involves a disputed question of fact or a mixed question of law and fact;

(2) was raised during the public comment period, and, for applications filed on or after September 1, 2015, was raised in a comment made by an affected person whose request is granted; and

(3) is relevant and material to the decision on the application.

(d) Consistent with the nature and number of the issues to be considered at the contested case hearing, the commission by order shall specify the maximum expected duration of the hearing by stating the date by which the judge is expected to issue a proposal for decision.

(1) For applications filed before September 1, 2015, no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. A judge may extend any hearing if the judge determines that failure to grant an extension will deprive a party of due process or another constitutional right.

(2) For applications filed on or after September 1, 2015, the administrative law judge must complete the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or the date specified by the commission, whichever is earlier. This deadline may be extended by the judge if the judge determines that failure to grant an extension would unduly deprive a party of due process or another constitutional right, or by agreement of the parties with approval of the judge.

(e) The commission may limit the scope of a contested case hearing:

(1) to only those portions of a permit for which the applicant requests action through an amendment or modification. All terms, conditions, and provisions of an existing permit remain in full force and effect during the proceedings, and the permittee shall comply with an existing permit until the commission acts on the application; and

(2) to only those requirements in Texas Health and Safety Code, §382.055 for the review of a permit renewal.

(f) When referring a case to SOAH, for applications other than those filed under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382, the commission or executive director shall provide a list of disputed issues. For hearings on these applications, the disputed issues are deemed to be those defined by law governing these applications, unless the commission orders otherwise under §80.6(d) of this title (relating to Referral to SOAH).

(g) When referring a case to SOAH under Texas Water Code, §5.556 for applications filed on or after September 1, 2015, the commission shall submit a list of detailed and complete issues.

Adopted December 9, 2015

Effective December 31, 2015

§50.117. Commission Actions.

(a) The commission may grant or deny an application in whole or in part, suspend the authority to conduct an activity or dispose of waste for a specified period of time, dismiss proceedings, amend or modify a permit or order, or take any other appropriate action.

(b) For applications involving hazardous waste under the Texas Solid Waste Disposal Act, the commission may issue or deny a permit for one or more units at the facility. The interim status of any facility unit compliant with the provisions of Texas Health and Safety Code, §361.082(e), and §335.2(c) of this title (relating to Permit Required) for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(c) If the commission directs a person to perform or refrain from performing any act or activity, the order shall set forth the findings on which the directive is based. The commission may set a reasonable compliance deadline in its order in which to:

- (1) terminate the operation or activity;
- (2) cease disposal, handling, or storage of any waste;
- (3) conform to the permit requirements, including any new or additional conditions imposed by the commission; or
- (4) otherwise comply with the commission's order.

(d) For good cause, the commission may grant an extension of time to a compliance deadline upon application by the permittee.

(e) For applications involving radioactive material licenses under the Texas Radiation Control Act, the commission may incorporate in any license at the time of issuance, or thereafter by appropriate rule or order, additional requirements and conditions as it deems appropriate or necessary to:

(1) protect and minimize danger to public health and safety or the environment;

(2) require reports and the keeping of records and to provide for inspections of activities under the license as may be appropriate or necessary; and

(3) prevent loss or theft of radioactive material subject to this subchapter.

(f) Consistent with Chapter 5, Subchapter M of the Texas Water Code (for applications under Chapter 26 or 27 of the Texas Water Code and Chapter 361 of the Texas Health and Safety Code), and for applications under Chapter 382 of the Texas Health and Safety Code, the commission shall consider all timely public comment in making its decision and shall either adopt the executive director's response to public comment in whole or in part or prepare a commission response.

(g) After the conclusion of the contested case hearing, if the commission issues a final decision on an application rather than remanding, continuing, or referring the case back to SOAH, the commission shall issue a single decision on the application.

Adopted September 2, 1999

Effective September 23, 1999

§50.119. Notice of Commission Action, Motion for Rehearing.

(a) If the commission acts on an application, the chief clerk shall mail or otherwise transmit the order and notice of the action to the applicant, executive director, public interest counsel, and to other persons who timely filed public comment, or requests for reconsideration or contested case hearing. The notice shall explain the opportunity to file a motion under §80.272 of this title (relating to Motion for Rehearing). If the commission adopts a response to comments that is different from the executive director's response to comments, the chief clerk shall also mail the final response to comments. The chief clerk need not mail notice of commission action to persons submitting public comment or requests for reconsideration or contested case hearing who have not provided a return mailing address. The chief clerk may mail the information to a representative group of persons when a substantial number of public comments have been submitted.

(b) If the commission acts on an application, §80.272 of this title applies. A motion for rehearing must be filed not later than 25 days after the date the commission's final decision or order on the application 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, 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, 382.032, or 401.341.

(c) Motions for rehearing may be filed on:

(1) an issue that was referred to State Office of Administrative Hearings (SOAH) for contested case hearing, or an issue that was added by the judge;

(2) issues that the commission declined to send to SOAH for hearing; and

(3) the commission's decision on an application.

(d) A motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.

Adopted December 9, 2015

Effective December 31, 2015