



Submitted to the Texas Commission on Environmental Quality on October 8, 2024

Statement by Save Barton Creek Association on Upcoming Rulemaking Related to 30 TAC Chapter 39 and Chapter 55

Save Barton Creek Association would like to thank TCEQ for the opportunity to submit comments on possible rule changes to 30 TAC Chapters 39 and 55. SBCA was founded in 1979, making us one of the oldest citizens' environmental nonprofit groups in the state. We work to protect streams and aquifers through Central Texas. We've repeatedly seen that one of the biggest threats comes from the discharge of treated wastewater when the effluent contains more pollutants even after treatment than are present in the receiving stream. SBCA has engaged in advocacy involving many wastewater permit applications during our 45 years. We regularly submit public comments and participate in public meetings, and we have also been approved as an affected party in contested case challenges on behalf of our affected members. We additionally provide coordination for the Wastewater Conservation Coalition, which includes 15 other member organizations that work on wastewater permit applications throughout the Hill County.

Based on the experiences of our organization and our partners, we believe that this rulemaking project should have an additional focus. The project is essentially asking the question:

How can TCEQ improve the public's ability to participate in the permit application process?

SBCA strongly urges the project to also examine this related question:

How can TCEQ improve its ability to make substantive changes in permits based on public input during the application process?

While this may seem outside the scope of the project, we would argue otherwise. Change simply for the sake of change seems like an unproductive use of the project's time. Improving the public's ability to make comments that will have no effect on permit applications seems pointless.

Again, based on the experiences of SBCA and our partners, our perception is that almost every draft permit issued by TCEQ's staff has been approved as is by TCEQ's commissioners, regardless of recommendations from the public during the comment period, and often even regardless of recommendations from SOAH judges during contested case hearings. Among the draft permits that have eventually made their way to the commissioners for a final vote on approval, we are only aware of less than a handful that have been changed in some way from what TCEQ's staff had proposed at the draft stage. And while our experience is limited to domestic wastewater permits, we know that our partners working on air quality permits have had similar experiences.

We admit that this perception — that TCEQ never makes changes to draft permits based on the public comments that it receives — is only based on the permit applications that we and our partners are aware of. That's why we believe that it would be extremely helpful for TCEQ to analyze this matter in a systematic way. We recommend that the Commission:

1) Collect information on every air and water permit application filed over the past 10 years that resulted in a permit issued by TCEQ and that received 100 or more public comments during the official comment period and/or that was heard by a SOAH judge who issued a Proposal For Decision.

2) Compare the draft permit as issued by the staff with the final permit as approved by the commissioners, to determine whether any changes were made to the permit based on comments from the public or recommendations from SOAH.

3) In addition, for the applications examined in this analysis, review the requests for contested case affected party status to determine how many individuals who were approved by TCEQ commissioners as affected parties were landowners who lived more than 1 mile from the proposed facility, or who were approved for meeting another criteria other than being an affected landowner.

Again, we recognize that this may seem beyond the scope of the current rulemaking project. But we would argue that TCEQ has a larger credibility problem if the perception continues that the Commission never incorporates public comments into its decision-making during the permit application process.

Within the scope of the current rulemaking project, SBCA respectfully offers the following recommendations:

1) Public participation procedures should be standardized in the application process for all air and water permits that currently provide for public participation. For example, if the draft permit is posted on TCEQ's website for one permit category, this should be done for all permit categories. Or, if the public comment period is extended for 36 hours after the public meeting for one permit category, this should be done for all permit categories.

2) Public participation procedures should incorporate both in-person and virtual options whenever possible. Not everyone will be able to take advantage of either option; some people may only be able to use one or the other. For example, while all draft permits should be posted on TCEQ's website, physical copies should still be placed in central and convenient public locations. Similarly, all public meetings should be held as hybrid meetings to allow for both in-person and virtual attendance.

3) Public participation should be included in the application process before the draft permit is issued, when TCEQ's staff can actually incorporate public input into their decision-making. There are several ways that this could be done. One would be for the Commission to have an official public comment period during the technical review period after an application is filed, with the same requirement that TCEQ's staff should issue a formal Response To Comments. Another would be for the Commission to hold a public meeting, when requested by a legislator, during the technical review of an application, and before the draft permit is issued. If the Commission doesn't have the resources to hold two public meetings (both before and after a draft permit is issued), we believe that having a single meeting before the draft permit will provide a better opportunity for the public to participate at a time when their comments could still conceivably be incorporated into decisions made by TCEQ's staff.

We also want to note that we have heard from some engineers who have worked on permit applications that they often have discussions with TCEQ staff to work out the terms of a permit before they even file an application for their client. While we understand why this benefits both TCEQ's staff and applicants, we must point out that this is another instance in which crucial decisions about a permit application are being made with no opportunity for the public to offer comments. One engineer has suggested to SBCA that TCEQ could create a new public notice — perhaps called a Notice of Intent to Apply — that would have to be issued when potential applicants want to hold these initial discussions with the Commission's staff.

We know what TCEQ's staff response will likely be to these last few suggestions — that it would be impossible for them to comment about a permit application when they supposedly haven't made any decisions about it. But we again want to point out that once the Commission's staff has made decisions about an application and issued a draft permit, it seems impossible for them to make any changes in that draft. If the current rulemaking project wants to do more than simply fulfill a statutory obligation to provide for public participation in the permit process, then it must also explore ways for TCEQ to actually incorporate the public's input into the permits that it writes and issues.

Respectfully submitted by:

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