

SB 709

Changes to Contested Case Hearing Requirements and Procedures

Janis Hudson

Environmental Law Division

Texas Commission on Environmental Quality

Advanced Air Permitting Seminar 2015

Introduction

- Alters the CCH process for most air quality; water quality; municipal, industrial, and hazardous waste; and underground injection control permit applications.
- Permit applications initiated on or after September 1, 2015.



Notice Text

- First and second notices have minimal changes.
- September - December 2015 notices will have text regarding the change in the law.



New TCEQ Legislator Notification

- Notifies area state senator and state representative(s) at least 30 days before issuance of draft permit.
- Provides this by e-mail.
- Sends NAPD to applicant at least 30 days from the legislator notification.

Example Notification E-mail

 Send	To...	Area Representative Person
	Cc...	
	Bcc...	
Subject:		Air Permit ##### Proposed In Your Area

TCEQ is preparing the initial draft permit for applicant review. At the time the draft permit is issued, the applicant will be required to publish notice in a newspaper of general circulation, and the TCEQ will provide a copy of the notice of draft permit to persons who have requested to be on a mailing list. Questions regarding this email may be directed to Jane Doe, Section Manager (512)239-9999.

Hearing Requestors' New Duties

- Submit a timely request.
- Submit timely comments with a hearing request.
- Groups: Specifically identify affected person(s) by name and physical address.



The Commission and Hearing Requests



- Can't consider a group to be “affected” unless:
 - The CCH request is timely.
 - The request identifies, by name and physical address, a member who would be affected in the member's own right.
- May consider certain criteria when determining who is affected person.

When Commission Processes Hearing Requests

Must submit complete detailed and factual list of issues to SOAH.



Timing of Hearings

- Hearing can't be held until agency files RTC (direct referrals).
- No more than 180 days between preliminary hearing date and the Judge's decision.



New Admin. Record Procedures

Applicants

- File a duplicate copy of their full application with the OCC in 10 days of their referral.

TCEQ

- Provides the Administrative Record to SOAH when the case is docketed.

Hearings

- Administrative Record establishes that the draft permit meets requirements.
- Rebuttal of the administrative record that demonstrates that the draft permit violates a specific requirement.
- Applicant and ED can present additional evidence.



SB 709 Applicability Exception

The changes do not apply to a permit application that is substantially similar to a permit application for which a draft permit has been issued (date restrictions apply).

Rulemaking Schedule 2015

Comment
Period
Closed

Expected
Adoption
Publication

Expected
Adoption
Agenda

Expected
Effective
Date

Proposed

Published

Expected
Adoption
Publication

September						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

S	M	T	W	T	F	S
30	31					
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

December						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Rulemaking

- Changes proposed in Chapters 39, 50, 55 and 80.
- Rulemaking also includes proposed rules to implement SB 1267, which amended the Texas Administrative Procedure Act.

Chapter 39 Changes

- 39.419 – Notice of Application and Preliminary Decision
- 39.602 – Mailed Notice

Both provide for notice to state senator/representative 30 days prior to NAPD issuance.

Chapter 50 Changes

- 50.115 – Scope of CCH:
 - Refer to only disputed issues of fact or mixed question of law and fact.
 - 180 days for PFD.
- 50.143 – Withdrawing the application

Chapter 55 Changes

- 55.156 – Public Comment Processing
- 55.201 – Requests for Reconsideration (RFR) or CCH
- 55.211 – Commission Action on RFRs and CCH

Hearing issues limited to relevant and material issues of fact raised during the comment period by a hearing requestor who is an affected person.

More Chapter 55 Changes

- 55.203 – Determination of Affected Person:
 - Merits of the underlying application and supporting info;
 - The ED's analysis and opinions; and
 - Other items submitted by the ED, the applicant, or hearing requestor.

More Chapter 55 Changes

- 55.205 – Request for Group or Association

Name and physical address of member who is an affected person.

- 55.210 – Direct Referrals

Preliminary hearing will be after the ED's RTC is provided.

Chapter 80 Changes

- 80.4 – Judges and 80.252 – Judge's Proposal for Decision

180-day limit and limited basis for extending length of hearing.

Chapter 80 Changes

- 80.6 – Referral to SOAH and 80.118 – Administrative Record

OCC prepares and submits the record to SOAH, including application from the applicant.

- 80.25 – Withdrawing the Application

More Chapter 80 Changes

- 80.105 – Preliminary Hearing

Always after RTC is provided.

- 80.17 – Burden of Proof
- 80.117 – Order of Presentation

More Chapter 80 Changes

- 80.127 – Evidence

Prima facie case.

- 80.108 – ED Party Status in Hearings

May revise or reverse his position based on hearing evidence.

Comments on Rulemaking

Comment
Period Closed

September

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

A photograph of a crowd of people with their hands raised in the air, overlaid with a light blue tint. The image is used as a background for the text.

Questions?