

# Texas Natural Resource Conservation Commission

## INTEROFFICE MEMORANDUM

Date: November 10, 1999

From: Victoria J. L. Hsu, P.E., Director, Air Permits Division

Subject: Disclaimer for Distribution of the Public Announcement, Public Notice, EPA Review, and Public Petition Guidance Document

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The staff of the Texas Natural Resource Conservation Commission (TNRCC) Air Permits Division (APD) has developed forms and guidance documents to be used in the implementation and administration of the Federal Operating Permit Program required by the Federal Clean Air Act Amendments.

Attached is a copy of the draft guidance document for **Public Announcement, Public Notice, EPA Review, and Public Petition** procedures that include the amendments to Title 30 Texas Administrative Code Chapter 122, effective on November 10, 1999. This guidance document reflects the current position of the TNRCC on issues relating to public notice, comment, and hearings.

This guidance document will be final after review by the Public Information and Publications Division and assignment of a publication number. This document may also be updated as new developments occur. The most recent version of this and all APD guidance documents will be available on the TNRCC APD Internet site (<http://www.tnrcc.state.tx.us/air/opd/>).

If you have any questions related to this document, please direct them to the following TNRCC APD staff members: Ms. Jackie Ploch (512) 239-1404 or Ms. Erica Parsons (512) 239-1248.

Attachment

**PUBLIC ANNOUNCEMENT, PUBLIC NOTICE,  
EPA REVIEW, AND PUBLIC PETITION**

**TITLE 30 TEXAS ADMINISTRATIVE CODE CHAPTER 122  
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION  
GUIDANCE DOCUMENT**

**NOVEMBER 1999**

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## I. INTRODUCTION

Pursuant to Title 40 Code of Federal Regulations Part 70 (40 CFR Part 70) and Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122), all federal operating permits (FOPs) resulting from an initial application, a permit renewal, a permit reopening, or an application for a significant permit modification must undergo public notice, affected state review, U.S. Environmental Protection Agency (EPA) review, and public petition prior to the FOP becoming final. While general operating permits (GOPs) undergo these reviews during the development process, site operating permits (SOPs) and temporary operating permits (TOPs) are subject to these reviews on an individual basis. Minor permit revisions require only a public announcement along with required notifications to the EPA, affected states, and appropriate local air pollution control agencies. Administrative permit revisions do not require any public notice or announcement.

This document will provide general information and guidance regarding procedures associated with public announcement, public notice, notice and comment hearings, EPA review, and public petition for the FOP Program.

## II. PUBLIC ANNOUNCEMENT REQUIREMENTS

Title 30 TAC § 122.312 specifies public announcement requirements for minor permit revisions. It requires the Texas Natural Resource Conservation Commission (TNRCC) to publish an announcement of a draft FOP for minor permit revisions on the commission's publicly accessible electronic media. The announcement will contain:

- A. a permit application number;
- B. the permit holder's name and address;
- C. a description of the location of the site;
- D. a description of the comment procedures, including the duration of the public announcement comment period;
- E. the name, address, and phone number of the commission office to be contacted for further information; and
- F. the location and availability of the following:
  - C copies of the complete permit application;
  - C draft FOP; and
  - C all other relevant supporting materials in the public files of the agency.

Title 30 TAC Chapter 122 requires the following information to be made available for public review at the TNRCC regional and central offices:

- C the complete application (except confidential information);
- C the draft FOP; and
- C all other relevant supporting materials in the public files of the agency.

The TNRCC will make the public announcement available to the EPA and local air pollution control agencies with jurisdiction. The TNRCC will furnish a notice of the public announcement to any affected state.

The TNRCC shall receive public comment for 30 days after the announcement of the draft FOP is published. During the comment period, any person may submit written comments on the draft FOP. The only portions of the draft FOP that are subject to review by the TNRCC, the public, and the EPA during the permit revision and reopening processes are those portions of the permit that are being revised. The draft FOP may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of 30 TAC Chapter 122. All comments received during the 30-day announcement period will be responded to, in writing, consistent with 30 TAC § 122.345 (relating to Notice of Proposed Final Action).

### III. PUBLIC NOTICE PROCEDURES

After a TOP or SOP application is received, the TNRCC will conduct an initial screening, technical review, and site inspection. As a result, a draft FOP will be developed. The permit engineer will discuss this draft FOP with the applicant and will mail the draft FOP and the Public Notice Authorization Package to the applicant. The Public Notice Authorization Package will contain detailed instructions pertaining to the requirements for newspaper notices and sign postings. The Public Notice Authorization Package will also contain appropriate newspaper notices and example sign postings. This Public Notice Authorization Package will also contain all the forms necessary to certify that public notice and sign posting requirements have been accomplished. The cover letter sent along with the draft FOP and Public Notice Authorization Package will identify a deadline by which the applicant must publish the newspaper notice. In some cases, the TNRCC may combine the public notice and the 30-day advance notice for a hearing. See the Notice and Comment Hearing Section for more details.

Title 30 TAC Chapter 122 requires the following information to be made available for public review at the TNRCC regional and central offices:

- C a complete application (except confidential information);
- C the draft FOP;
- C a compliance plan, if required;
- C a compliance certification; and
- C all monitoring reports, if required.

In addition, a copy of the complete application (except confidential information) and the draft FOP will be made available for review and copying at a public place in the county in which the site is located. See Section III.D. of this document for more details.

## A. Public Notice Requirements

Public notice applies to initial permit issuances, significant permit revisions, reopenings, and renewals.

Title 30 TAC § 122.320(b) specifies the contents and format of the newspaper notice for an FOP application. It requires applicants to publish the newspaper notice, at their expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the area addressed by the FOP application is located, or proposed to be located, or the municipality nearest to the location of the area addressed by the FOP application.

The newspaper notice included in the public notice section of the newspaper should contain the following information:

1. the permit application number;
2. the applicant's name, address, and telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information;
3. a description of the activity or activities involved in the FOP application or reopening;
4. a description of the location of the site or proposed location of the site;
5. the air pollutants with emission changes, for significant revisions;
6. the location and availability of copies of the completed FOP application, the draft FOP, and all other relevant supporting materials;
7. the description of the comment procedures, including the duration of the comment period, and a statement of procedures to request a hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;
8. a statement that a person who may be affected by the emission of air pollutants from the site is entitled to request a hearing pursuant to 30 TAC § 122.340;
9. the name, address, and phone number of the TNRCC regional office to be contacted for further information printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;
10. the telephone number of the TNRCC Office of Public Assistance (OPA);
11. in some cases, a potential notice and comment hearing date, time and location;
12. a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit;
13. if applicable, the time and location of any public meeting; and
14. the location in the county where a copy of the application and draft permit will be available for review and copying.

If the newspaper notice cannot be published by the date set in the cover letter of the Public Notice Authorization Package, the applicant should not publish the newspaper notice until after contacting the permit engineer. If the newspaper notice is published after the established date, the applicant may be required to publish another newspaper notice.

After the newspaper notices have been published, applicants shall provide a copy of the newspaper notices and the date of publication to the TNRCC Central Office at the following address:

Texas Natural Resource Conservation Commission  
Air Permits Division  
Technical Program Support Section, MC 163  
P. O. Box 13087  
Austin, Texas 78711-3087

This requirement shall be met by providing the actual newspaper tear sheets of all the actual newspaper notices as they were published, that include the full notice, date of publication, and publication name, along with a signed Form OP-CRO1 (Certification by Responsible Official). The actual newspaper tear sheets shall be submitted within 10 days of the date of publication and certification of this submittal may be made concurrent with the Form OP-PN1 (Public Notice Certification) with a Form OP-CRO1 within 75 days from the date on the cover letter of the Public Notice Authorization Package. Otherwise, the TNRCC will send a Notice of Deficiency (NOD) letter to the applicant. If the applicant fails to submit the proof of newspaper notice, in writing, to the TNRCC by the deadline specified in the NOD, the applicant will be in violation of Title 30 TAC § 122.132 and formal enforcement action may be pursued.

If the applicant publishes the newspaper notice incorrectly the applicant must republish the newspaper notice.

#### B. Sign Posting Requirements

Applicants shall post a sign in accordance with the sign posting requirements of 30 TAC § 122.320(h). Title 30 TAC § 122.320(h) specifies that applicants post a sign at the site, at their expense, declaring the filing of an application for an FOP and the manner in which TNRCC may be contacted for further information. A Public Notice Authorization Package sent to an applicant will contain an example of a sign posting. The signs shall be provided by the applicant and shall meet the following requirements:

1. consist of dark lettering on a white background and shall be, no less than, 18 inches by 28 inches;
2. begin with the words “APPLICATION FOR FEDERAL OPERATING PERMIT” in, no less than, a two-inch bold-face, block printed, capital lettering;
3. include the words “APPLICATION NO.,” “SITE NAME,” “FACILITY NAME ,” and the number of the FOP application (project number) in, no less than, one-inch bold-face, block printed, capital lettering (more than one number may be included on the signs if the respective public comment periods coincide);
4. include the words “for further information contact” in, no less than, ½-inch lettering;
5. include the words “OFFICE OF PUBLIC ASSISTANCE” in, no less than, one-inch bold-face, capital lettering;

6. include the phone number of the OPA, “(800) 687-4040” in, no less than, two-inch bold-face numbers;
7. include the words “Texas Natural Resource Conservation Commission” and the address of the appropriate TNRCC regional office in, no less than, one-inch bold-face, capital lettering and 3/4-inch, bold-face, lowercase lettering; and
8. include the phone number of the appropriate TNRCC regional office in, no less than, two-inch bold-face numbers.

The sign shall be in place by the date of publication of the newspaper notice and shall remain in place and legible throughout the 30-day public comment period. The sign placed at the site shall be located at or near the site main entrance, provided that the sign is legible from a public street. If the sign would not be legible from a public street, then the sign shall be placed within ten feet of a property line paralleling a public street. Title 30 TAC § 122.320(h)(3)(A) allows the TNRCC to approve variations from the specific sign posting requirements. However, 30 TAC Chapter 122 also requires applicants to demonstrate that it is not practical to comply with requirements of 30 TAC § 122.320(h). Therefore, the alternative sign placement must be at least as effective as the regular sign posting requirements. Applicants must obtain approval from the TNRCC for alternate sign posting methods prior to actually posting any signs.

The applicant shall certify in accordance with 30 TAC § 122.165 that signs required by 30 TAC § 122.320(h) have been posted consistent with the provisions of that section. This is accomplished by submitting Form OP-CRO1 along with the Form OP-PN1. These certifications are required to be submitted to the TNRCC APD no later than 15 days after the end of the 30-day public notice period or the TNRCC may send an NOD to the applicant.

If the applicant fails to submit the Forms OP-CRO1 and OP-PN1 to the TNRCC by the deadline specified in the NOD, the applicant will be in violation of Title 30 TAC § 122.132 and formal enforcement action may be pursued.

Again, it should be noted that if the applicant posts signs and/or publishes the newspaper notice incorrectly the applicant must repost signs and republish the newspaper notice.

### C. Bilingual Public Notice Requirements

Title 30 TAC § 122.322 specifies bilingual public notice requirements. Bilingual public notice is applicable when either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Texas Education Code Chapter 29, Subchapter B; and 19 TAC § 89.1205(a) (relating to Bilingual Education), or if either school is not offering a bilingual education program because the school district has received an exception from such a required bilingual education program under the provisions of 19 TAC § 89.1205(g). Schools not governed by the provisions of 19 TAC § 89.1205 shall not be considered in determining applicability of the requirements of 30 TAC § 122.322.

Title 30 TAC § 122.322(a)(1) specifies that at the applicant's expense, an additional notice shall be published at least once in each alternate language in which the bilingual education program is taught, or for each alternate language in which the bilingual education program would have been taught had the school not waived out of the bilingual education program. The format of the bilingual newspaper notice for an FOP application shall follow the requirements of 30 TAC § 122.320. A notice shall be published in each applicable alternate language newspaper or publication of general circulation in the municipality or county in which the facility is located or proposed to be located. Each alternate language notice is required to be published only within the United States.

Title 30 TAC § 122.322(a)(4) specifies that the bilingual notice is waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice. Title 30 TAC § 122.322(a)(6) specifies that if the alternate language publication is published less frequently than once a month, the alternate language publication notice may be waived by the Executive Director on a case-by-case basis.

At the applicant's expense, applicants shall post each additional sign in accordance with the alternate language sign posting requirements of 30 TAC § 122.322(8). Each alternate language sign shall be posted adjacent to each English language sign required in public notice and any such sign shall meet all other requirements of 30 TAC § 122.320. Both signs shall be posted for the entire public notice period, which extends for 30 days after the last English language or alternate language notice is correctly published in the newspaper. The Public Notice Authorization Package contains Spanish language newspaper notices and example sign postings, use these if needed, otherwise disregard.

The applicant shall certify in accordance with 30 TAC § 122.165 that alternate language signs required by 30 TAC § 122.322(a)(8) have been posted consistent with the provisions of that section. This is accomplished by submitting Form OP-CRO1 along with the Form OP-PN1. Both of these certifications are required to be submitted to the TNRCC APD no later than 15 days after the end of the 30-day public notice period or the TNRCC may send a NOD letter to the applicant.

If the applicant fails to submit the Forms OP-CRO1 and OP-PN1 to the TNRCC, by the deadline specified in the NOD, the applicant will be in violation of 30 TAC § 122.132, and formal enforcement action may be pursued.

Again, it should be noted that if the applicant posts any alternate language sign(s) and/or publishes any alternate language newspaper notice incorrectly, the applicant must repost any such sign and republish any such newspaper notice.

#### D. Application and Draft Permit Availability Requirements

In accordance with 30 TAC § 122.320(b), the applicant shall make a copy of the application and draft permit available for review and copying at a public place in the county in which the site

is located or proposed to be located. Before the Public Notice Authorization Package is drafted by the permit engineer, the applicant will be asked to verify the name and address of the public place they have chosen to meet this requirement.

A public place is a location which is built or supported by public funds (such as libraries, county courthouses, city halls) and cannot be a commercial enterprise. If the application contains confidential information, the applicant is required to indicate in the public file that there is additional trade secret information in the confidential file located at the TNRCC Central Office.

The applicant shall certify that a copy of the application and draft permit were made available for copying and review at a public place in the county where the site is located by submitting Form OP-CRO1 along with Form OP-PN1. Both of these certifications are required to be submitted to the TNRCC APD no later than 15 days after the end of the 30-day public notice period.

#### E. The EPA, Affected State, and Local Program Notice

The EPA, affected state, and local program notice applies to initial permit issuances, minor permit revisions, significant permit revisions, reopenings, and renewals.

Within two weeks of submitting the Public Notice Authorization Package to the applicant, the draft FOP will be sent to the EPA, affected states, and local programs. Affected states, local programs, and the EPA may submit comments within 30 days from the date of notification of the draft FOP. For permit revisions and reopenings the affected states, local programs, and the EPA may only comment on those portions of the permit that are being revised. The draft FOP may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of 30 TAC Chapter 122.

#### IV. PUBLIC COMMENT PERIOD

The public comment period applies to initial permit issuances, significant permit revisions, reopenings, and renewals.

The 30-day public comment period for all draft FOPs begins on the day after the newspaper notice is correctly published. If the bilingual notice is required, the 30-day period starts on the day after the last newspaper notice is correctly published. During this period, any person may submit written comments on the draft FOP or a written request for a notice and comment hearing pursuant to the requirements in 30 TAC § 122.340. The only portions of the draft FOP that are subject to review by the affected states, local programs, and the EPA during the permit revision and reopening processes are those portions of the permit that are being revised. Requests for a hearing must be made, in writing, and submitted during the 30-day comment period. In the event that a hearing is requested, the period for the submission of written comments is automatically extended to, at least, the close of the hearing. The hearing coordinator may grant an extension of the public notice comment period after the close of the notice and comment hearing. Any person may comment on

the draft FOP; however, the draft FOP may only be changed based on comments pertaining to whether the permit provides for compliance with the requirements of 30 TAC Chapter 122.

## V. NOTICE AND COMMENT HEARING PROCEDURES

Notice and Comment Hearing requirements apply to initial permit issuances, significant permit revisions, reopenings, and renewals.

Pursuant to Texas Clean Air Act § 382.0561 (TCAA § 382.0561), all FOP hearings will be notice and comment hearings scheduled upon request, for the purpose of collecting oral and written comments regarding draft FOPs, or the contents of the application. During the 30-day public notice comment period, any person who may be affected by emissions from a site regulated under this chapter may request, in writing, a notice and comment hearing on the draft FOP. The APD or the OPA is responsible for conducting all notice and comment hearings for FOPs. Unlike new source review (NSR) permits, FOPs are not subject to the contested case hearing requirements of the Administrative Procedures Act.

### A. Public Notice for Notice and Comment Hearings

Title 30 TAC § 122.340(f) allows the agency to require public notice for Notice and Comment Hearings, or to combine such notice with the Draft FOP Public Notice.

#### 1. Separate Public Notice for Notice and Comment Hearings

Title 30 TAC § 122.340(e) specifies the contents of the newspaper notice for a Notice and Comment Hearing and requires applicants to publish the newspaper notice, at their expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the area addressed by the FOP application is located or proposed to be located or the municipality nearest to the location or proposed location of the area addressed by the FOP application. This notice must be published at least 30 days prior to the date set for the hearing. The notice shall include the following:

- a. the time, place and nature of the hearing;
- b. a brief description of the purpose of the hearing (that includes the permit application number, the applicant's or permit holder's name and address, a description of the location of the site or proposed location of the site, and a description of the activity or activities involved in the permit application; and
- c. the name and phone number of the commission office to be contacted to verify that a hearing will be held.

If a hearing request is received, the permit engineer will discuss the hearing process with the applicant, and will mail the applicant a Notice and Comment Hearing Public Notice Authorization Package (Hearing Package). The Hearing Package will contain detailed instructions pertaining to the requirements for each hearing newspaper notice. The

Hearing Package will also contain an example of an appropriate hearing newspaper notice. If the area addressed by the application is subject to bilingual notice requirements contained in 30 TAC § 122.322, then the hearing notice is subject to bilingual publication. The Hearing Package will also contain an example of an appropriate hearing newspaper notice.

Within 10 days after publication of each hearing newspaper notice, applicants shall provide a copy of each newspaper notice and date of publication to the TNRCC Central Office at the following address:

Texas Natural Resource Conservation Commission  
Air Permits Division  
Technical Program Support Section, MC 163  
P. O. Box 13087  
Austin, Texas 78711-3087

This requirement shall be met by providing the actual newspaper tear sheet(s) that include(s) the full notice, the name of the publication, and the date of the publication along with a signed Form OP-CRO1. If proof of the hearing newspaper notice is not submitted within 10 days after publication the TNRCC may send an NOD letter to the applicant. If the applicant fails to submit the proof of each hearing newspaper notice, in writing, to the TNRCC, by the deadline specified in the NOD or the applicant will be in violation of the 30 TAC § 122.312, and formal enforcement action may be pursued.

If the applicant published each hearing newspaper notice incorrectly the applicant must republish notices. Prior to republishing, the applicant shall contact the permit engineer to see if the hearing date needs to be rescheduled to allow for the required 30-day advance notice of the hearing. If each hearing notice is published after the established date, the applicant may be required to republish.

## 2. Combined Hearing Notice and Draft FOP Public Notice

To allow for a timely and streamlined public notice process, in some cases the TNRCC may have the potential notice and comment hearing date included in the public notice of the draft FOP. Since the public must have a 30-day advanced notice of any scheduled notice and comment hearing, it is very important that this publishing deadline is met or the applicant may be required to republish the newspaper notice. When the potential hearing date is included in the public notice, it will generally be scheduled to occur 75 days from the date of the cover letter to the Public Notice Authorization Package. Although a hearing may be scheduled, it will only be held if requested. The applicant shall include this hearing notice within the newspaper notice identifying the date, time, and place a notice and comment hearing will be held, if it is requested during the public comment period. The newspaper

notice will state that a hearing will not be held if one is not requested during each comment period. This hearing notice is consistent with 40 CFR § 70.7(h)(2), which requires applicants to publish a notice of a hearing in a newspaper 30 days before a requested hearing is held.

If the newspaper notice cannot be published by the date set in the cover letter of the Public Notice Authorization Package, the applicant should not publish the newspaper notice until notifying the TNRCC permit engineer, who may have to send a new Public Notice Authorization Package which will include a new potential hearing date. If the newspaper notice is published after the established date, the applicant may be required to publish another newspaper notice.

Since hearings will only be held upon request, please call the OPA at (800) 687-4040, or the permit engineer no later than the date one week after the comment period ends to verify whether a hearing will be held.

## B. Hearing Procedures

If a hearing is requested for an FOP then a notice and comment hearing will be held. Typically, all FOP hearings will be conducted at the TNRCC Central Office or held in the region.

The hearing will be structured to allow TNRCC staff to briefly describe the draft FOP. Following that period, any person, including the applicant, who believes that the conditions of the draft FOP do not provide for compliance with all applicable requirements as defined in 30 TAC § 122.10; or that any condition of a draft FOP is inappropriate; or that the preliminary decision of the TNRCC to issue or deny the draft FOP is inappropriate, may raise all reasonably appropriate issues and submit all reasonably available arguments in support of their position (30 TAC § 122.340[i]). The only portions of the draft FOP that are subject to review by the TNRCC, the public, and the EPA during the permit revision and reopening processes are those portions of the permit that are being revised. Participants will be given the opportunity to submit oral comments and may submit additional comments in writing. A tape recording or written transcript of the hearing will be made available for public review after the completion of the hearing. All comments received will be responded to, in writing, after the hearing. Comments pertaining to whether the permit provides for compliance with the requirements of 30 TAC Chapter 122 may initiate changes in the draft FOP.

The hearing coordinator may grant an extension of the public notice comment period after the close of the notice and comment hearing. In the event that time runs out during a notice and comment hearing and not all the participants have a chance to comment, the hearing coordinator may grant a continuance for the hearing. Therefore, the notice and comment hearing would be rescheduled and would resume at a later time.

## VI. NOTICE OF PROPOSED PERMIT/NOTICE OF PROPOSED FINAL ACTION

At the end of the public comment period and after any requested hearing, or at the end of the public announcement period, TCAA § 382.0562 requires that APD send a notice of proposed permit Notice of Proposed Permit (NOPP) regarding the proposed final state action on the FOP to all persons who commented, in writing, or participated in any hearing, and the applicant.

A. The NOPP for Public Announcement

In the NOPP associated with a minor permit revision, the TNRCC will respond to all comments submitted. The NOPP shall include:

1. the response to any comments submitted during the public announcement period; and
2. identification of any change in the conditions in the draft FOP and the reasons for the change.

B. The NOPP for Public Comment and the Notice and Comment Hearing

In an NOPP associated with initial permit issuances, significant permit revisions, reopenings and renewals, the TNRCC will respond to all comments submitted. The NOPP shall include:

1. the response to any comments submitted during the public comment period or at the hearing;
2. identification of any change in the conditions in the draft FOP and the reasons for the change;
3. a description and explanation of the process for public petitions to the EPA pursuant to 30 TAC § 122.360, which specifies that any person affected by the decision of the Commission or its designee may petition the EPA in accordance with TCAA § 382.0563 and the rules adopted under that section; and
4. the date by which the petition must be filed.

VII. THE EPA REVIEW PERIOD

The EPA review period applies to initial permit issuances, minor permit revisions, significant permit revisions, reopenings, and renewals. The only portions of the draft FOP that are subject to review by the TNRCC, the public, and the EPA during the permit revision and reopening processes are those portions of the permit that are being revised.

Title 30 TAC § 122.350 requires that the TNRCC submit the proposed FOP to the EPA after the end of the public comment period for initial permit issuances, significant permit revisions, reopenings and renewals. For minor permit revisions, the TNRCC shall submit the proposed FOP to the EPA no earlier than the first day of the public announcement period. Upon receipt of the proposed FOP, the EPA has 45 days to object, in writing, to the issuance of the proposed FOP. If the EPA objects to the proposed FOP, the TNRCC has 90 days to resolve the objection and submit a new proposed FOP to the EPA. If the TNRCC fails to resolve the objection, then the EPA may issue a modified FOP or deny the FOP for the site consistent with 40 CFR Part 71. If the EPA issues

the FOP then the EPA will administer and enforce it as a 40 CFR Part 71 permit.

## VIII. FINAL STATE ACTION AND APPEAL

After the end of the 45-day EPA objection period, if there is no EPA objection or if the EPA's objection is resolved, the Executive Director of the TNRCC or his designee will issue the FOP, which then becomes effective. A person affected by an act of the Executive Director may appeal the action by filing a petition in a district court of Travis County pursuant to TCAA § 382.032(a) or by petition to the EPA. Issuance of an FOP meets the TNRCC's obligation to take final action on the FOP application within the applicable deadlines specified in 30 TAC Chapter 122. A timeline is provided in Appendix A, Public Notice Timeline, that illustrates the entire public notice process.

## IX. PUBLIC PETITION PERIOD

The public petition period applies to initial permit issuances, significant permit revisions, reopenings and renewals. The only portions of the draft FOP that are subject to review by the TNRCC, the public, and the EPA during the permit revision and reopening processes are those portions of the permit that are being revised.

Immediately following the expiration of the EPA objection period, the 60-day public petition period described in 30 TAC § 122.360 begins. This is a process that provides an opportunity for any person to petition the EPA to object to a permit.

Pursuant to 30 TAC § 122.360, any person, including the applicant, affected by a decision of the commission or its designee may petition the EPA during this 60-day period and ask the EPA to object to the FOP. A copy of the petition shall be provided to the TNRCC and the applicant by the petitioner. These petitions must be based only on objections to the FOP that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates in the petition to the EPA that it was impracticable to raise such objections within the public comment period, or that the grounds for such objection arose after the public comment period.

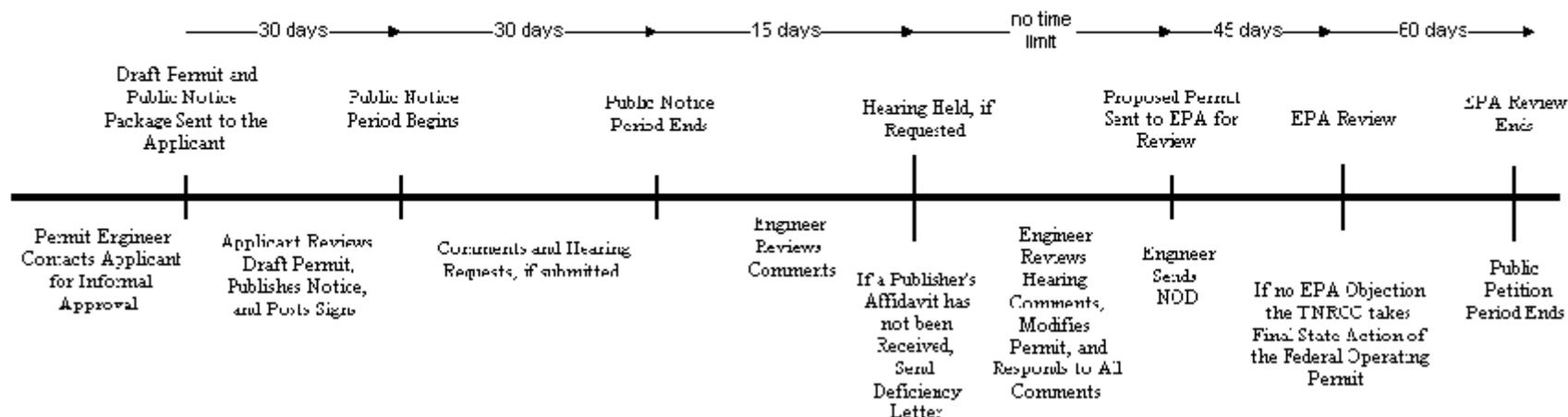
If the EPA agrees with the public petition and objects to the FOP, and the TNRCC has not issued the effective FOP, the FOP cannot be issued until the objection is resolved. The commission has 90 days from the receipt of an objection to resolve the objection and to revise, modify, and reissue the FOP or to revoke the FOP. The TNRCC can request a single 90-day extension from the EPA if more information is needed from the applicant to resolve the objection.

If the TNRCC fails to resolve the objection, the EPA may issue a modified FOP consistent with 40 CFR Part 71. If the EPA issues the FOP, then the EPA will administer and enforce it as a 40 CFR Part 71 permit. If no objections are filed as a result of a public petition, the FOP will become final; therefore, federally enforceable.

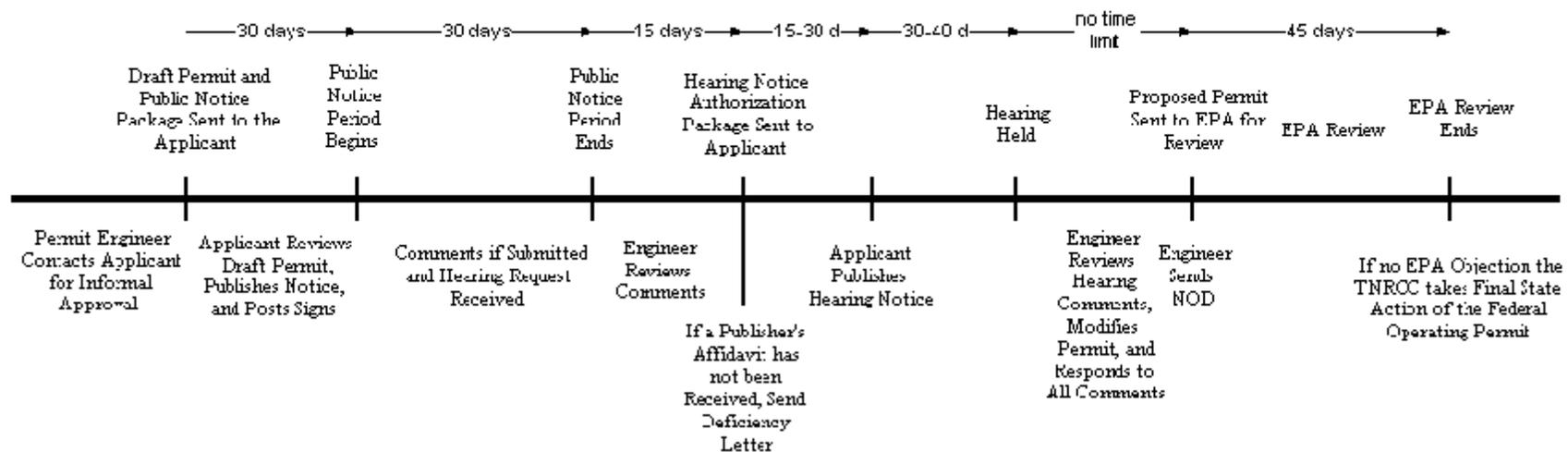
## **APPENDIX A**

### **Public Notice Timeline**

## Public Notice Timeline When Hearing Is Prenoticed in Public Notice



## Public Notice Timeline When Hearing Is Separate Notice



Public Notice, EPA Review, and Public Petition Draft Guidance Document [SS# 6837, Version 8] - November 1999  
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