

Issue 16: Electronic Access to Permit Documents

A. Brief Description of Issue

Permit applications and draft permits for most environmental media are required by statute to be made available in a publicly accessible building, such as a library, so that members of the public may review and make copies. During the COVID-19 public health emergency, many of these buildings were closed to the public. In response, the agency allowed applicants to post copies of permit applications and draft permits virtually in lieu of making them available in a public place. Benefits including resource savings and convenience would continue if the agency was provided the flexibility to allow applicants to post applications and draft permits online in lieu of, or in addition to, placing the required documents in a public place.

B. Discussion

Current statutory provisions require that a copy of the application and certain related documents be made available at a public place in the county where the site or facility is located or proposed to be located. These statutory requirements and associated TCEQ rules include:

- Texas Health and Safety Code (THSC) Section 382.056(j) and Texas Water Code (TWC) Section 5.553(e): The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.
- TWC Section 5.552(e), THSC Section 382.056(d), and 30 Texas Administrative Code (30 TAC) Section 39.405(g): The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located.
- 30 TAC Section 122.320(b): The executive director shall direct the applicant to publish a notice of draft permit and preliminary decision, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The executive director shall direct the applicant to make a copy of the application, draft permit, and statement of basis available for review and copying at a public place in the county in which the site is located or proposed to be located.

The purpose is so members of the public may have convenient access to review and copy the documents. A frequent comment received by the agency on applications is that the permit application is hard to access or not at the public location when the commenter attempted to review it. If the permit application is not at the public location, the most common remedy is to extend the public comment period, thus delaying the final action on the permit. People who lack the means to travel to the public location have difficulty fully participating in the permitting process.

During the COVID-19 public health emergency, many of these buildings were closed to the public. In response, the agency allowed applicants to post copies of permit applications and draft permits virtually instead of making the documents available at a publicly accessible building. Applicants would post the required documents on a public website, then provide that link to TCEQ, which would be included on the agency's public website and in the public meeting notice. With this process, the agency incurred little to no cost because the applicant was required to digitize the documents and post the materials. This virtual posting option occurred at the applicant's risk, as a court holds jurisdiction over the question of whether posting on a website is a sufficient alternative.

Unlike the application types mentioned above, the following federal and state rules require electronic posting of certain permit applications and related documents:

- 40 Code of Federal Regulations Section 257.107(a): Each owner or operator of a Coal Combustion Residual (CCR) unit subject to the requirements of this subpart must maintain a publicly accessible internet site (CCR website) containing the information specified in this section.
- 30 TAC Section 330.57(i)(1): Upon submittal of an application, the owner or operator shall provide a complete copy of any application that requires public notice, except for authorizations at Type IAE and Type IVAE landfill facilities, including all revisions and supplements to the application, on a publicly accessible internet website, and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only.
- 30 TAC Section 352.1321(c): The owner or operator shall post on the publicly accessible website certain documents including the application, upon submittal to or receipt from the executive director or the chief clerk for the active life of the coal combustion residuals unit through the completion of the post-closure care period.

To continue to be effective, methods for making permit applications publicly available should reflect developments in how the public accesses information. Access to permit applications utilizing electronic resources reflects widespread public access to the internet, email, and other electronic means of communication. Electronic access is a streamlined method to provide information to the public in a manner to which the public is now accustomed. Additionally, electronic access is not barred by hours of operation and members of the public can review the information at their convenience.

C. Possible Solutions and Impact

TCEQ recommends amending the statutes to allow flexibility to post applications and draft permits online instead of placing the required documents in a public building. Electronic access of permit applications will be more effective, timely, cost-effective, and reach more members of the public, thus providing for more meaningful public participation in the permitting process. It would also minimize the need to extend the public comment period due to delays in the application and draft permit not being timely provided at a public place and would allow permits to be issued more efficiently.