

Public PARTICIPATION in ENVIRONMENTAL Permitting



For Applications Filed On or After September 1, 2015

This brochure provides a brief overview of your rights and responsibilities in the permitting process for certain applications. There are variations to the process and not all of them are identified here. This brochure is for certain permit applications filed on or after September 1, 2015. If the application was filed before September 1, 2015, please read *Public Participation in Environmental Permitting: Applications Filed before September 1, 2015* (GI-233).

The Texas Commission on Environmental Quality 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 new permits, certain permit amendments, and renewals of permits related to:

- Water quality
- Beneficial land use
- New source review (air)
- Municipal solid waste
- Industrial solid waste
- Hazardous waste
- Underground injection wells

Administrative Review of Permit Applications

When the TCEQ receives a permit application, its staff reviews it to determine whether the applicant has submitted information necessary to identify the applicant and the type of facility and its activities that are the subject of the application. This process is called *administrative review*. When all of the information has 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 states the location of a public place where a copy of the application can be viewed and copied. NORI's can be viewed online at: <https://www.tceq.texas.gov/agency/decisions/participation/pending-permit-information>.

The applicant is required to publish the NORI in a newspaper within 30 days after the TCEQ declares the application administratively complete. (In some cases, the applicant may have to publish the notice in a language other than English, too.) The TCEQ will also mail the NORI to certain landowners, as well as individuals on the mailing list for the county and/or permit. For air permit applications, the applicant must also post signs around the property with information about the application and who to contact.

Responding to the Public Notice

All NORIs contain instructions for submitting comments, getting 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:

At 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 you are using fax, the original must then be mailed or hand delivered to the Chief Clerk and received within three business days.

Comments, in any language, regarding the application may be sent to the TCEQ. The TCEQ is required to review and reply to timely filed comments in a formal Response to Comments before it issues 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 by the affected person or group requesting the hearing.

Getting Placed on a Mailing List

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

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

To get 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 on, and include your name and address.

Requesting a Public Meeting

Public meetings enable the public to learn about the application, ask questions of the applicant and the 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 there is significant interest in an application, if a legislator from the area of the proposed project requests one, or a meeting is otherwise required by law. On certain air applications, the TCEQ will also hold a public meeting if an interested person requests one.

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 for a “public hearing” will be considered a request for a contested case hearing and not a request for a public meeting. Members of the public may request an interpreter for a public meeting by contacting the chief clerk at least two weeks before the meeting.

Requesting a Contested Case Hearing

The commissioners’ decision whether to grant a hearing is based in part on the information the requester submits. 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

► A **contested case hearing** is a legal proceeding similar to a civil trial in state district court.

request a hearing 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, or SOAH, which is an independent agency that conducts hearings for state agencies. When an application is referred, the TCEQ sends SOAH the administrative record, which includes the permit application, the ED’s draft permit, and documentation regarding the review of the application and preparation of the draft permit. These documents establish a “prima facie” case, meaning that the draft permit meets all state and federal legal and technical requirements, and that the permit, if issued, would protect human health and safety, the environment, and physical property. The prima facie case may be rebutted by evidence that demonstrates that at least part of the draft permit violates a specifically applicable state or federal requirement. If there is such a rebuttal, the applicant and the ED may present additional evidence to support the draft permit. 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.

► The TCEQ will hold a public meeting if there is significant interest in an application, if a legislator from the area of the proposed project requests one, or a meeting is otherwise required by law.

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 be in writing and include:

- 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, or questions of fact and law, that were raised by the person

making the hearing request during the public comment period and that are the basis of the hearing request

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

Note: On certain air permit applications, to preserve the right to a contested case hearing, at least one request for a hearing must be submitted within the time frame specified in the NORI. See “Request for a Contested Case Hearing,” below. For information on the contested case hearing process and requirements for applications filed before September 1, 2015, see the publication *Public Participation in Environmental Permitting: Applications filed before September 1, 2015* (GI-233).

Technical Review of Permit Applications

After an application is administratively complete, the ED’s 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, or 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. NAPD’s can be viewed online at: <https://www.tceq.texas.gov/agency/decisions/participation/pending-permit-information>.

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 or the 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,” below.

If the TCEQ receives no requests for a hearing 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 it.

You can:

- request a contested case hearing
- request its reconsideration
- move to overturn it

Request for a 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 by the hearing requester during the comment period, in comments that were not withdrawn later. The agency must receive the request for a hearing within 30 days of 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 a 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. For information on this process and requirements for applications filed before September 1, 2015, see *Public Participation in Environmental Permitting: Applications Filed before September 1, 2015* (TCEQ publication GI-233).

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 personnel 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 the requester’s name, address, and phone number, and why the requester believes 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 a 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 the commissioners have not acted on a motion to overturn 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 has specifically been granted.

Review of Requests for Reconsideration and 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. 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 that 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 personnel.

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, or ADR, is available to determine whether a mutually agreeable settlement is possible. The TCEQ has dispute-resolution 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.

Asking for Language Access or Accommodations

TCEQ strives to ensure that all Texans can participate in their programs, activities, and services. Language access or

accommodations for agenda may be requested by contacting the Office of Chief Clerk at 512-239-3300 at least five business days before agenda. For public meetings, interpretation services are provided when either the Office of Chief Clerk has received comments in the alternative language at least two weeks before the public meeting is scheduled or there is substantial or significant public interest that would be served by having interpretation services available. For more information on TCEQ's nondiscrimination processes, visit the following webpage: <https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance>.

Protesting the Commissioners' Decision

If the commissioners issue a decision that approves a permit application, 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 25 days after the date the decision was issued. If the commissioners do not act on the motion within 55 days after the date the decision was issued, or a later date approved by the commissioners, the motion is overruled by operation of law. 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

The public can get answers to questions about permitting by calling 800-687-4040.

Si desea información en Español, puede llamar 1-800-687-4040.

The TCEQ helps the public with the status of applications and the permitting process.

OFFICE OF PUBLIC INTEREST COUNSEL
512-239-6363

OPIC informs the public about legal aspects of contested case hearings.

ALTERNATIVE DISPUTE RESOLUTION
512-239-0687

ADR personnel assist 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/customersurvey, or request that a survey be mailed to you by calling 800-687-4040.

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The TCEQ is an equal opportunity employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation or veteran status.

