



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.

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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

Option 1:

TPDES or discharge permit

TPDES stands for Texas Pollutant
Discharge Elimination System

Covers all direct discharge into
streams, lakes, and bays in the
state

Option 2:

TLAP or land application permit

TLAP stands for Texas Land
Application Permit

Treat and irrigate effluent on the
land

Dedicated disposal field, often with
a storage/evaporation pond

Add-on:

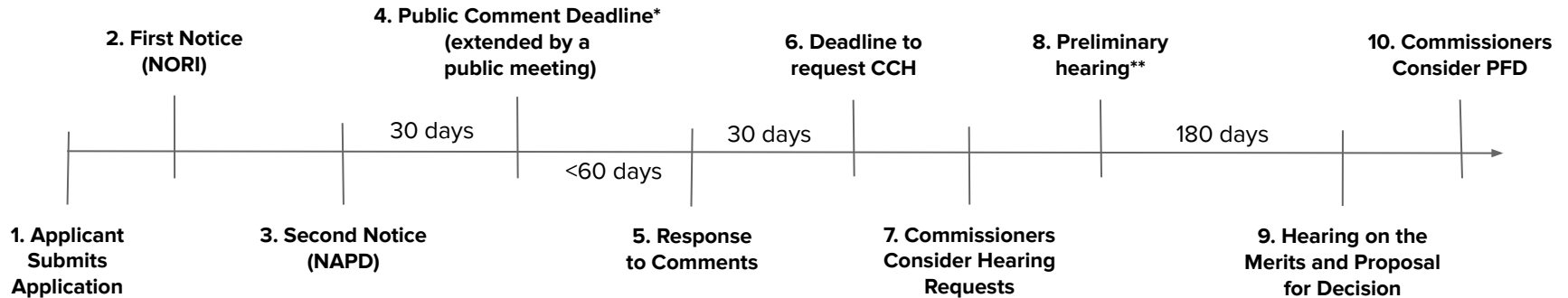
Reclaimed water or 210 reuse authorization

With either a TLAP or discharge
permit, effluent can also be used
on-demand to irrigate landscapes,
flush toilets, fire protection, and
more

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



* **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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DOMESTIC WASTEWATER PERMIT APPLICATION

TCEQ

DOMESTIC TECHNICAL REPORT 1.0
The Following is Required For All Applications
Renewal, New, And Amendment

Section 1: Permitted or Proposed Flows (Instructions Page 51)

A. Existing/Interim I Phase
Design Flow (MGD): 0.22
2-Hr Peak Flow (MGD): 1
Estimated construction start date: Feb 2019
Estimated waste disposal start date: June 2019

B. Interim II Phase
Design Flow (MGD):
2-Hr Peak Flow (MGD):
Estimated construction start date:
Estimated waste disposal start date:

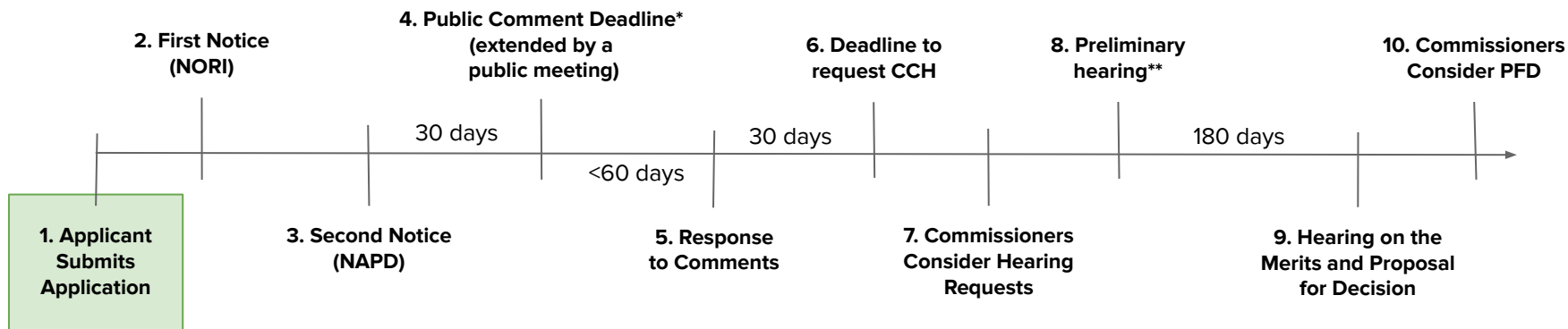
C. Final Phase
Design Flow (MGD): 0.49
2-Hr Peak Flow (MGD): 1.06
Estimated construction start date: May 2022
Estimated waste disposal start date: August 2022

D. Current operating phase: N/A
Provide the startup date of the facility:

Section 2: Treatment Process (Instructions Page 51)

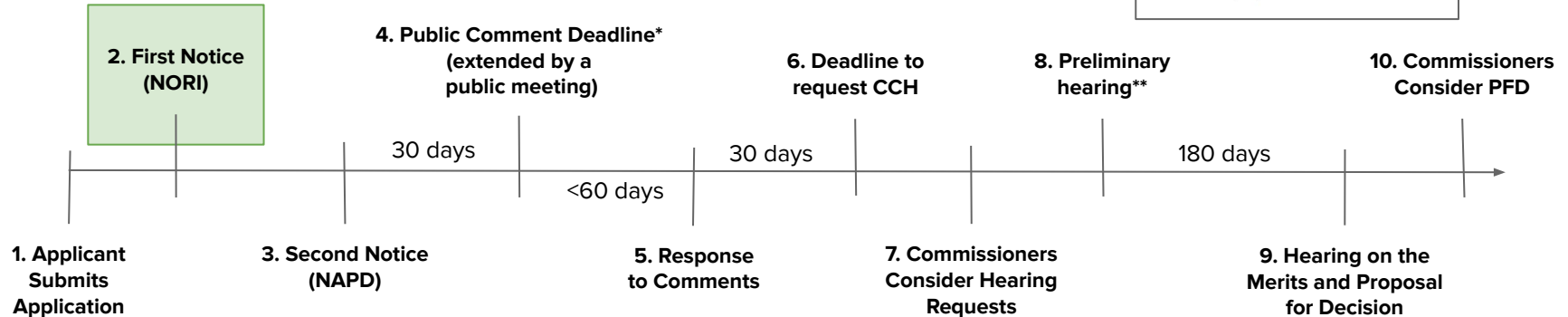
A. Treatment process description
Provide a detailed description of the treatment process. Include the type of

TCEQ-10014 (01/01/2017) Page 1 of 80
Domestic Wastewater Permit Application Technical Report




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.



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF RECEIPT OF APPLICATION AND INTENT TO OBTAIN WATER QUALITY PERMIT

PROPOSED PERMIT NO. WQ001713001

APPLICATION: *See also:* 80% TPD a/c. Banders, Texas (RCC), has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ001713001 (PDA ID No. TCEQ001713001) to authorize the discharge of treated wastewater at a volume not to exceed a daily average flow of 40,000 gallons per day. The discharger, wastewater treatment facility will be located at 80% TPD a/c. Banders, in Banders County, Texas (RCC). The discharge route will be from the plant site to Comanche Creek, thence to Brazos Creek. TCEQ received this application on July 20, 2020. The permit application is available for viewing and copying at Banders County Public Library, 343 Main Street, Banders, Texas. This link is an electronic map of the site or facility's general location is provided in a public courtesy and not part of the application or notice. For the exact location, refer to the application. [http://www.texas.gov/assets/public/33b02c/index.html?lat=30.6665&lon=-96.2334&zoom=14¢er=30.6665&lon=-96.2334](http://www.texas.gov/assets/public/33b02c/index.html?lat=30.6665&lon=-96.2334&zoom=14¢er)

ADDITIONAL NOTICE: TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT / PUBLIC MEETING: You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

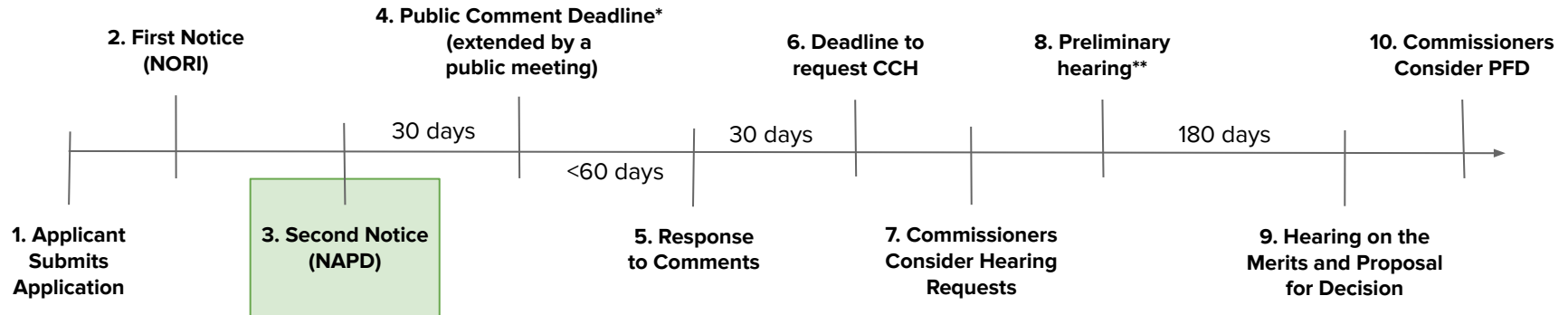
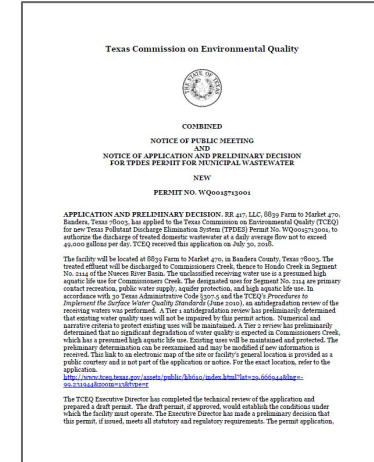
OPPORTUNITY FOR A CONTESTED CASE HEARING: After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision.

Sources of Public Information

- **Commissioners' Integrated Database (CID):** <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/>
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/>
 - Allows public to search for public notices sent by the Chief Clerk
- **Wastewater Permit Status Check:** <https://www6.tceq.texas.gov/wqpaq/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, 512-239-6363
- **Public Information Requests to Public Information Officer:** openrecs@tceq.texas.gov

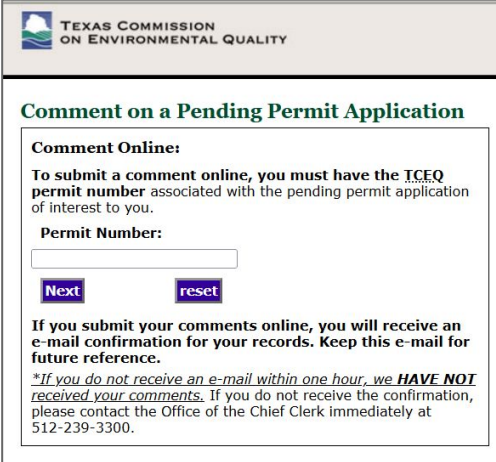
Step 3: Second Notice (“NAPD”)

- 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)



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Comment on a Pending Permit Application

Comment Online:

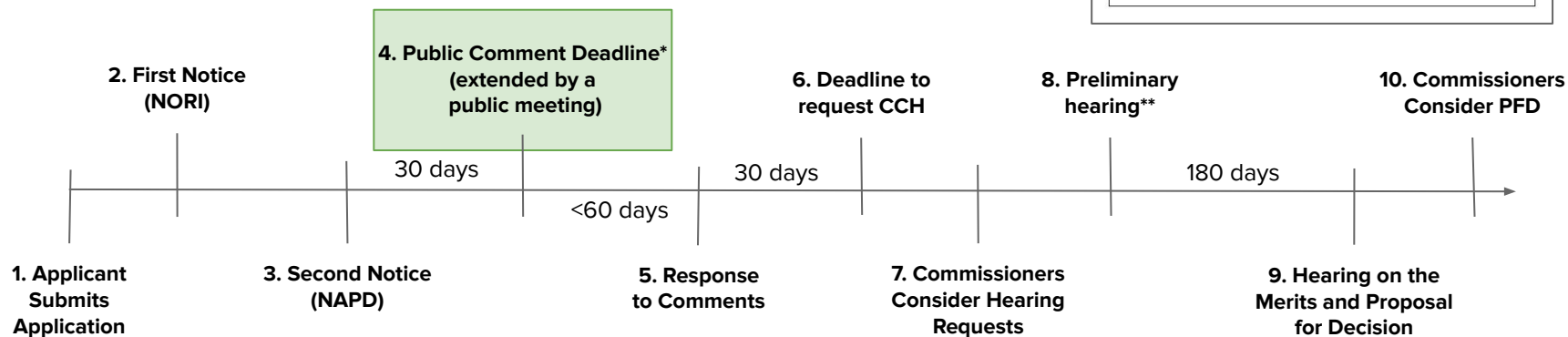
To submit a comment online, you must have the TCEQ permit number associated with the pending permit application of interest to you.

Permit Number:

Next **reset**

If you submit your comments online, you will receive an e-mail confirmation for your records. Keep this e-mail for future reference.

If you do not receive an e-mail within one hour, we **HAVE NOT received your comments. If you do not receive the confirmation, please contact the Office of the Chief Clerk immediately at 512-239-3300.*



Bonus Step: Public Meeting

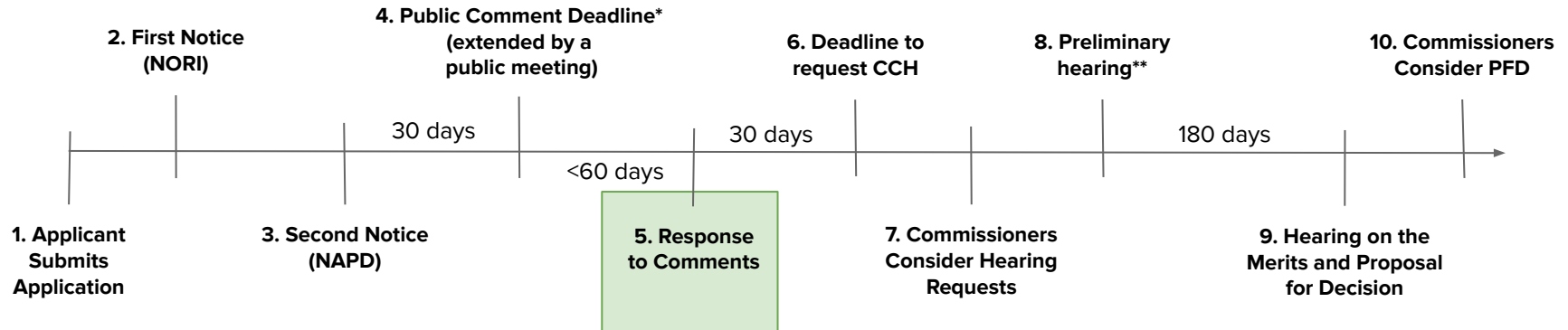
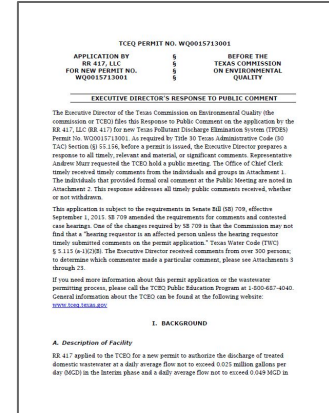
- Will be granted if a legislator requests one or if ED determines significant degree of community interest in the application
- The Applicant, ED, and OPIC will attend
- Two main parts: (1) informal Q&A and (2) the formal comment period
- The public comment deadline is extended to the end of the public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



Photo Credit: Houston Chronicle

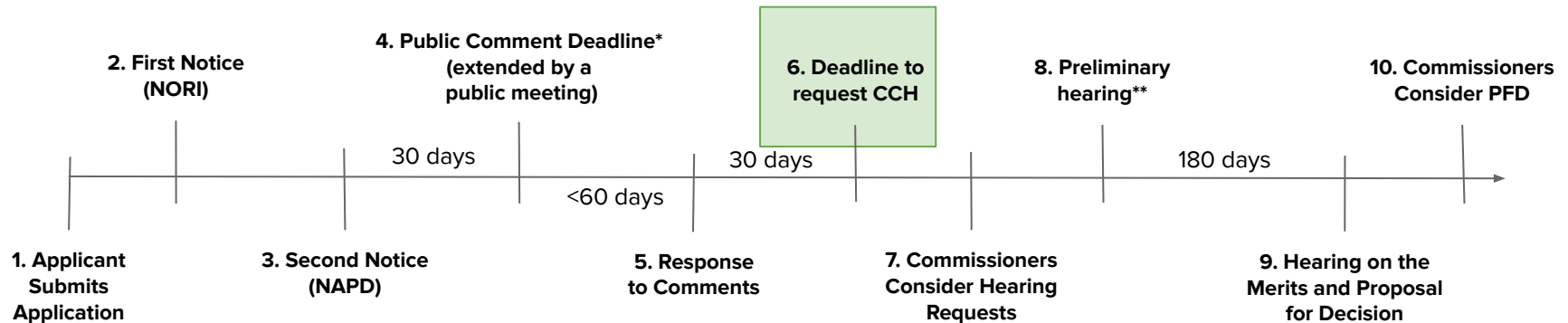
STEP 5: Response to Comments (RTC)

- 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



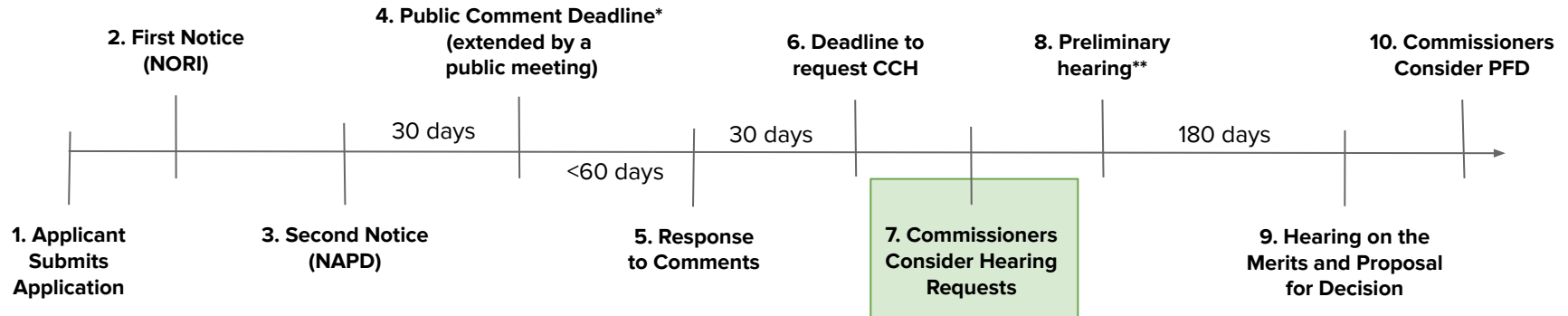
STEP 6: Request a Contested Case Hearing

- 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.



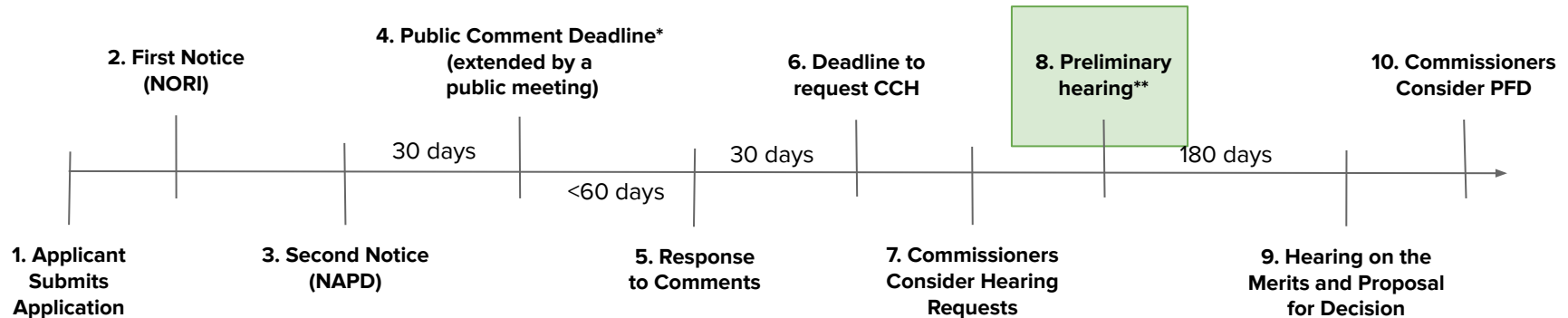
STEP 7: TCEQ Commissioners Consider Hearing Requests

- 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.



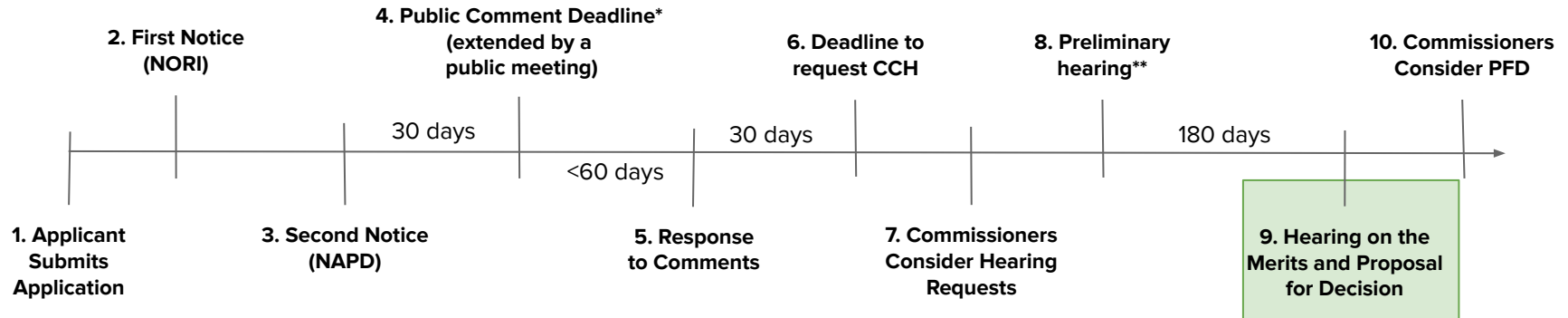
Step 8: Preliminary Hearing

- 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



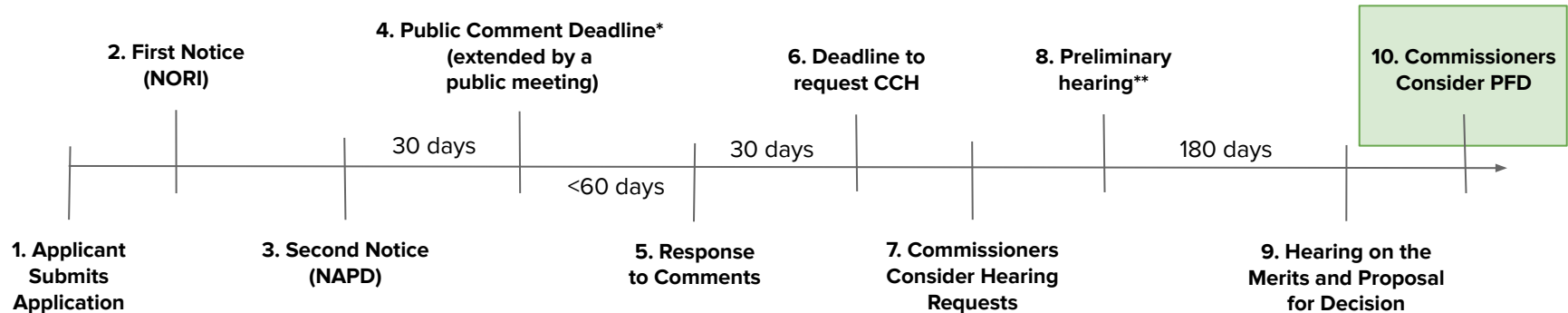
Step 9: Hearing on the Merits

- 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.



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.**



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?



**PERALES,
ALLMON &
ICE, P.C.**

Lauren Ice

Perales, Allmon & Ice, P.C.

1206 San Antonio Street

Austin, TX 78701

512-469-6000

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
- Wastewater discharge pages with example public comments: <https://aquiferalliance.org/waste-water-discharge/> and <https://aquiferalliance.org/waste-water-discharge-page-2/>

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