WEBINAR: NAVIGATING THE TCEQ WASTEWATER PERMITTING PROCESS

Wednesday - February 1, 2023
12:00 - 1:00 PM

SPEAKER: LAUREN ICE
Attorney - Perales, Allmon & Ice, P.C.
About the Speaker

Lauren Ice is a partner at the law firm Perales, Allmon & Ice, P.C., where she represents clients on a variety of environmental matters. Her firm regularly helps clients navigate TCEQ permitting and related administrative matters. Lauren has represented clients before the State Office of Administrative Hearings in protesting wastewater disposal permits and has assisted clients in negotiating improvements to wastewater permits. Prior to joining private practice, she was a staff attorney for Save Our Springs Alliance.

***This is only a guide, NOT legal advice. Please contact an attorney if you would like advice on a specific case.
Why Participate?

- Concerns over impacts from the facility, such as odors, reduced water quality, aesthetic impacts
- It is your right
- It makes the process work better
- It can help you win real improvements

Photo Credit: Stephanie Ryder Morris
## Overview of Wastewater Permitting Options

<table>
<thead>
<tr>
<th>Option 1:</th>
<th>Option 2:</th>
<th>Add-on:</th>
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<tbody>
<tr>
<td><strong>TPDES or discharge permit</strong></td>
<td><strong>TLAP or land application permit</strong></td>
<td><strong>Reclaimed water or 210 reuse authorization</strong></td>
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<tr>
<td>TPDES stands for Texas Pollutant Discharge Elimination System</td>
<td>TLAP stands for Texas Land Application Permit</td>
<td>With either a TLAP or discharge permit, effluent can also be used on-demand to irrigate landscapes, flush toilets, fire protection, and more</td>
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<td>Covers all direct discharge into streams, lakes, and bays in the state</td>
<td>Treat and irrigate effluent on the land</td>
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<td>Dedicated disposal field, often with a storage/evaporation pond</td>
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The Key Players

- Applicant
- Protestant(s)
- Texas Commission on Environmental Quality (TCEQ)
  - Commissioners
  - Chief Clerk
  - Executive Director (ED)
  - Office of Public Interest Counsel (OPIC)
- State Office of Administrative Hearings (SOAH)
  - Administrative Law Judge (ALJ)
Public Participation in 10 Steps

1. Applicant Submits Application
2. First Notice (NORI)
3. Second Notice (NAPD)
4. Public Comment Deadline* (extended by a public meeting)
5. Response to Comments
6. Deadline to request CCH
7. Commissioners Consider Hearing Requests
8. Preliminary hearing**
9. Hearing on the Merits and Proposal for Decision
10. Commissioners Consider PFD

* Extra Step: Public Meeting (may extend public comment deadline)
** Skip Steps: Applicant Requests Direct Referral (will skip straight to Preliminary Hearing)

We’ll also discuss potential outcomes of a hearing and or in successfully negotiating a settlement.
Step 1: Applicant Submits Application

- Applicant submits application to TCEQ
- Administrative Review of the application begins
- TCEQ Staff will determine whether all the information has been included in the application
- If not, Staff can send the Applicant a “Notice of Deficiency” letter asking for additional information.
- New: Public Involvement Plan (PIP), since November 2022

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*Public Comment Deadline: 30 days
**Preliminary hearing: 180 days
Step 2: First Notice (“NORI”)

- NORI = Notice Of Receipt of Application and Intent to Obtain a Permit
- Applicant must publish notice in a newspaper in the county or city where facility is proposed to be located - bilingual notice may be required
- Chief Clerk will mail notice to adjacent landowners and those one mile downstream (for TLAPs, one mile from the facility as the crow flies)
- Application must be available for viewing/copying in the county where facility is located
- Public comment period opens. Technical review begins.

2. First Notice (NORI)

4. Public Comment Deadline* (extended by a public meeting)

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1. Applicant Submits Application

3. Second Notice (NAPD)

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Sources of Public Information

- **Commissioners’ Integrated Database (CID):** [https://www14.tceq.texas.gov/epic/eCID/](https://www14.tceq.texas.gov/epic/eCID/)
  
  Allows the public to search data from the Chief Clerk about pending matters, like comments and other filings

- **Central Registry:** [https://www15.tceq.texas.gov/crpub/](https://www15.tceq.texas.gov/crpub/)

  Allows public to search for Regulated Entity or affiliated Customer and other entities, including compliance history

- **Public Notice Database:** [https://www14.tceq.texas.gov/epic/eNotice/](https://www14.tceq.texas.gov/epic/eNotice/)
  
  - Allows public to search for public notices sent by the Chief Clerk

- **Wastewater Permit Status Check:** [https://www6.tceq.texas.gov/wqpag/index.cfm](https://www6.tceq.texas.gov/wqpag/index.cfm)

- **Contact TCEQ Wastewater Permitting Program directly:** wqap@tceq.texas.gov, 512-239-4671

- **Contact OPIC about process:** [https://www.tceq.texas.gov/agency/directory/comm_directory.html#pic](https://www.tceq.texas.gov/agency/directory/comm_directory.html#pic), 512-239-6363

- **Public Information Requests to Public Information Officer:** openrecs@tceq.texas.gov
Step 3: Second Notice ("NAPD")

- NAPD = Notice of Application and Preliminary Decision and Draft Permit
- Applicant must again publish notice in a newspaper in the county or city - bilingual notice may be required
- Chief Clerk will mail another notice to adjacent landowners, those one-mile downstream, and those on mailing list
- Applicant must continue make a copy of the application available for viewing and copying, as well as any revisions and the draft permit
- Public comment deadline is 30 days from NAPD.
Step 4: Public Comment Deadline

- Include **ALL** questions or issues of concern, with specificity
- Any person or any organization who may want to contest the draft permit should submit comments on their own behalf
- All public comments and requests must be submitted either:
  - Electronically, with permit number: https://www14.tceq.texas.gov/epic/eComment/
  - In writing (must arrive by deadline)
  - Hand-delivery
  - Fax (must also mail or hand-deliver copies)
**Bonus Step: Public Meeting**

- Will be granted if a legislator requests one or if ED determines significant degree of community interest in the application
- The Applicant, ED, and OPIC will attend
- Two main parts: (1) informal Q&A and (2) the formal comment period
- The public comment deadline is extended to the end of the public meeting

Photo Credit: Houston Chronicle
**STEP 5: Response to Comments (RTC)**

- 60 days (or more) after the public comment period has ended, the Executive Director mails the Response to Comments
- Will respond to each question/comment, often by grouping similar questions/comments
- Will explain if any changes have been made to the draft permit
- Triggers 30-day deadline to request a Contested Case Hearing

**Timeline**

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* Extended by public meeting
** Preliminary hearing held within 30 days of request for CCH
STEP 6: Request a Contested Case Hearing

- A request for a Contested Case Hearing should include:
  - all issues of concern you raised in your comments that you may want to raise during the hearing, and
  - a description of how you would be adversely affected in a way not common to the general public.

- If no requests for a contested case hearing, then the Executive Director will issue the permit to the applicant.

- If there are hearing requests, then the TCEQ Commissioners must consider whether to grant the hearing requests at one of their regular Agenda Meetings.

- You may also file a Request for Reconsideration to ask the Commissioners to reconsider the ED’s decision.

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Notes:
* Public Comment Deadline extended by a public meeting
** Preliminary hearing
STEP 7: TCEQ Commissioners Consider Hearing Requests

- Prior to Commissioners’ Agenda Meeting, the Applicant, TCEQ ED, and OPIC have the opportunity to file Responses to hearing requests.

- Requestors may file replies to the Applicant, ED, and OPIC responses.

- If the Commissioners grant a hearing, they will issue a written order that names affected persons and lists the disputed issues to be considered.

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Step 8: Preliminary Hearing

- If the Commissioners grant a hearing, the case is transferred to the State Office of Administrative Hearings (SOAH). The notice will be provided at least 30 days in advance of the Preliminary Hearing.

- An Administrative Law Judge (ALJ) from SOAH will convene a preliminary hearing where he or she will name parties and set a procedural schedule, based on input from parties.

- At any time an applicant may request a “direct referral” to SOAH.
**Step 9: Hearing on the Merits**

- This SOAH hearing is like a civil bench trial, with expert and fact witnesses, discovery, and legal arguments.
- About 3-4 months after the preliminary hearing, the hearing on the merits takes place with live testimony.
- After the hearing on the merits, parties may file “closing arguments.”
- About 60 days after closing arguments, ALJ issues Proposal for Decision (PFD) recommending denial of permit, granting of permit, or granting of permit with conditions.

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Step 10: TCEQ Commissioners Consider PFD

- Commissioners consider the PFD and may adopt, reject, or modify PFD.
- The TCEQ Commission will issue a written order expressing their final decision which will be mailed to all parties.
- A party may file “Motion for Rehearing.” If denied or Commissioners do not act on the motion, then a party can appeal to district court.
- The process, from start to finish, can take two years or more.

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Mediation and Settlement

- At any stage of the process, the parties may agree to settle the case.
- TCEQ and SOAH have mediators, or parties may hire private mediators to help reach a settlement.
- If settlement does occur, a common time for parties to settle is either before the preliminary hearing or shortly thereafter.
- Many contested wastewater permits settle without the need for a hearing on the merits.
Settlement Can Also Win Improvements

- Nothing is off the table in settlement. Protestants have achieved real improvements, such as:
  - Withdrawal of discharge permit for land application permit
  - Reduction in total permitted flow
  - Increased storage and irrigation land
  - Commitments to reuse or truck & haul certain volume
  - Enhanced treatment standards for effluent
  - Good neighbor provisions to mitigate for aesthetics, noise, odor, etc.
  - Money for mitigation efforts on protestant’s property
  - Less impacts from related development, e.g., reduced density, development buffers, water conservation, etc.
  - Enhanced monitoring and reporting
Tips for Public Participation

- Remember, this is your right.
- Talk to someone with experience early in the process.
- Pay attention to the timeline for community input.
- Don’t waive your right to a contested case hearing.
- Community organizing is effective.
- Look for other permits the applicant may need - groundwater wells, surface water rights, road entrances, tax incentives, development permits, etc.
Questions?

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lauren@txenvirolaw.com
www.txenvirolaw.com
Other resources

Greater Edwards Aquifer Alliance (GEAA)
- Annalisa Peace, Executive Director: annalisa@aquiferalliance.org
- Nathan Glavy Technical Director: nathan@aquiferalliance.org

Save Barton Creek Association (SBCA)
- Brian Zabcik, Advocacy Director: brian@savebartoncreek.org
- No Dumping Sewage coalition, email Brian to attend the next meeting on 2/8

Hill Country Alliance (HCA)
- Marisa Bruno, Water Program Manager: marisa@hillcountryalliance.org
- Grassroots Gatherings for Water Advocates— email Marisa if interested