



Public Participation in Environmental Permitting

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

We invite you to read this brochure that provides a brief overview of your rights and responsibilities in the permitting process. Please be advised that there are variations to the process, and not all of them are identified here.

The Texas Commission on Environmental Quality (TCEQ) is the state's environmental agency. Three full-time commissioners, appointed by the governor, establish overall agency direction and policy, and make final determinations on contested permitting and enforcement matters. An executive director (ED), hired by the commissioners, is responsible for managing the day-to-day operations of the agency.

Among its many functions, the TCEQ must review applications for a wide variety of environmental permits. The procedures outlined in this brochure cover applications for the following types of permits (as well as certain amendments and renewals of these permits):

- Water quality permits
- Beneficial land use permits
- New source review air permits
- Municipal solid waste permits
- Industrial solid waste permits
- Hazardous waste permits
- Underground injection well permits

Administrative Review of Permit Applications

When a permit application is received by the TCEQ, staff reviews it to determine whether the applicant has submitted all of the required parts of the application. This process is called *administrative review*. If all the parts have been submitted, the application is determined to be administratively complete and the agency issues a Notice of Receipt of Application and Intent to Obtain Permit, or NORI.

The NORI describes the location and nature of the proposed activity, lists agency and applicant contacts for obtaining additional information, and provides the location in the county where a copy of the application can be viewed and copied.

The applicant is required to publish the NORI in a newspaper within 30 days after the application is declared administratively complete. (In some cases, the applicant may have to publish the notice in languages other than English, too.) The TCEQ will also mail the NORI to certain landowners—except in the case of air permit applications, where instead the applicant must post signs with application and contact information around the property.

Responding to the Public Notice

All NORIs provide instructions for submitting comments, getting placed on the mailing list, requesting a public meeting, and requesting a contested case hearing. These comments or requests to the TCEQ can be submitted in any of the following ways:

On our website:

www.tceq.texas.gov/goto/comment

By U.S. mail:

Office of the Chief Clerk, MC 105
TCEQ
P.O. Box 13087
Austin, TX 78711-3087

In person or by courier:

Office of the Chief Clerk
TCEQ
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

By fax:

512-239-3311

(Note: If using fax, the original must then be mailed or hand delivered to the Chief Clerk and received within three business days.)

Comments regarding the application may be sent to the TCEQ, and the TCEQ is required to review and reply to timely filed comments in a formal Response to Comments (RTC) prior to

issuance of the permit. In order for an issue to be considered at a contested case hearing, it must have been first raised in a comment or in a request for a contested case hearing during the public comment period.

Getting Placed on a Mailing List

If you submit a comment, request a public meeting, or request a contested case hearing regarding a specific application, you will be automatically added to the mailing list for that specific permit application. You may also request to be placed on either of these two kinds of mailing lists:

1. The permanent mailing list for a specific applicant name and permit number.
2. The permanent mailing list for a specific county (which includes all air, water, and waste notices in that county).

If you want to be placed on either of these additional mailing lists, you must send a request to the Chief Clerk. In your request, specify the mailing list or lists you want to be placed on, and provide your complete name and address.

Requesting a Public Meeting

Public meetings provide an opportunity for the public to learn about the application, ask questions of the applicant and TCEQ, and offer formal comments. *No decision to approve or deny an application is made at a public meeting.*

The TCEQ will hold a public meeting if significant interest is shown in an application, or if it is requested by a legislator from the area of the proposed project, or otherwise required by law. On certain air applications, a public meeting will also be held if requested by an interested person.

A request for a public meeting must be submitted to the Chief Clerk during the public comment period and must specify that it is a request for a “public meeting.” A request asking for a “public hearing” will be considered a request for a contested case hearing, and not a request for a public meeting.

Requesting a Contested Case Hearing

The commissioners’ decision whether to grant a hearing is based in part on the information provided by the requester. When requesting a hearing, it is necessary to demonstrate that the requester is an “affected person,” in order

to be granted party status. This means that the requester must be personally affected by the permit decision and that granting the permit would specifically affect the requester in ways not shared by the general public—for example, by impairing the requester’s health or safety, or by interfering with the use or enjoyment of the requester’s property. Affected persons may use this process to challenge the ED’s decision on an application.

A contested case hearing is a legal proceeding similar to a civil trial in state district court. Hearings are conducted by the State Office of Administrative Hearings (SOAH), which is an independent agency tasked with conducting hearings for state agencies. When a contested case is referred to SOAH, an administrative law judge will preside over the hearing and will consider evidence in the form of sworn witness testimony and documents presented as exhibits.

Because contested case hearings are legal proceedings, parties may wish to hire an attorney to ensure that their interests are fully represented. However, representation by an attorney is not required.

Requests for contested case hearings *must* include the following information:

- The requester’s name, address, and daytime telephone number.
- The permit number and applicant’s name.
- A statement clearly requesting a “contested case hearing.”
- The location of the requester’s home, business, or property that is affected, and its distance from the proposed facility.
- A detailed explanation of how the requester would be adversely affected by the proposed facility or activity in a manner not common to the general public.
- A list of all the relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request.

If the request is made on behalf of a group or an association, the request must identify one or more members who have standing to request a hearing, and state how the interest that the group or association seeks to protect is relevant to the group’s purpose.

Note: On certain air permit applications, to retain the right to a contested case hearing, there must be at least one request for hearing submitted within the time frame specified in the NORI. For more information on this, see “Request for Contested Case Hearing,” below.

Technical Review of Permit Applications

After the application has been determined to be administratively complete and the NORI has been issued, TCEQ staff reviews the application to determine whether it satisfies state and federal regulatory requirements. This process is called the *technical review*. If the application meets all the requirements, the ED issues a preliminary decision in a second notice, called the Notice of Application and Preliminary Decision (NAPD), which is mailed to the mailing list and published in a newspaper. The NAPD provides an additional opportunity to submit comments, request a public meeting, request a contested case hearing (except as stated in the note above), or ask to be placed on the mailing list.

The Close of the Public Comment Period

Except for certain air applications, the public comment period ends no earlier than 30 days from the last publication date of the NAPD. If a public meeting is held after the close of the comment period, the comment period extends to the end of the public meeting.

After the public comment period closes, the ED considers all timely filed comments to determine whether any issues that were raised require changes to the preliminary decision and/or proposed permit, and prepares a written response to all relevant comments. The ED's response and decision are sent to the mailing list, including all commenters. This response provides a final 30-day period to request a contested case hearing. For certain air permit applications, see the "Exception" note, below.

If no requests for hearing are received on an application and it meets all the applicable requirements, the ED may issue the permit.

Protesting the ED's Decision

Once the decision has been released by the ED, in many cases there are still three possible ways to contest the decision: you can make a request for a contested case hearing, a request for reconsideration, and/or a motion to overturn.

Request for Contested Case Hearing

If comments were filed during the comment period, there is an opportunity to request a

contested case hearing. The request must be based on issues that were raised during the comment period, in comments that were not withdrawn later. The request for hearing must be received no later than 30 days after the date of the decision letter, which is mailed out by the Chief Clerk.

To help the TCEQ determine the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the ED's responses to comments that the requester disputes and the factual basis of the dispute, and also list any disputed issues of law or policy. For more information, see "Requesting a Contested Case Hearing," above.

Exception: In the case of certain air applications, if there are comments but no contested case hearing requests in response to the first notice, or NORI, TCEQ staff will respond to comments, but there is no longer an opportunity to request a hearing. Persons wishing to seek further TCEQ review of the permit must file a motion to overturn (see "Motion to Overturn," below). Persons wishing to exercise all of their rights to challenge the permit must also file a petition for judicial review with the Travis County District Court. This petition may need to be filed prior to a TCEQ decision on the motion to overturn.

Request for Reconsideration

In addition, after the decision letter has been mailed, any person may file a *request for reconsideration*, which asks the commissioners to reconsider the ED's decision. The request should include your name, address, and phone number, and why you believe the decision should be reconsidered. The request for reconsideration must be received by the Chief Clerk no later than 30 days after the date of the decision letter.

Motion to Overturn

If no request for hearing or reconsideration is received and the ED issues the permit, any person may file a *motion to overturn*, requesting the commissioners to overturn the ED's action. The motion must be filed no later than 23 days after the date that the TCEQ mailed the notice of the signed permit, and must explain why the commissioners should review the ED's action. If a motion to overturn has not been acted on by the commissioners within 45 days after the date that the TCEQ mailed the notice of the signed permit, the motion is thereby denied, unless an extension of time was specifically granted.

Review of Requests for Reconsideration & Contested Case Hearings

All timely filed requests for contested case hearings are considered at the commissioners' agenda meetings. Timely filed requests for reconsideration may also be considered at these meetings, provided the requests have not been denied by the Office of General Counsel. At these meetings, the commissioners decide whether they will grant or deny the requests. In making their decision, they consider public comments and requests, briefs, the ED's response to comments, and applicable statutes and rules. Therefore, it is very important that requesters fully explain—in written comments and responses to briefs—their reasons why an application should not be approved. Oral comments are not accepted at agenda meetings unless so specified by the commissioners, and requesters are not required to attend. However, the commissioners may ask questions of the requesters (if present), the applicant, or TCEQ staff.

If the commissioners decide to grant a request for a contested case hearing, the case is referred to SOAH with a list of issues to be considered at the hearing. At the conclusion of the SOAH hearing, the judge issues a *proposal for decision*, which is submitted to the TCEQ for formal consideration. The commissioners then approve, deny, or modify the proposal for decision.

At any stage of the process the option of alternative dispute resolution (ADR) is available to determine whether a mutually agreeable settlement is possible. The TCEQ has ADR attorneys dedicated to facilitating mediation. If the dispute can be settled through mediation, there may be no need to continue with the administrative process. If the dispute is not resolved in this fashion, the parties can still proceed to the SOAH hearing.

Protesting the Commissioners' Decision

If the commissioners deny a request for a contested case hearing or approve a permit application after it has gone through the contested case hearing process, protestants may submit a *motion for rehearing*, requesting that the commissioners review their decision. This motion for rehearing is a prerequisite for appealing to the District Court, and must be submitted within 20 days after you are notified of the decision. If the commissioners do not act on the motion within 45 days after you are notified of the decision, the motion is overruled by operation of law, unless an extension of time was specifically granted. If the commissioners do not receive a motion for rehearing, the action of the commissioners will become final within the TCEQ process.

For More Information

OFFICE OF PUBLIC ASSISTANCE (OPA)
800-687-4040

OPA provides information to the public on the status of applications and the permitting process. Through its Environmental Equity Program, the office also provides assistance on environmental issues to low-income and minority communities.

OFFICE OF PUBLIC INTEREST COUNSEL (OPIC)
512-239-6363

OPIC provides information to the public regarding the legal aspects of the contested case hearing process.

ALTERNATIVE DISPUTE RESOLUTION (ADR)
512-239-0687

ADR assists with the informal resolution of contested cases.

YOUR FEEDBACK ON THE TCEQ

Please take a few moments and let us know how the TCEQ has served you by filling out our customer satisfaction survey at www.tceq.texas.gov/goto/customerurvey, or request that a survey be mailed to you by calling 800-687-4040.

