

Effective: January 10, 2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
Permanent Rule Change

Rule Log No. 2000-005-086-AD
Quadrennial Review of Chapter 86 (with Repeals)

Chapter 86
Special Provisions for Contested Case Hearings

Subchapters C, E, and F

1. Purpose. This change transmittal provides the pages that reflect changes and additions to the Texas Natural Resource Conservation Commission (commission) Volume of Permanent Rules.
2. Explanation of Change. On December 20, 2000, the commission adopted the repeal of Subchapter C, Water Rate Hearings, §§86.31 - 86.36; Subchapter E, Appeals of Rules of the Edwards Underground Water District, §§86.91 - 86.101; and Subchapter F, Variance Hearings, §§86.130 - 86.132.
3. Effects of Change. The chapter was originally adopted to provide procedures for specialized types of contested case hearings that were created by statutes. Some of the specialized types of contested case hearings that were created by statute are either no longer authorized by statute, superceded by other procedural rules adopted by the commission, or rendered obsolete by other statutory provisions and therefore the corresponding rule provisions are no longer needed.

The commission conducted a review of the rules under Chapter 86 and determined that the reasons for the rules in Subchapter A, General; Subchapter B, Water Rights Adjudication; and Subchapter D, Appeals of City Actions Relating to Water Pollution Control and Abatement Outside the Corporate Limits of a City continue to exist. Subchapter B, Water Rights Adjudication, is needed to implement the provisions of Texas Water Code (TWC), §§11.301 - 11.341, regarding the adjudication of water rights. While most water rights in Texas have been adjudicated under the Water Rights Adjudication Act, the adjudication of the Upper Rio Grande River Basin remains pending; therefore, the procedural rules in Subchapter B remain necessary. Subchapter D, Appeals of City Actions Relating to Water Pollution Control and Abatement Outside the Corporate Limits of a City, is needed to implement the provisions of TWC, §26.177(d), which provides that any person affected by any ruling, order, decision, ordinance, program, resolution, or other act of a city relating to water pollution control and abatement outside the corporate limits of such city may appeal such action to the commission or district court.

The commission also determined that the reasons for the rules in Subchapter C, Water Rate Hearings; Subchapter E, Appeals of Rules of the Edwards Underground Water District; and Subchapter F, Variance Hearings no longer exist. The reasons for Subchapter C, Water Rate Hearings, no longer exist because the procedures for water rate hearings were put into Chapter 291, Subchapter I in 1996. The Chapter 291 procedures are now used instead of the Chapter 86 procedures. The reasons for Subchapter E, Appeals of Rules of the Edwards Underground Water District, no longer exist because the underlying statute establishing the Edwards Underground Water District was repealed in 1993 when

the legislature created the Edwards Aquifer Authority. The statute creating the Edwards Aquifer Authority, unlike the repealed statute creating the Edwards Underground Water District, does not contain a provision providing for the appeal of rules of the Edwards Aquifer Authority to the commission. The reasons for Subchapter F, Variance Hearings, no longer exist because the commission no longer holds air quality rule variance hearings. The Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.028(b), states that a variance “is an exceptional remedy that may be granted only upon demonstration that compliance with a provision of the TCAA or commission rule or order results in an arbitrary and unreasonable taking of property.” If grounds exist for a variance from a rule, an entity complaining about the rule would directly challenge the rule in court rather than seek to obtain a variance from the rule.