



Manufacturing Matters

ENVIRONMENT REFORMING THE TEXAS PERMITTING PROCESS

The Texas environmental permitting process is unlike any other in the nation. Because of the protracted contested case hearing process and the lack of certainty with regard to timelines, it is widely regarded as one of the most draconian in the country. The Texas manufacturing and business sector needs more certainty in the process as the manufacturing industry continues to thrive in this state.

>> Texas is unlike most states in that most major air, water and waste permits are subject to a statutorily-created contested case hearing process, which resembles a trial-like proceeding at the State Office of Administrative Hearings (SOAH), prior to the Texas Commission on Environmental Quality (TCEQ) issuing the final permit.

>> Anyone who qualifies as an “affected person” can request a contested case hearing.

>> The hearing is governed by the state Administrative Procedures Act (APA) and can add an additional one to two years to the permitting process.

>> Because there are many unknowns relative to the process (i.e., whether an “affected person” will request a contested case hearing, the duration of the hearing, the issues to be considered at a hearing, etc.), having a contested case hearing as an element in the Texas permitting process creates a tremendous amount of uncertainty and potential delay for the regulated community.

>> Furthermore, the Texas contested case hearing process is not required under federal law, and in fact, far exceeds federal public participation requirements for permitting.

Potential Legislative Solutions

>> Moving forward, the regulated community needs more certainty in the environmental permitting process, and there are several ways to accomplish this goal:

>> Streamline TCEQ’s technical review of the permit application.

>> Establish statutory timelines in the contested case hearing process that SOAH is bound to follow.

>> Direct SOAH to only consider in the contested case hearing the issues sent over by TCEQ.

>> Automatically dismiss any “affected person” who requests that a permit be amended in a manner that exceeds the regulatory requirements.

>> Limit the administrative review process to only what is required by federal law.

>> Eliminate contested case hearings for certain types of permits.