

Becky Smith

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Texas Commission on Environmental Quality
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Submitted by email to amy.browning@TCEQ.texas.gov and online via tceq.commentinput.com

October 8, 2024

Re: Rule Project Number 2024-003-039-LS, amendment of 30 TAC Chapter 39, Public Notice; and Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment – Comments by Clean Water Action

Clean Water Action appreciates the opportunity to provide these comments. Our comments are based on the TCEQ Sunset bill, SB 1397 (88R), and on our participation in the TCEQ Sunset review process.

We believe the very first assertion in the Sunset staff report: “TCEQ’s Policies and Processes Lack Full Transparency and Opportunities for Meaningful Public Input, Generating Distrust and Confusion Among Members of the Public.” The agency has considerable work to do to improve meaningful public input.

I. Public notice recommendations

- A. Do not limit or restrict current forms of notice. The goal of public notice should be to reach as many people as possible who may be impacted by the proposed action.
- B. Standardize notices and clearly state specific due dates to eliminate confusion.
- C. Improve electronic access to notices.
- D. Improve virtual meeting options. Do not seek to replace in person meetings with virtual meetings. We urge the agency to embrace the in-person meeting and never again seek to eliminate it.

II. Contested Case Hearings should expand access and opportunity for the public, not restrict it

- A. Standing requirements should align with federal standing criteria. Recreational and other users of waters of the United States are not limited to landowners within one mile of discharge, for instance.
- B. The Commission should follow the ALJ’s Recommendation. The commissioners should respect the ALJ’s role in the process and abide by his or her recommendation.

- C. The State should fund public participation in the CCH process. The Office of Public Interest Counsel should have a fund for community members to apply for money to hire attorneys and experts to participate in the CCH process.

III. Please provide details of progress on the community outreach provision of SB 1397

Section 10 of SB 1397 provides:

Sec. 5.136. COMMUNITY OUTREACH. The commission shall provide outreach and education to the public on participating in the permitting process under the air, waste, and water programs within the commission's jurisdiction. Please collaborate with advocacy groups and members of impacted communities when developing the community outreach and education plan.

IV. Other miscellaneous comments

- A. The deadline for public comments should be extended beyond the public meeting in all cases. In Section 4, SB 1397 holds open for 36-hours the public comment period and the contested case hearing request period for permit applications for which consolidated notice was issued. This should be expanded to all permits, not just those with consolidated notice.
- B. Title VI compliance plans The TCEQ should establish clear criteria for when it will issue notices and other materials in other languages.
- C. Public posting of permit applications We urge the agency to begin posting draft and final permits as soon as possible and to make those postings as easy to locate as possible. The public notice announcing a permit should include the web address where the draft permit can be viewed.
- D. There is confusion at public meetings about the Q&A portion and the on the record portion.
- E. Oral comments should be rendered in writing. Oral comments delivered at public meetings should be transcribed and entered into the written record.

Thank you for the opportunity to provide these comments, if you wish to discuss our position further, I can be reached by email at bsmith@cleanwater.org or by phone at 617.314.2347.

Thank you, again, for this opportunity to offer comments that we believe will increase the democratic and public health of our environmental permitting processes.

Sincerely,

Becky Smith, Texas Director

Clean Water Action