March 2005

Playground and chemical plant in Texas City, Texas

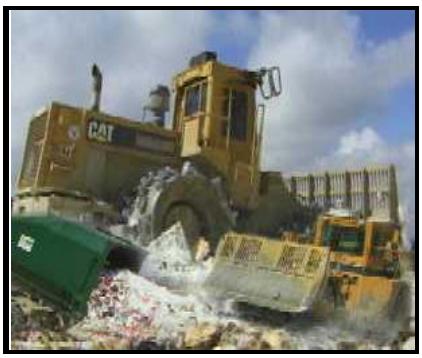
Efficiency in Environmental Permitting: How Texas Rates Among Key States Across the Nation

A Comparison of States' Permitting Procedures With Those of the Texas Commission on Environmental Quality


Port Arthur, Texas


Confined Animal Feeding Operation

Texas City, Texas



Waco, Texas Landfill

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Written by Beth O'Brien.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY 2
SUMMARY OF FINDINGS 3
METHOD AND SCOPE OF RESEARCH 4
RESULTS 6
LENGTH OF PERMITTING PROCESS 6
BRIEF OVERVIEW OF NOTICE REQUIREMENTS 9
WHEN TO PROVIDE PUBLIC NOTICE 10
GIVING NOTICE TO LOCAL GOVERNMENTS 11
OPPORTUNITY FOR CONTESTED CASE HEARING 12
SETTING DISTANCE LIMITATIONS FOR THOSE WHO CAN PARTICIPATE IN PERMITTING PROCESS 14
COMPLIANCE HISTORIES 16
TIME LIMITS FOR PROCESSING PERMITS 18
IMPORTANCE OF CONTESTED CASE HEARING PROCESS 19
A HEALTHY TEXAS BUSINESS CLIMATE BELIES CLAIM OF BURDENSOME PERMITTING 22
ARE CONFINED ANIMAL FEEDING OPERATIONS LEAVING TEXAS BECAUSE OF STRICT PERMITTING? 24
CONCLUSION 26
REFERENCES 27

EXECUTIVE SUMMARY

During both the 2003 regular session of the Texas Legislature and the following special sessions, bills were introduced that would have drastically changed the environmental permitting process in Texas.

Proposals in these bills included:

- Mandating all permit applications are processed within 180 days.
- Setting distance limits that would determine which landowners could be affected parties in the permitting process, altering a key definition that determines if a neighbor can protest a permit.
- Reducing the amount of public notice that the agency provides for permit applications.
- Removing the opportunity for contested case hearings for certain types of permits.
- Limiting the use of compliance histories in evaluating permit applications.

Sponsors and supporters of these bills claim the state needs changes because Texas' permitting process is so inefficient and difficult it is forcing industries to move from Texas to states with supposedly more streamlined permitting procedures.

Permitting is a critical function of the Texas Commission on Environmental Quality (TCEQ) that determines the health of Texas citizens and the existence of our state's natural resources. Permits determine what toxins regulated facilities release into the air we breathe, the water we drink, and the land we use.

Permitting regulations that are too lax or not enforced adequately can mean life or death for residents living near pollution sources; it can mean an entire city drinking from a contaminated water source; it can be the difference between a dream home and a nightmare when homeowners find toxic waste seeping from the ground on their property. The role the TCEQ plays in issuing permits for various entities across the state is a life-threatening role and the agency and state legislature must treat it as such.

Legislation changing the permitting process died during the sessions. House Bill 7, a governmental reorganization bill, did pass during the third special session. It requires an interim study on the permitting procedures of the TCEQ.

HB 7 states, "The legislature finds the Texas Commission on Environmental Quality's procedures for processing permits cumbersome, confusing, lengthy, and inefficient for citizens, business, political subdivisions, and the commission."

Public Citizen decided to conduct research to find out how efficient the permitting process is in Texas compared to 13 other key states. The permit is an enforceable document and thus issues such as effects screening levels and cumulative impact reviews are critical factors in the permitting review process. However, our research primarily concentrated on the areas of permitting that the proposed legislation sought to change and to claims by sponsors and supporters of the permitting legislation that

industry and business are leaving or avoiding Texas because our permitting processes are "cumbersome, confusing, lengthy, and inefficient…."

SUMMARY OF FINDINGS

Overall, our research found that permitting procedures in Texas are shorter and more efficient than most of the other 13 states we examined. Specifically, we found that:

- The TCEQ Commission granted contested case hearings for only 0.46% of the 8,970 permit applications that had the possibility of resulting in a contested case hearing for the fiscal years 2001 through 2003.
- Out of the 8,970 permit applications, for which the pubic was given notice during the fiscal years 2001 through 2003, 7% of these applications received hearing requests and only 6% of these hearing requests were granted.
- In all states studied, it is common for processing of permit applications to take more than 180 days.
- For air emission permits, Texas ranks second for the fastest average amount of time it takes to process applications.
- For both hazardous waste and water permits, Texas falls in the top half among states for fastest time to process applications.
- For solid waste permits, Texas takes an average amount of time to process permit applications.
- None of the states we studied set specific distance limits to determine which landowners can be affected parties in the permitting process.
- The permitting process in all the other states routinely evaluates compliance histories of permit applicants -- including records of non-adjudicated violations.
- All of the states researched provide opportunities to request contested case hearings on all types of major permits.
- Business and industry are not leaving or avoiding Texas because of the state's permitting procedures. Texas remains among the nation's most attractive business and industry destinations.
- Texas leads all states in net job creation since 1990.
- In 2004, Site Selection Magazine ranked Texas first for having the best business climate in the nation. Texas is the all-time leader in receiving this title for the 27-year history of the corporate project competition.
- Over the period of one year, a TCEQ permit administrative reviewer for New Source Review air permit applications must evaluate, on average, three applications a day and one of every five applications requires the additional work involving the public notice process.
- For waste applications, including municipal solid waste, industrial hazardous waste, and underground injection control, the agency has only one administrative reviewer, responsible for 67 applications over a one-year period.

- For the fiscal years 2000 through 2004, the State Office of Administrative Hearings (SOAH) issued a proposal for decision (PDF) for 19 TCEQ contested cases; 90% of these cases received a PDF in less than a year and a half.
- For the fiscal years 2000 through 2004, SOAH dismissed 78 contested cases as settled or mediated; SOAH dismissed 71% of these cases in less than 6 months and 92% in less than one year.
- In assessing the impact of permitting on CAFOs in Texas, it is important to note that the state has only denied one permit application for a CAFO and only once has it denied an application for a permit renewal or amendment to expand.

METHOD AND SCOPE OF RESEARCH

In deciding to compare permitting regulations of the TCEQ with those of other states' environmental agencies, we first had to choose which states to study. Time constraints prohibited us from collecting information from all fifty states.

Therefore, we carefully selected thirteen states, in addition to Texas. These include the states that border Texas (Louisiana, Arkansas, Oklahoma and New Mexico) and those that share a border with Mexico (California and Arizona). We also selected states that rivaled Texas in terms of population or economic influence (New York, New Jersey and Illinois) and others to represent various geographic areas of the nation and which compete with Texas for new business (Colorado, Tennessee, South Carolina, and Kansas).

To begin our research, we initially compiled a list of eleven questions to submit to the environmental regulatory agencies in the thirteen states. These questions applied to the four major categories of permits: air, water, solid waste and hazardous waste. The questions were:

- What is the average time it takes to process permits?
- When does the public receive notice of a permit application?
- What types of public notice are used?
- Are there any time limits for comments or challenges to a permit application?
- Who can request the agency hold a public hearing on a permit application?
- Who can request the agency hold an adjudicated contested case hearing on a permit application?
- Who can participate in a contested case hearing?
- What is the definition of an affected party?
- When evaluating permit applications, are past compliance records of facilities considered?
- Are any facilities that apply for permits exempt from public notice or public comment?
- Who makes the final decision on a permit?
- Can someone from the public appeal the agency's decision on a permit application?

In addition to the eleven basic questions above, we asked an additional six questions that dealt directly with some of the changes to Texas permitting procedures that legislation in 2003 proposed. These questions were:

- Does the public receive notice when an applicant files a permit application with the agency? If not, when is the first public notice?
- Does the agency consider compliance history of an applicant when reviewing a permit application?
- When public notice is given, does the agency mail the notice to local government officials?
- Is there an opportunity to request a contested case hearing for a solid waste facility's renewal permit?
- Are there any distance requirements for consideration of people from the public as "affected parties" in a contested case hearing? Are there any distance limitations on those people from the public who can participate in the permitting process?
- On average, does the permit process take longer than six months?

Sources for our research consisted of official Web sites for states' environmental agencies, states' laws and regulations, and speaking with dozens of employees from state agencies, including permit engineers, agency directors, and permit coordinators. (The state agency Web sites and employees that served as sources for this report are cited at the end of this document.)

We also relied on a 1998 report from Austin environmental attorney Rick Lowerre, "Opportunities for Mexico or Canada to Participate in Environmental Evaluation Processes of U.S. Federal and State Governments." In particular, we reviewed information contained in this report's Annex B, "State Laws and Regulations for Notice, Comment, and Hearings in the Environmental Evaluation Process."

In the evaluation of current Texas Commission on Environmental Quality permitting procedures, we referred to the Texas Water Code, Health and Safety Code, Texas Administrative Code and the *Citizen Guide - Participating in Government Decisions on Pollution Sources,* written by Richard Lowerre and Erin Rogers in 2003.

We conducted further research regarding claims that business and industry are leaving or avoiding Texas because of the state's permitting procedures. Sources for this research include the U.S. Census Bureau's Business and Industry Data Center, Site Selection Magazine, Development Alliance and Forbes magazine.

In researching whether confined animal feeding operations (CAFOs) are leaving the state because of permitting, our sources include milk market order statistics and production information from USDA Agriculture Marketing Service (www.dallasma.com), a report on the Texas Public Employees for Environmental Responsibility Web site: *Toxic Texas: Erath County's Booming Dairy Industry Pollutes Texas' Waterways* (http://www.txpeer.org/toxictour/erath.html), the Sierra Club's *Murky Waters: Industrial Dairies and the Failure to Regulate* report, and various state newspapers, including the *Waco Tribune-Herald*.

RESULTS

LENGTH OF PERMITTING PROCESS

In response to concerns raised by some that the permitting process in Texas is unreasonably long, we took a close look at the length of time it takes permit applications to be processed in different states. The data this examination produced varied widely depending on what type of permit application and which state.

While most permits are routine and only take a matter of weeks to complete, others are complicated and can take years. In New Mexico, one solid waste permit application has been ongoing for nine years.

Most states have adopted specific time frames for issuing permit decisions. However, extending these time limits is quite common. In some states, the agency denies a permit application if it has not reviewed all necessary details of the application by the deadline. Applicants usually agree to extended deadlines so their applications have a chance to be accepted and permits issued.

According to many states, the inability to meet timelines in processing permits often is the fault of the applicant. Causes for delays in permitting include when applicants make changes or fail to respond in a timely manner to requests by the agencies for more information. For this reason, many states stop the "clock" while they are waiting for more information from the applicant.

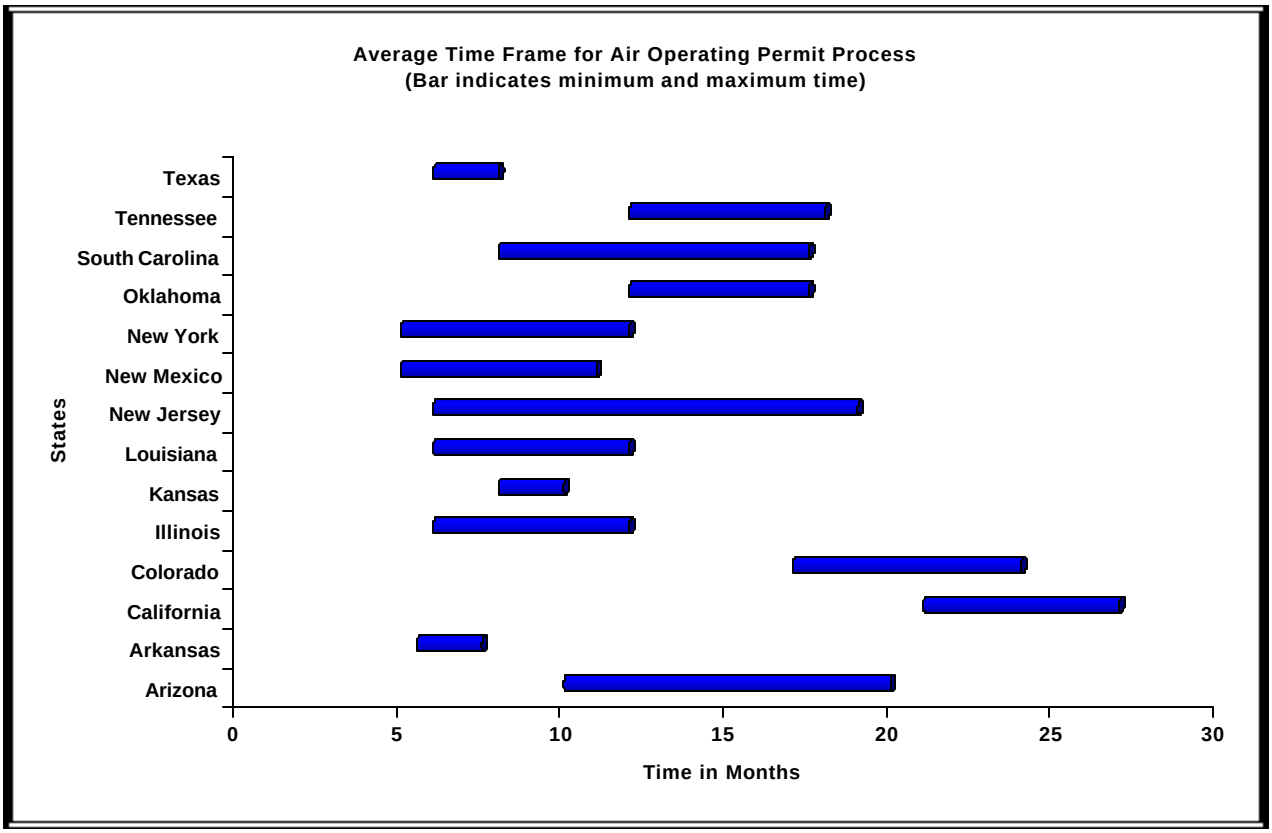
State agencies commonly have a deadline for determining an application administratively complete and then another deadline for completing the technical review. The deadlines for administrative completeness vary between 30 days and 90 days, with 60 days being the most frequent among the states surveyed.

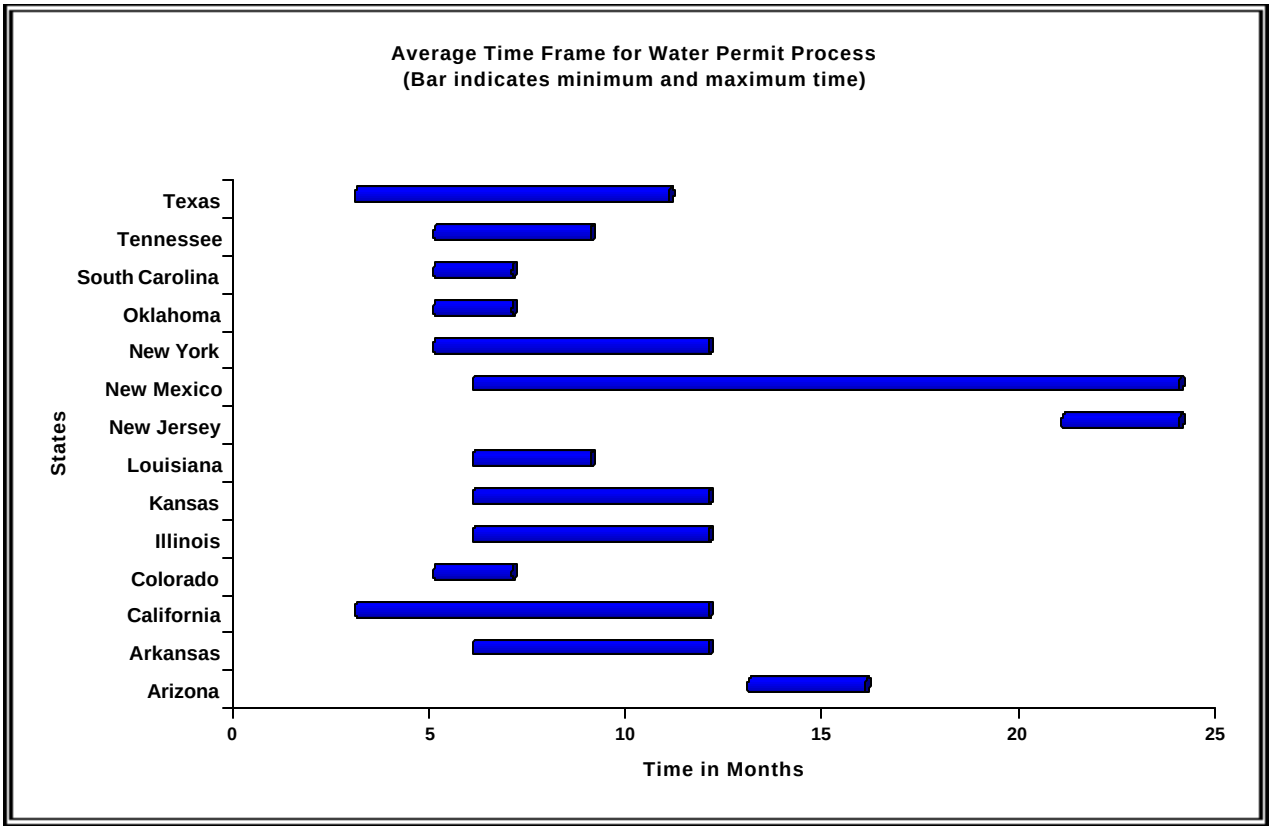
In determining the average time for the processing of four major kinds of permits in the 14 states, we asked for the length of time between when the agency deems an application administratively complete and when the agency issues a final permit decision. Agencies usually call this period the technical review or substantial review. Our evaluation considers average time frames and excludes extreme outliers.

We found for air operating permits, Texas is second fastest of the fourteen states for application processing time. Seven of the states had time frames that averaged under a year, Arkansas being the shortest, with an average range between five and a half and seven and a half months. Colorado and California had the longest periods for processing air operating permits, between a year and a half and two years.

In comparing the time for processing water permits, Texas ranks among the fastest of the fourteen states. Most states process water permits in under a year. The exceptions are New Jersey and New Mexico, which can take two years, and Arizona, whose range is between thirteen and sixteen months.

The following graphs depict the average range of time for processing standard to complex air operating permits and water quality permits for each of the fourteen states researched.

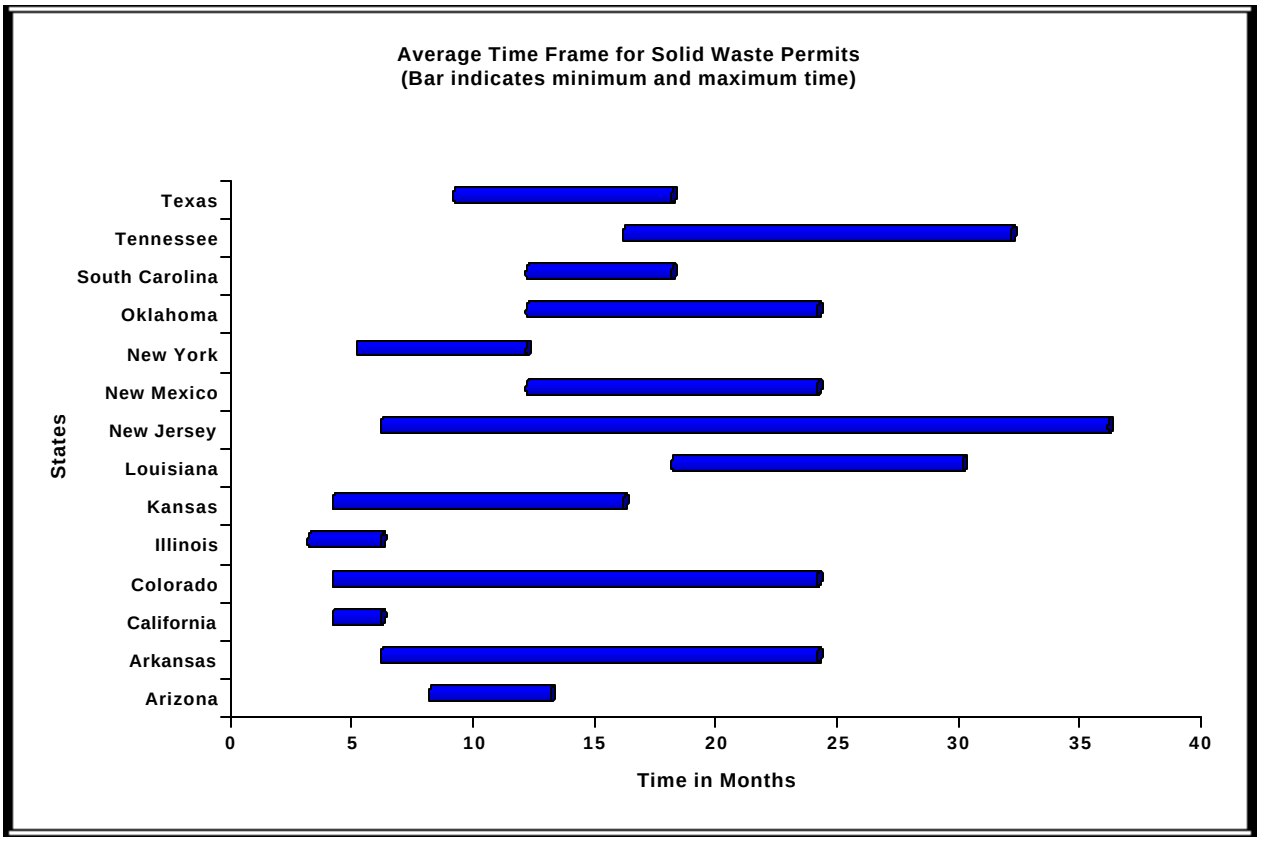

Average Time Frame for Air Operating Permit Process
(Bar indicates minimum and maximum time)
States
Texas
Tennessee
South Carolina
Oklahoma
New York
New Mexico
New Jersey
Louisiana
Kansas
Illinois
Colorado
California
Arkansas
Arizona
0
5
10
15
20
25
30
Time in Months

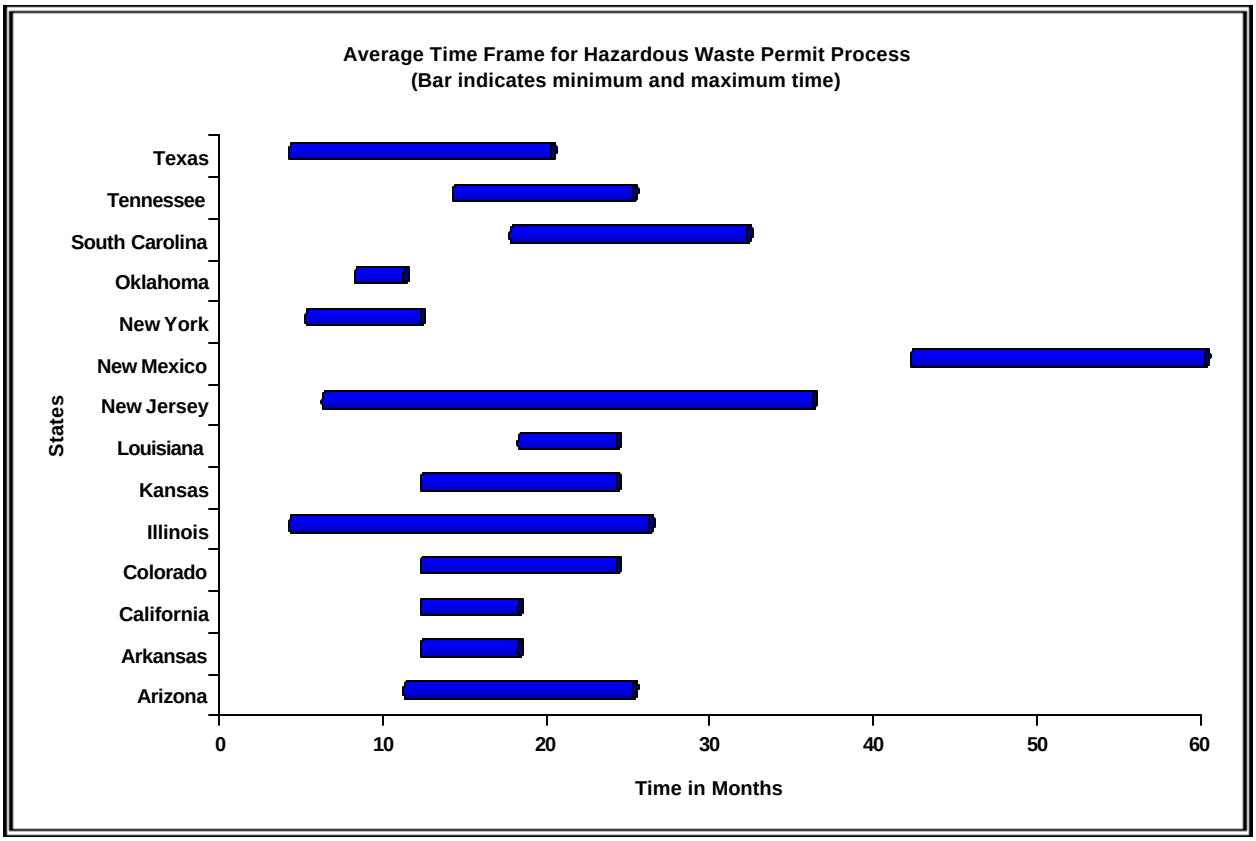

Average Time Frame for Water Permit Process
(Bar indicates minimum and maximum time)
States
Texas
Tennessee
South Carolina
Oklahoma
New York
New Mexico
New Jersey
Louisiana
Kansas
Illinois
Colorado
California
Arkansas
Arizona
0
5
10
15
20
25
Time in Months

Solid waste and hazardous waste permits, on average, can take far longer to issue or deny than do water or air permits. It is not uncommon in most states for the process to take at least two years, and in some states it is not unusual for the process to take as long as five years.

For solid waste permits, Texas falls in middle range of the 14 states for the shortest amount of time it takes to process these permit applications. California and Illinois are the only states who reported an average of six months or less to process a solid waste permit. Arizona and New York's guidelines for processing solid waste applications are also under one year. Texas, South Carolina and Kansas all issue decisions in less than a year and a half. The other seven states' procedures can take up to two or three years to make a final decision for solid waste permit applications.

For processing hazardous waste permits, New York and Oklahoma are the only states to report an average time frame of less than one year. **Texas falls in the top half of the 14 states surveyed with an average processing period between four and twenty months.** The majority of the states process these applications in under two years. New Jersey and South Carolina can take up to three years on average, and New Mexico takes as long as five years to issue decisions for hazardous waste permits.





BRIEF OVERVIEW OF NOTICE REQUIREMENTS

In reviewing permitting regulations for the fourteen states studied, we found the majority follow roughly the same rules for providing public notice when the agency receives applications for new permits.

Most states require a series of public notices concerning permit applications. These series of notices are required when an applicant submits a new application, when the agency deems an application administratively complete, when the agency prepares a draft permit, and when public hearings or meetings are scheduled.

All states require published legal notice in a newspaper of general circulation in the area where a proposed permitted facility is to be located, with the notice being published once a week for one to three weeks, depending on the type of permit. More than half of the states researched require the regulatory agencies to send out notice to a mailing list that includes local government officials and nearby landowners. Many states also insist on the agency or applicant issuing notice through local broadcast media announcements over radio or television stations and posting signs around the site of the proposed facility.

Several states, including California, go so far as to require permit applicants to hold "pre-application" meetings with the agency and/or public.

Normally, states require a 30- to 45- day public comment period for new permit applications. In some states, public meetings and/or public hearings are automatically required for certain types of permits such as hazardous or solid waste. As part of the public participation process, most states allow anyone from the public to request an adjudicated contested case hearing on the application, with the agency's executive director or commission deciding whether to hold such a hearing.

When agencies do hold public hearings or adjudicated hearings, almost all the states surveyed provide at least 30 days public notice of the hearing. Arizona and Arkansas are the only two states that provide less than 30 days public notice of a hearing for all types of permit applications. In those two states, the agency provides public notice between 10 and 20 days prior to a hearing, depending on the type of permit. Texas and Colorado also require less than 30 days notice for some types of permits. Texas only requires 20 days notification for water permit hearings and three weeks notice for waste permit hearings. Colorado provides a minimum of 30 days notice for all permit hearings except for solid waste, in which only 10 days newspaper notice is required. However, the agency requires the applicant to post a sign containing public notice of the hearing at least 30 days before the date of the hearing and at a location near the proposed facility.

WHEN TO PROVIDE PUBLIC NOTICE

Among the changes to Texas' permitting procedures that were proposed, but not passed, by the Legislature in 2003 was elimination of the requirement that the TCEQ give public notice when an applicant files a permit application with the agency. Under the proposed legislation, public notice would be required only after the executive director conducts a technical review and issues a preliminary decision on an application for a permit.

As the chart below demonstrates, all of the fourteen states we surveyed currently provide public notice at the time an application is filed ("early notice") for at least some of the four major permits. **The majority of the states require public notice at the time an applicant files a permit application with the state agency for all major types of permits.**

The current practice of requiring public notice at the time an applicant files an application provides a number of benefits that make the permitting process more efficient and fair. It allows interested parties time to gather information necessary to review the application and to discuss solutions to concerns early, when amendments to applications are easier to administer. Early notice also allows parties time to develop relevant, well-reasoned, and meaningful comments to assist agency staff in reviewing applications and draft permits.

STATES THAT GIVE PUBLIC NOTICE WHEN AN APPLICATION IS FILED

Type of Permit	AZ	AK	CA	CO	IL	KS	LA	NJ	NM	NY	OK	SC	TN	TX
AIR	✓	✓	✓	✗	✗	✗	✓	✗	✓	✓	✓	✗	✓	✓
WATER	✗	✓	✓	✗	✗	✗	✓	✓	✓	✓	✓	✗	✓	✓
SOLID WASTE	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓
HAZARDOUS WASTE	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓

RECOMMENDATIONS

- TCEQ should create a central web page that posts all types of notice requirements. This database needs to be searchable by category of permit, city, and county. The notices should have links to any fact sheets and to an applicant's web page, containing the permit application and the draft permit after it is developed.
- Notice needs to be in a newspaper of the largest circulation in the proposed county and published on every Sunday for three weeks.
- The applicant should publish notice when the permit application is submitted to the agency and again when the draft permit is complete, beginning the public comment period. All people who submit comments during the comment period or ask to be on the agency's mailing list need notification if a public hearing is scheduled.

GIVING NOTICE TO LOCAL GOVERNMENTS

Another change to the permitting process proposed during the 2003 legislative sessions would have eliminated current requirements that local governments receive notice when the agency files permit applications. Under current Texas law, county judges, mayors, and health authorities of counties and cities where proposed facilities would be located all receive notice by mail. Elimination of this notice requirement lessens the likelihood the agency would obtain valuable local government input when it is making permit decisions. As the chart below demonstrates, all fourteen states except Oklahoma and Tennessee provide notice to local governments for all types of permits, and those two states do so for some types of permits.

STATES WHO SEND NOTICE TO LOCAL GOVERNMENT OFFICIALS

Type of Permit	AZ	AK	CA	CO	IL	KS	LA	NJ	NM	NY	OK	SC	TN	TX
AIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗	✓
WATER	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SOLID WASTE	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
HAZARDOUS WASTE	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓

RECOMMENDATIONS

- Texas should keep the current law that requires sending notices to county judges, mayors, and health authorities of counties and cities where proposed facilities are to be located.

OPPORTUNITY FOR CONTESTED CASE HEARING

Another proposed change in 2003 legislation would have given broad authority to the TCEQ to grant "general permits" to specific types of industries. A general permit authorizes a regulated activity for a category of entities. This means that a single entity, for example, a dairy farm, would not need to apply for an individual permit. Instead, a general permit would cover all dairy farms in the state. Because of a general or blanket permit, the agency does not consider unique circumstances of a specific facility when issuing permits. This general permit or "permit by rule" process also eliminates the opportunity for contested case hearings, leaving only public comment opportunities.

In comparing Texas with the other 13 states in our study, we found all of these states provided the opportunity to request contested case hearings regarding the four major types of permits: water, air, solid waste and hazardous waste. In some permit cases, most commonly with solid and hazardous waste applications, the agencies are required to hold public hearings, in which all parties may present evidence and argument on all issues involved. In other states, public hearings are more like public meetings, where the agency accepts formal comments from the public and answers questions about the permit.

For major types of permits, someone from the public can submit a request for a contested case hearing. The state agencies have different means of evaluating such requests. Most states' regulations assert if the public demonstrates significant interest in a permit application, the agency will hold a contested case hearing. Kansas was the only state that does not allow someone from the public to

request a contested case hearing, the applicant is the only one who has standing to do so. For Colorado air permit applications, state law excludes members of the public from seeking adjudication of a permit before the Commission. All of the other states surveyed allowed an opportunity for someone from the public to request a contested case hearing at some time during the permitting process.

Among the proposed changes to the permitting process during the 2003 legislature was a measure that would make renewals of solid waste permits no longer subject to contested case hearings. Frequently when applicants apply for renewal permits, they seek to expand operations and increase the amount of emissions or discharges from the levels on original permits. Renewal permits are an opportunity to upgrade requirements based on new technologies so the facility can reduce pollution releases.

Our surveys found this proposal inconsistent with practices in the other states, most of which provide the opportunity for a contested case hearing on solid waste renew permits. Again, Kansas was the only state that did not provide the opportunity for the public to request a contested case hearing and only gave that right to the applicant. In Arizona, Oklahoma, and Colorado, renewals of solid waste permits do not exist. When a solid waste permit expires in Arizona, the permit holder must apply for a new one, which is subject to a contested case hearing. Oklahoma and Colorado issue solid waste permits for the life of the permitted facility.

STATES WHO ALLOW CONTESTED CASE HEARINGS FOR SOLID WASTE RENEWAL PERMITS

AZ	AK	CA	CO	IL	KS	LA	NJ	NM	NY	OK	SC	TN	TX
☑	✓	✓	☑	✓	✓	✓	✓	✓	✓	☑	✓	✓	✓

☑: Allow contested case hearings for solid waste permits, but do not require renewals of such permits.

RECOMMENDATIONS

- Strong discretion needs to accompany the issuance of general permits. General permits ought to be limited to activities where there are no site-specific conditions needing consideration.
- Citizens should have the right to adjudicated hearings on all permit applications for which they are affected by the proposed facility and on all renewal permits for such facilities.
- Renewal applications that include adjustments to the original emission levels should require the use of the best available new technology.

SETTING DISTANCE LIMITS FOR WHO CAN PARTICIPATE IN PERMITTING PROCESS

Among the most extreme proposed changes to the state's permitting procedures would set specific -- but arbitrary -- distances that limit who can participate as affected parties in the permitting process, according to how far they live from the sites of facilities seeking permits.

Measures proposed during the 2003 legislative sessions would have restricted participants in contested case hearings for air, water quality, industrial solid waste and hazardous waste, and municipal solid waste facilities, to those people who own land or reside within ½ to 1 mile of the pollution source. For underground injection well applications, an affected person must reside or own property underlying the facility or underlying property adjacent to the facility.

None of the 14 states we researched has such distance limitations on who can participate in the permitting process. We spoke with permitting representatives in each state to find out if there were any distance stipulations on who could request a contested case hearing or submit comments on permit applications. In most states, either an agency official or, more commonly, an administrative law judge presiding over a contested case hearing, makes a determination as to who can be an affected party. While distance from a proposed facility may be a factor in making such a determination, no states had set limits in their regulations.[1]

Common sense defies and sound science does not support setting arbitrary limits such as those proposed in Texas. When determining who constitutes an affected party in a permitting procedure, numerous factors, including geography and climate, need consideration.

Public reports of decreased visibility at Big Bend National Park, Texas and the recommendation from a US and Mexico bi-national work group led to the creation of The Big Bend Regional Aerosol and Visibility Observational (BRAVO) Study. BRAVO is an intensive air quality monitoring project that measured fine aerosol mass and its constituents, atmospheric optical properties, gaseous air pollutants and meteorology, from July through October 1999. Preliminary data analyses released by the BRAVO Technical Committee in 2002 shows sources outside Texas may be affecting the Park in a more sizable way than previously thought. Several researchers presented information suggesting large coal-fired power plants and other industrial sources to the east of Texas, particularly in the Southeast US, are sizable contributors to the haze.

[1] The one exception pertained to Colorado's solid waste permit applications. The local governing authority in Colorado handles solid waste permits and not the state agency. The governing body presiding over the contested case hearing concerning a permit application shall hear any written or oral testimony presented by any residents concerning the proposed site or facility. The regulations define residents as "all individuals who reside within the geographic area controlled by the governing body having jurisdiction or within three miles of the proposed site and facility…(30-20-104 (3) (b))." Therefore, a member of the public may participate in the hearing process if they reside in the geographic area of the governing body having jurisdiction, without regards to actual distance from the proposed site, otherwise they must reside within three miles of the proposed site. This is the only instance we found actual distance limitations in any state's regulations with respect to who can participate in a contested case hearing.

BRAVO released synthetic atmospheric tracers at Big Brown power plant approximately 100 miles southeast of Dallas, at the Parish power plant near Houston, at San Antonio to represent urban emissions, and at Eagle Pass, which was the closest US point to the Carbon 1-2 power plants in Mexico. Samplers collected the tracers at 20 different locations throughout Texas and in Oklahoma, including at Big Bend National Park. The percentage of observations of the tracers at the various points in the Park varied, from 16-33% for the tracer released at Eagle Pass, to 1-10% for the tracer released at the Big Brown power plant. The BRAVO study is scientific proof that emissions affect air quality in regions great distances from their sources.

Air emissions are not the only types of pollution that travel further than a mile away from their sources. Setting a distance limit for those who can protest a wastewater discharge permit would fail to take into account several important factors, including the amount of discharges and the involved rivers or streams flow rates, which would determine the downstream landowners discharges might affect. Water contaminants vary in toxicity and potency, while they might not affect the area surrounding the source, they could have detrimental effects on the soil and wildlife further downstream, especially if the waterway narrows or the water stagnates. Treated water has shown negative effects on water supplies several miles away from discharge points.

One of the proposals that surfaced in the 2003 legislature would have limited affected parties in underground injection well permits to those who reside or own land or mineral rights underlying or adjacent to the facility. Such a proposal in effect contradicts state regulations, since applicants for injection wells are required to review impacts of the well within a 2 1/2 mile radius.

Setting distance limitations on who can be affected parties in contested case hearings for permits would shut out of the hearing process not only affected individuals, but also local governments and conservation and sporting groups who in the past have opposed permits on behalf of their members.

A good example of how this legislation would lead to inaccurate permit decisions is the 1997 permit application by Adobe Eco-Systems for a new municipal solid waste landfill permit in Kinney County, Texas. If the distance limits had been in place, some of the affected parties in this case -- the U.S. Air Force, City of Brackettville, West Nueces-Las Moras Soil and Water Conservation District -- would not have been able to participate. This would have been crucial since these groups presented evidence during the hearing that revealed errors in the evaluation of the landfill's soil and water permit conditions. The agency ultimately denied the permit because of this evidence.

RECOMMENDATIONS

- Because pollution is not contained in a defined area, any member from the public affected by a proposed permit application needs the right to request a contested case hearing.

COMPLIANCE HISTORIES

Proposed changes to permitting procedures in Texas would undo the compliance history requirements in current TCEQ regulations. The purpose of these rules is to reward companies with good compliance records and punish those with bad ones. The TCEQ spent about $2 million developing these compliance history rules in 2001. Eliminating or altering these rules would not only waste that $2 million, but would also require more money to adopt new rules.

Additionally, the TCEQ reports they just began to implement the existing compliance history provisions in the spring of 2003. It would be poor judgment to abolish such provisions since the amount of time they have been in effect is too short for an accurate evaluation of their success or failure.

The legislation sought to eliminate the classification process of compliance histories currently used by TCEQ. The compliance classification system is an essential method for making the Commission's review of compliance records more efficient.

The existing formula does not accurately measure the environmental performance of a regulated facility. This is a major reason the compliance history process at TCEQ has not performed to its potential. The evidence of this failure comes from Public Citizen's review of compliance classifications for the twelve most polluting facilities in the Houston region. These plants belonging to major petroleum and petrochemical companies accounted for 80% of all pollution released accidentally into Houston's air last year.

According to a Houston Chronicle article from February 8, 2004, these facilities' upsets released over 5.5 million pounds of pollution during the period from February 1 to December 31, 2003. These unpermitted emissions not only endanger the health of nearby residents, but also can spread for hundreds of miles. Unpermitted releases put the public at risk and are exactly the type of factors compliance records should reflect. Surprisingly, none of these companies or sites' ratings comes even close to a 'poor performance' classification. Noting that the requirement for a poor performer classification is having a rating of 45 or higher, only one of the twelve facilities even has a rating above three.

The fact that none of these twelve facilities' compliance history classifications portrays their unsatisfactory performances documents the failure of this formula. Under the current formula, a facility benefits from the more inspections it incurs. The agency uses the number of inspections as a divisor into the overall compliance score, thus making the total lower. A lower number classifies a facility as a higher performer, meaning they have a better record of compliance.

Also among the proposed permitting changes related to compliance was one that specified the agency would only consider adjudicated decisions in evaluating wastewater discharge and air emission permits. However, adjudication is not normally the result of noncompliance cases. More often, the agency and the violator negotiate a settlement or agreement to resolve the case.

Making adjudicated cases the only ones considered when evaluating compliance histories in permitting procedures could have two negative impacts. One, important permit violations that were not adjudicated would be ignored. Secondly, this proposal creates an incentive to take more cases to trial, a waste of taxpayer and corporate resources if violations could otherwise be resolved.

Proper record keeping is essential to evaluating an applicant's compliance history. The State Auditor's report on the enforcement and permitting functions of the TCEQ, released in December of 2003, found that incomplete information in files used by the agency staff to write draft permits and monitor entities' compliance adversely affects the Commission's enforcement responsibility.

When the Auditor's office tested the agency's records for compliance with enforcement policies and procedures, they found 68% of the files were missing investigation reports. In 55% of the files the notices of enforcement, notices of violations, and general compliance letters were missing. Of the records requiring general correspondence letters, 76% were missing these documents. Furthermore, while testing the permitting process, 22% of the files requested by the state auditor's office could not be located. TCEQ needs to address this critical problem before spending more resources altering regulations due to changes in state legislation.

An example of how important a role compliance history can play in the permitting process involves a 1992 application by Recontek for a new hazardous waste recycling facility in Henderson County, near Athens, Texas. During the contested case hearing, opponents presented evidence that Recontek had a record of state and federal environmental law violations in another state. (Opponents also presented evidence that Recontek had failed to disclose springs and water wells on its property in the permit application.) Following presentation of this evidence, Recontek withdrew its application.

Our research showed that most state regulatory agencies consider the past compliance records of companies -- including nonadjudicated violations -- when reviewing applications for permits.

STATES THAT CONSIDER PAST COMPLIANCE RECORDS WHEN ISSUING PERMITS

Type of Permit	AZ	AK	CA	CO	IL	KS	LA	NJ	NM	NY	OK	SC	TN	TX
AIR	✓	✓	✗	✗	☑	✓	✓	✓	☑	✓	✓	✓	✓	✓
WATER	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓
SOLID WASTE	✓	✓	✓	✓	☑	✓	✓	✓	✓	✓	✓	✓	✓	✓
HAZARDOUS WASTE	✓	✓	✓	✓	☑	✓	✓	☑	✓	✓	✓	✗	✓	✓

☑: Do take past compliance history into consideration, but not required by regulation.

RECOMMENDATIONS

- TCEQ must continue to use compliance histories for evaluating permit applications.
- The agency should have the right to consider notes in files and NOVs in determining the compliance of an applicant.
- The agency needs to develop cumulative impact analyses for applicants and facilities.
- Fix the classification formula so that it properly reflects the compliance history of a facility. It should include the number of verbal and written NOVs and all complaints against a site.
- Inspections must not benefit a facility's compliance history classification. A facility that requires more inspections due to violations or complaints shows a site is not operating in compliance and takes agency resources to investigate. Thus, the compliance classification of a site should negatively reflect such inspections.

TIME LIMITS FOR PROCESSING PERMITS

Proposed changes in permitting submitted during the 2003 legislative sessions included a 180-day time limit, beginning from the date of administrative completeness, for the TCEQ to issue a permit decision. Setting a 180-day limit for complex permits, especially when a contested case hearing is involved, is unreasonable. At a time when resources are limited for state agencies, such a compressed timeline could result in hurried, ill-considered decisions affecting important issues of public health and environmental protection.

Our review showed that on average the permitting process takes far longer than 180 days in most states. The average time of all 14 states researched for processing air permits is between nine and sixteen months, and for water permits it is seven to thirteen months. Solid waste permits take an average of eight to twenty months to process, and the state agencies average thirteen to twenty-six months to issue a decision for hazardous waste permits.

Texas' average time frames for processing permits are below the average of the fourteen states' time periods for air, water and hazardous waste permit applications. The range for processing solid waste applications in Texas falls within the average range of the fourteen states. **The results are evidence that Texas processes applications faster than many of the states it competes with for attracting new business.**

These average time frames for processing permits do not include the time that the agency is evaluating the administrative completeness of applications. Agencies allow a period of one to three months for the administrative completeness review, and that range usually does not include the time it

takes for applicants to respond to an agency's request for more information. State agencies frequently "stop the clock" for the period it takes the applicant to respond to such inquiries.

The following chart displays those states whose environmental agencies take longer than six months, on average, to issue decisions for major types of permit applications.

STATES WHOSE PERMITTING PROCESS ON AVERAGE TAKES LONGER THAN 180 DAYS

Type of Permit	AZ	AK	CA	CO	IL	KS	LA	NJ	NM	NY	OK	SC	TN	TX
AIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
WATER	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓	✗	✗	✓	✓
SOLID WASTE	✓	✓	✗	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓
HAZARDOUS WASTE	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

IMPORTANCE OF THE CONTESTED CASE HEARING PROCESS

Proponents of these changes to the permitting process say they want to "streamline" what is a cumbersome process and make the process more "predictable" for permit applicants. It may be that these proposals would streamline the process and make it easier for applicants to predict they will obtain permits without opposition.

Nevertheless, these changes would reduce the rights of Texans to participate in the permitting process. They would make the process less democratic.

It is worth noting that Texas already processes the majority of all permit applications relatively quickly and with minimal opposition. The agency states that the vast majority of authorizations issued by the TCEQ are uncontested, and therefore do not go before the Commission for final action or referral for a hearing.

Information collected from the TCEQ shows the total number of applications for which the public received notice, with the opportunity to request a contested case hearing, for the fiscal years 2001 through 2003. During this period, there were 8,970 permit applications with opportunity for the public to request a contested case hearing. Of these applications, about 7% received hearing requests. Out of those 7% of applications receiving hearing requests, the Commission granted hearings for only 6%.

This data reveals that the Commission granted contested case hearings for only 0.46% of the 8,970 permit applications that had the possibility of resulting in a contested case hearing for the fiscal years 2001 through 2003. The following chart displays these figures in more detail.

Fiscal Year	2001	2002	2003	Totals
Total applications for which notices were issued, with the option to request a contested case hearing (CCH)	2,501	2,694	3,775	**8,970**
Total applications receiving hearing requests (HR)	228	207	211	**646**
Percentage (%) of applications receiving HR	9.1%	7.7%	5.6%	**7.2%**
Hearing requests granted	12	18	11	**41**
% of HR granted compared to the total number of applications receiving HR	5.3%	8.7%	5.2%	**6.3%**
% of HR granted compared to the total number of applications for which notices were issued, with the option to request a CCH	0.48%	0.67%	0.29%	**0.46%**

Some proponents of a more streamlined permitting process say the State Office of Administrative Hearings (SOAH) can take five years or longer to issue proposal for decisions (PFDs) on contested cases. We collected data from SOAH for the fiscal years 2000 to 2004 and found this notion to be entirely untrue. On average during those five fiscal years, it took just under one year, 354 calendar days, from the date TCEQ referred the case for SOAH to issue a PFD.

During this five-year time, SOAH issued PFDs for 19 cases, dismissed 78 cases as settled or withdrawn, and seven cases are still pending as of March 24, 2005. The TCEQ Commission did not refer all of these cases to SOAH. An Administrative Law Judge (ALJ) for SOAH, Bill Newchurch, said each year a significant number of the cases are self-referred by the applicant pursuant to TWC § 5.557.

TWC § 2003.047(e), as added by HB 801 during the 76th Legislature, requires TCEQ to specify the date by which the PFD is due when it grants a hearing request and sends the case to SOAH. Under that statute, the Commission has set deadlines for the PFD as short as three months and as long as one year. The SOAH ALJ can only extend that date when not doing so would deprive a party of due process or another constitutional right. Since the 76th Legislature passed HB 801, Bill Newchurch says, as far as he knows, no SOAH judge has ever issued a PFD later than the date specified by the Commission unless all parties, including the applicant, asked for such a delay.

He said applicants began to frequently argue that they could not reasonably prepare their cases and have a hearing soon enough for the ALJ to issue the PFD by the Commission deadline. They argued that acting so quickly would violate their rights to due process, and it has now become common for applicants to request and ALJs to extend deadlines based on those arguments.

Additionally, SOAH has had cases in which a state or federal court has ordered a delay when one of the parties in the case filed a lawsuit seeking a ruling on some law applicable to the application. Another source of delay is applicants amending their applications and sending them back to TCEQ staff for further technical review before a contested case hearing. The chart below shows the length of time for all Natural Resources contested cases at SOAH from FY 2000 through FY 2004.

Amount of Time it takes SOAH to dispose of TCEQ Contested Cases FY 2000- FY 2004

	Cases with Proposal for Decisions Issued	Cases Dismissed as Settled or Mediated	Cases Pending as of 3/24/05
Less than 6 months	3 cases	55 cases	0
6 months to 1 year	8 cases	16 cases	4 cases
1 year to 1.5 years	6 cases	4 cases	3 cases
1.5 years to 2 years	1 case	1 case	0
2 years to 2.5 years	1 case	1 case	0
2.5 years to 3 years	0	0	0
3 years to 3.5 years	0	1 case	0
Total number	19 cases	78 cases	7 cases

If the goal of the legislature is to decrease the amount of time it takes the agency to evaluate permit applications and issue decisions, eliminating the contested case hearing process is not the solution. The solution to the question of how to speed up the permitting process involves the resources that the agency has to perform their functions. There is a shortage of agency staff to review applications in a timely manner.

Public Citizen collected data from TCEQ's manager of the Permits Administrative Review division that demonstrates the lack of resources the agency has to work with. In the period of one year, the agency analyzed 6,596 New Source Review (NSR) air permit applications. Out of these applications, 20% required public notices. This large number of applications only had nine administrative reviewers to do the work. This means on average, a reviewer must evaluate three applications a day and one of every five applications requires additional work involving the public notice process.

For waste applications, including municipal solid waste, industrial hazardous waste, and underground injection control, the agency has only one administrative reviewer. Over the period of one year, the reviewer had to assess 67 permit applications and all of them required the development of public notice.

There are six administrative reviewers for water applications, involving water quality permits, utilities and districts, and confined animal feeding operations registrations. During a year period, these six reviewers had 2,260 applications to process, 870 requiring public notice.

These numbers indicate that the agency needs additional administrative reviewers to process the large numbers of permit applications received each year. Considering that on average, less than half of one percent of permit applications issuing public notices go to contested case hearings each year, it would be more effective to improve the permit review process in other areas. By allotting more funds to hiring permit reviewers, the agency could drastically speed up the permitting process.

Recent history has shown state and federal agencies, local governments, legislators, conservation organizations and others have successfully used the contested case hearing process to bring out important information about permit applications that affected public health and the quality of the state's natural resources.

As a result of contested case hearings, the TCEQ and its predecessor agencies have denied permits it initially proposed to grant, and in many more cases, such participation has resulted in changes in the draft permit needed to protect public health or the environment.

The public plays a critical role in the permitting process. While it can be expensive and time consuming, the contested case hearing process has proven to be the best way to ensure the agency knows all of the facts and to ensure that science, not politics, is the major factor in permit decisions.

Most disputed permit applications are resolved prior to reaching a contested case hearing through processes such as Alternative Dispute Resolution (ADR). Having the option of contested case hearings contributes to the negotiation process. The applicant is more willing to reach a compromise with affected individuals through ADR if there is the possibility of an administrative law judge ultimately deciding to deny the application at a contested case hearing.

Without the threat of a contested case hearing, applicants have an incentive to lie on their applications, especially since the agency relies on the applicant's own assessment of the proposed site. There are also incidences of applicants giving false information on permit applications unintentionally and contested case hearings can help to bring attention to these, sometimes critical, errors.

Although contested case hearings can lengthen the time for obtaining permits, they are a crucial element of the permitting process, ensuring that the public has enforceable rights regarding permits. The contested case hearing approach is too valuable to the evaluation and review practice to restrict. The TCEQ should investigate alternative ways to streamline the procedures for obtaining permits, without limiting the public's participation.

A HEALTHY TEXAS BUSINESS CLIMATE BELIES CLAIM OF BURDENSOME PERMITTING

Public Citizen also wanted to take a brief look at how attractive Texas is for business and industry and whether TCEQ's permitting process is acting as a deterrent. In the course of debate over the state's permitting process, there have been some claims by proponents of drastic statutory changes that businesses and industries are avoiding or leaving Texas because of our permitting procedures.

It is no secret or big news that Texas ranks high among all states as a destination for business and industry. Even with the economic downturn that has affected most states to some degree, Texas has maintained a healthy business climate. The Business and Industry Data Center, an ongoing initiative of the U.S. Census Bureau, which shows economic data and statistics at the state and local levels, reports:

- Texas leads all states in net job creation since 1990.
- While manufacturing jobs have declined nationally since 1990, Texas has the second largest number of people employed in manufacturing (California is first, with must tougher permitting standards).
- Texas exports in 2002 increased past 2001 figures to reach $95.4 billion, while total exports in the U.S. declined 5.2%.

- From a research and development standpoint, Texas ranked third nationwide in producing the most patents, behind New York and California.

Site Selection Magazine, the official publication of the Industrial Asset Management Council, has repeatedly ranked Texas among the top 10 states in several categories over the past years, stating, "Texas remains a formidable competitor for business locations and expansions."

- Texas ranked first in Site Selection Magazine's 2004 Survey of State Business Climates.
- By claiming the Site Selection prestigious Governor's Cup title for 2004, Texas became the all time leader in Cup titles in the 27-year history of the corporate project competition.
- Since 1978, Texas has finished in the Top Ten Governor's Cup ranking more than any other state—a record 26 times.

Probably no more gleaming example of Texas' attractiveness for business was the decision by Toyota to build its new $800 million pickup manufacturing plant in San Antonio. In selecting San Antonio as the site for a plant that will employ 2,000 people, one Toyota executive said, "We were very impressed with what we thought would be the available work force and the business-friendly nature of this community and this state."

One reason Toyota selected San Antonio over Dallas was that the air quality in the Dallas/Fort Worth region is so poor the area is facing federal economic sanctions. According to the Sept. 23, 2003 edition of the Dallas Morning News, "In February, dirty air led Toyota to reject North Texas as a place for its new truck plant." Toyota gave the same reason for dropping Houston from their list of potential sites for the new plant.

The fact areas in Texas lose new business because of their polluted air is even more reason it is essential for TCEQ to have a permit process with strong standards. **The state must protect its environment so it can remain a powerful player in attracting new business for many years to come.**

State Representative Warren Chisum, R-Pampa, was quoted in the July 7, 2003 Forth Worth Star-Telegram as saying under the proposed permit changes, Toyota would be able to obtain its environmental permit from the TCEQ in 265 days, as opposed to 600 days he estimated it could take under existing rules. In reality, the TCEQ issued both Toyota's New Source Review construction permit and Prevention of Significant Deterioration permit in a total of 153 days. The agency received the applications on December 15, 2003 and completed their technical reviews, with the decision to issue both permits, on June 16, 2004.

Despite arguments the Texas environmental permitting process turns off businesses, most businesses look at several other factors when determining their site locations.

Development Alliance, which the Industrial Asset Management Council endorses, provides companies interested in finding locations with information concerning community demographics. The standard criteria companies consider are:

- Population

- Housing
- Income and Occupation
- Transportation to Work
- Quality of Life
- Consumer Expenditures
- Incentives Programs

The most weighted factors in choosing locations are the quality of life and workforce in the state. Given tight labor markets nationwide, Site Selection reports managers realize "that such quality of life factors as schools, traffic, and recreational opportunities are becoming increasingly more important in terms of staff acquisition, retention, and productivity."

Conway Data, a provider of management sources to trade associations for more than forty years, shows that the quality of life figure is important to businesses because it is calculated using hundreds of factors under ten broad categories and eighty-three subcategories. The ten broad groups range from community features, health and welfare, to cultural aspects and living costs.

Developmental Alliance provides community demographics for states and counties, including their quality of life index. **Of the fourteen states we researched, Texas ranks third with a quality of life index of 135 for the year 2003.** The top two states are Arizona with an index of 150 and California with 146. The lowest quality of life index of the fourteen states is New York with 58. Given that Forbes Magazine selected Austin as number one in its 2003's list of top ten places to live, it is not surprising the quality of life index for Travis County is a high 168.

According to Texas Instruments Chairman, President, and CEO Tom Engibous, "Texas has a lot to offer and when Texans cooperate and work together, big things can happen." Texas does have a lot to offer businesses looking to relocate or expand, and if we protect our resources, we will continue to have a lot to offer far into the future. It is just as Site Selection says in its May 2004 article, *Big Deals in the Big State*, "…the big city climate of the Lone Star state is at least as strong as its wide open spaces."

ARE CONFINED ANIMAL FEEDING OPERATIONS LEAVING TEXAS BECAUSE OF STRICT PERMITTING?

In the course of our research, we felt it prudent to address concerns that some confined animal feeding operations (CAFOs) are leaving Texas because of strict permitting regulations.

In fact, some CAFOS have been leaving Texas in recent years. Almost exclusively, these have been large dairy operations moving from the Erath County area and relocating in New Mexico. To understand why some of the large dairies have left Texas, some background is necessary.

Erath County has traditionally been a dairy farming region since the early 1900s. The nature of dairying in the area underwent some radical changes in the mid-1980s. During this period, large, industrial-sized dairies began moving into the vicinity, primarily from California but also from The

Netherlands. These operations confined thousands of dairy cattle on a few acres, as opposed to the smaller, pasture-based farms that had dominated the dairy industry. These CAFOs moved to Erath County to take advantage of an already existing dairy infrastructure, cheap land and labor, and few regulatory hurdles.

Most of the dairies that relocated to the Erath County area from California moved from the Chino Valley, where widespread groundwater contamination from dairy waste prompted the state to enforce tighter regulations for CAFOs there.

As the years passed and more and more CAFOs moved into the Erath County region (and existing dairies expanded), water pollution problems began to occur. The result was the degradation of water quality in both the North Bosque River and the Leon River in neighboring Comanche County. The federal Natural Resources Conservation Service and the Institute for Applied Environmental Research at Tarleton State University in Stephenville have extensively documented damage to these watersheds. The over-application of solid and liquid waste (and resulting manure runoff) and the failure of wastewater lagoons are cited as primary causes of the degraded water quality in these two watersheds.

The region's water bodies are no longer safe for human contact, and have become overloaded with nutrients, resulting in algae blooms and depressed dissolved oxygen levels, which often do not support aquatic life.

Currently, about 180 dairy CAFOs are located in the North Bosque River and Leon River watersheds. These contain about 130,000 cows and produce an estimated 1.8 million tons of manure annually.

In assessing the impact of permitting on CAFOs in Texas, it is important to note that since the TNRCC, TCEQ's predecessor agency, began issuing permits to operated dairies in the early 1990s, the Commission has only denied one permit application for a CAFO. In addition, the agency has approved every permit renewal application and amendment to increase herd size with only one exception.

Had there been adequate permitting regulations in place prior to the boom of CAFOs during the 1980s, the region would not have the problems that currently exist. The damage to the county's environment, drastic deterioration of water quality, and harm to local family operated dairy farms, were preventable if the agency responsible for regulating environmental quality had enacted proper restrictions on the large dairy farms locating in the area.

Pollution by CAFOs in the county finally gained serious attention of the TCEQ in the mid-1990s, after years of protests and complaints by local citizens and after the City of Waco discovered that water quality in Lake Waco, the city's source of drinking water, was suffering. The Bosque River feeds directly into Lake Waco.

In the late 1990s, the TCEQ imposed special permitting requirements for CAFOs in the North Bosque River watershed to address the water pollution problems there. In the past two or three years, several dairy CAFOs in the watershed have moved to New Mexico. Reasons cited by the dairy industry

for the relocations include drier climate, financial incentives offered to CAFOs by New Mexico, and less opposition.

We suppose one could make an argument that some CAFOs have left the North Bosque River watershed at least in part because of permitting requirements that may be stricter than those in New Mexico. However, if one considers the reasons for stricter permitting on CAFOs in that watershed, then it makes no sense to argue that permitting in the entire state needs to be less stringent. Doing so could result in even more pollution problems from CAFOs, not less.

Milk market order statistics and production information collected from USDA Agriculture Marketing Service shows the difference in the number of milk producers and amount of milk production for both Texas and New Mexico between the years 2000 and 2003. The number of milk producers in Texas dropped from 1,228 in 2000 to 901 in 2003, a decrease of 26.6%. However, the milk production for the state only declined by 1.9% for the same period. This indicates that larger dairies are either buying out smaller farmers, forcing them to quit because of competition or small dairies are consolidating. Although the number of dairies in the state has decreased, it is not drastically affecting the overall milk production for Texas.

Erath County lost 39 milk producers between 2000 and 2003, yet the county's percentage of the total milk production in Texas increased by 0.43%. This data shows that the loss of 39 dairies did not affect the county's competitive standing in the state.

It is interesting that between 2000 and 2003, New Mexico had a net gain of only five milk producers. Therefore, even if every one of those producers came from Erath County, it still means that 34 of the producers in the county relocated elsewhere, merged with other farmers, or went out of business.

One could also argue some CAFOs have left the North Bosque River watershed not because of burdensome permitting, but because of challenges to CAFO permits in that region by local landowners and by the City of Waco.

While a few dairies may be relocating from the Erath County area to New Mexico, the rest of the state has seen a boom in new CAFOs locating in Texas. Some of the nation's largest hog raising CAFOs have located in the Texas Panhandle and large poultry-raising CAFOs have opened in East Texas.

While Texas is considering loosening up permitting requirements for CAFOs and other industries, many other states adopted tighter permitting requirements in response to water pollution by CAFOs. States including North Carolina and Mississippi have gone so far as to enact moratoriums on any new CAFOs opening in those states.

CONCLUSION

In comparing permitting procedures, we found the process in Texas is generally more efficient and less time-consuming than in the other 13 states we studied and provides for similar public participation as other states.

The changes to the state's permitting process proposed during the 2003 legislature would alter the balance of this equation. They set Texas apart, primarily in ways that reduce effective citizen participation. They would not necessarily make a more efficient process.

Adopting the changes discussed in this report would demonstrate that our state cares little for the opinion and health of Texas citizens or for the protection of our state's natural resources. Adopting these changes would further show we have little respect for local governments' authority over their jurisdictions.

It is worth noting the requested changes to the state's permitting procedures did not originate from citizens or groups representing citizens. Rather, they came from the regulated industries.

Using legislation to alter the permitting process comes at a high cost; by allowing TCEQ to evaluate the current procedures and make rule changes, they could achieve the goal of streamlining the permitting process more efficiently.

There are likely ways the state could improve permitting procedures. However, the state should base any process to make changes on a consensus reached among all stakeholders -- including the public -- and not on politically motivated legislation promoted by some industries.

Any changes or "improvements" should not include reducing the rights of Texans to participate effectively in the permitting process.

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