

Issue 15: Public Meetings on Permit Applications

A. Brief Description of Issue

During the COVID-19 public health emergency, the agency utilized virtual public meetings to keep the public informed of agency projects and pending permit applications, and to allow the agency to continue receiving input from the public. Public meetings are required by federal law¹⁴ and by state statute for certain permitting actions. Specifically, Texas Health and Safety Code (THSC) Sections 361.0791 and 382.056(k) and Texas Water Code (TWC) Section 5.554 provide that “during the public comment period, the executive director may hold one or more public meetings *in the county* in which the facility is located or proposed to be located.”¹⁵ TCEQ has asserted that the purpose for holding a public meeting in the county of the proposed facility is to allow the public to participate in the permitting process without having to leave the county. A virtual public meeting accomplishes this purpose as attendees do not have to travel. Accordingly, the agency has taken the position that virtual public meetings are in compliance with the statutes. Express language authorizing the agency to hold or require virtual public meetings on permit applications would serve to reinforce the agency’s position.

B. Discussion

TCEQ rules require that a public meeting be held in the following instances: the executive director determines that there is a substantial or significant degree of public interest in an application; a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; an interested person requests a public meeting for major source air quality applications (i.e., Prevention of Significant Deterioration (PSD), Nonattainment, or Hazardous Air Pollutant (HAP) applications); or a public meeting is otherwise required by law.¹⁶

Further, a public meeting must be held on major source air quality applications, such as PSD, Nonattainment, and HAP applications, when an interested person requests a public meeting regardless of the amount of public interest because the federal rules require states to hold a public meeting¹⁷ on these types of applications if a request is received.¹⁸ In addition, public meetings are also mandatory for certain minor source applications. Specifically, applications to register under the Standard Permit for Concrete Batch Plants with Enhanced Controls are subject to a mandatory public hearing regardless of the amount

¹⁴ 40 Code of Federal Regulation (C.F.R.) § 124.12 specifically applies to National Pollutant Discharge Elimination System permits, Resource Conservation and Recovery Act permits, and Underground Injection Well permits (UIC); 40 C.F.R. § 51.102(a) contains the requirements that must be included in a State Implementation Plan which is a collection of regulations used by states to implement, maintain, and enforce the National Ambient Air Quality Standards and to fulfill other requirements of the Federal Clean Air Act.

¹⁵ THSC § 382.056(k) (emphasis added); TWC § 5.554 (emphasis added) (applies to public meetings for Texas Pollutant Discharge Elimination System permits, UIC permits, and waste permits issued under THSC Chapter 361); THSC § 361.0791 (emphasis added) (applies to public meetings for certain hazardous waste and municipal waste applications).

¹⁶ See 30 Texas Administrative Code (TAC) § 55.154(c).

¹⁷ Some statutory provisions use the term “public hearing” interchangeably with “public meeting.”

¹⁸ See 40 C.F.R. § 51.102(a); see also 30 TAC § 55.154(c)(3)-(4).

of public interest in the application.¹⁹The agency expends a significant amount of resources, including staff time and travel costs on in-person public meetings. In the typical case, at least three TCEQ staff members attend public meetings, including a member of the Office of the Chief Clerk (OCC) staff, technical staff, and legal staff. For public meetings with considerable public interest, there may be as many as nine TCEQ staff, including, several OCC staff members, additional program or legal staff as well as Regional Office staff. Staff from the Office of Public Interest Counsel may also attend meetings that are expected to be controversial.

Hosting an in-person meeting can significantly impact permitting time frames due to scheduling issues and the need to find a venue suitable for the expected capacity of the meeting. TCEQ has held public meetings in venues as varied as hotel conference rooms, school cafeterias or gymnasiums, court rooms, and privately owned spaces. The agency has received complaints from the public concerning the need to travel to in-person public meetings or the meeting venue's location in relation to the commenters or the facility.

For virtual meetings, TCEQ's OCC utilizes the GoToMeeting virtual platform, which is capable of multiple avenues of participation, including telephone participation. Specifically, the public may participate through the internet via a webcast or by telephone. In addition, the notice of the public meeting explains the multiple avenues of participation and provides the public with a telephone number to call for assistance accessing and participating in the meeting. TCEQ staff also begins virtual meetings with instructions that address the most frequently encountered technological issues, such as how to use the microphone on a computer. Digital recordings of the virtual public meetings are made available to the public in a timely manner.

TCEQ also utilizes the Microsoft Teams platform for other virtual meetings. This platform's functionality did not include telephone participation for several months when the agency first started using it, and separate call in lines were used in addition to the platform. However, Microsoft Teams now includes telephone participation, and the platform is being successfully used for Texas Groundwater Protection Committee and subcommittee public meetings, Watermaster Advisory Committee public meetings, and other similar non-permitting meetings across the agency. As with the GoToMeeting virtual platform, every effort is made to provide advanced notice or information on where and how to register and navigate the Microsoft Teams meeting, who to contact if difficulties are encountered, and where a recording of the meeting may be accessed afterward.

C. Possible Solutions and Impact

A possible solution that would strengthen the agency's efforts to reap the benefits of virtual public meetings is a statutory change to expressly authorize the use of virtual public meetings in lieu of in-person public meetings. Such a change would potentially conserve agency resources and provide the public with a convenient avenue to meaningfully participate in the permitting process and to receive information about pending permit applications and agency projects. For some agency program areas, the use of virtual public meetings would result in greater efficiency of communication with the public and result in shorter permitting time frames by eliminating delays due to scheduling conflicts for both attendees and the

¹⁹ See THSC § 382.05199(g) (Frequently, no members of the public attend the public hearing for a concrete batch plant with enhanced controls).

meeting venue. Virtual public meetings also provide a training opportunity for new staff and allow agency management to monitor public meetings without the need to be physically present. By continuing to utilize virtual public meetings, the agency will benefit by focusing its resources on projects with significant public interest. Often, individuals find it difficult to attend live public meetings due to family obligations, transportation challenges, or work conflicts. Virtual public meetings allow individuals who are unable to attend live public meetings an opportunity to provide meaningful input to TCEQ's permitting process and other agency projects.

Benefits from virtual public meetings to TCEQ include increased public attendance and decreased costs associated with staff travel expenses and travel time. Additionally, virtual public meetings would allow for valuable input by citizens and public interest groups. The public would be positively impacted by utilizing a new avenue of participation that does not require travel to a physical location. The virtual format provides the public with an opportunity to have meaningful participation in TCEQ's permitting process and agency projects without the necessity of attending in person.