

My name is Eric Allmon, and I am here on behalf of the Texas Center for Policy Studies. Over the past 15 years, I have worked with surrounding communities and businesses in participating in the permitting process for numerous landfills. Today, I would like to address two problems with the landfill permitting process: (1) The abuse of the process through the submission of speculative permits; and, (2) The unrealistic time constraints currently applied to public participation in the landfill permitting process.

Flooding Concerns

The way in which flooding is addressed in landfill permitting raises several concerns. For one, TCEQ limits itself to consideration of only the current 100-year floodplain. Even when future development is anticipated and foreseeable, TCEQ requires that the flooding impacts of such development be disregarded. Furthermore, TCEQ rules do not treat downstream high-hazard dams as warranting particular concern in the permitting context. A significant landfill was recently permitted shortly upstream of a high-hazard dam without recognizing the inherent conflict between these land uses. In a state where the dangers of flooding are so clear, there is no reason to imperil lives in such a fashion.

Application Changes

Through the years, applicants for landfills have increasingly decided to submit “placeholder” applications to the agency that reflect little attention to the TCEQ regulatory requirements, which the applicant’s then rehabilitate only as forced to by the TCEQ staff and the public. This strategy is unfair to the agency, to the public, and to other applicants who seek to follow the requirements of the rules from the start of the permitting process.

In light of TCEQ’s extreme reluctance to return a deficient application, TCEQ staff wind up spending tremendous time attempting to fix deficient applications, essentially spending state time and funds drafting the application for the applicant. As reflected in the attached letter returning a landfill application in 2015, the TCEQ staff had spent more than 1,300 hours of staff time reviewing the application to identify more than 400 deficiencies. This application was only returned after the discovery process showed that the application was still fatally flawed. The permitting process for the currently-pending Post Oak Clean Green Landfill has been equally, or more, burdensome on the agency. This allowance for permit changes not only wastes agency resources, but is also unfair to the public. It is understandably difficult to comment on an application that is constantly changing, and the public itself must do the work an applicant should have done in the first place.

The TCEQ’s Office of the Public Interest Counsel has made a recommendation that would address this problem in the broader permitting context. That recommendation is to limit the ability of an applicant to change its application. According to OPIC, this already applies to applicants for an air quality permit, and should be extended to all other types of applications, including MSW permit applications.

Furthermore, the Health & Safety Code already allows that the TCEQ may assess the costs of developing information on a hazardous waste permit application against the applicant where that information is material to a decision to deny or significantly change a facility’s design or operation. Texas Health & Safety Code § 361.0833. This statutory provision should be expanded to also apply to permit applications for municipal solid waste facilities.

Undue Restrictions on Hearing Length

In 2015, the Texas Legislature passed Senate Bill 709, which modified the TCEQ permitting process. This included a one-size-fits-all six-month limit on the length of contested case hearings. No MSW landfill has been forced through a hearing under this constraint, but it is a disaster waiting to happen.

Landfill applications are extraordinarily complex. Instead of dealing with a discrete set of emission or effluent limitations, a landfill permit involves very case-specific evaluations of unit design, operations, land use compatibility, flooding, drainage, fire prevention, vector control, and land use compatibility issues that can range from impact on residences to interference with Doppler weather radar systems to interference with the flight patterns of military aircraft. Often, the ED is only able to scratch the surface on such issues during the technical review period. Historically, hearings on landfill applications have involved extensive discovery to explore such issues. In multiple cases, this has led to changes that significantly improved permits or revealed fatal flaws in a proposed facility. Considering that the judges still require two months to write their own decision, in addition to time needed for live hearing and written argument, a six month limit does not allow time for a genuine development of the issues in a landfill proceeding. In fact, the same lobbyist who advocated for a six-month hearing limitation at the legislature recently proposed a hearing schedule in a landfill matter that will last approximately 12 months.

Landfill hearings do not raise the same concerns that were cited in support of the six-month limitation for other permit types. A municipal landfill is not going to be relocated to another state due to the length of the permitting process. In fact, a feasible landfill must be located proximate to the source of the waste. Further, Texas has significant excess landfill capacity, so there is no urgent to bring additional capacity online. Additionally, the consequences of a mistake in the permitting process is more severe for landfills. Unlike water quality or air quality permits, a landfill permit does not ever expire, and so may never undergo another agency review. Similarly, for air emissions and wastewater discharges, it is generally an option to address unanticipated pollution by modifying operations. Once waste is deposited, there is little to nothing that can be done to stop a leak. You cannot simply “turn off” a landfill. You cannot move a landfill.

The complex nature of landfills, the absence of future permit reviews, and the irreversible consequences of a bad permitting decision justify giving landfill applications particular attention, and, thus, such applications should not be subjected to the same six-month hearing limitation as other TCEQ permit applications.