

TCEQ Responds to Environmental Justice Concerns by Expanding Permit Requirements Designed to Enhance Public Participation

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The Texas Commission on Environmental Quality (“TCEQ”) has issued new rules that require many air, water rights, and water quality permit applications to provide alternative language translations of public notices and translation services at public meetings, and also require permit applications to contain a “plain-language summary” of an application to inform the public about the contents of a proposed permit. These new requirements are intended to ensure that TCEQ complies with Title VI of the Civil Rights Act by providing communities and individuals with limited English proficiency have the opportunity to participate and be involved in a meaningful way throughout the permitting process when regulated activities are proposed in their neighborhoods or when existing facilities expand their operations. These requirements apply to permit applications that are declared “administratively complete” on or after May 1, 2022.

The rules expand upon existing alternative language requirements for public notice, which currently require Notices of Receipt of Application and Intent to Obtain Permit and Notices of Application and Preliminary Decision to be published in an alternative language when either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program under the Texas Education Code. Because the Education Code bases bilingual education requirements on hard numbers—each school district with 20 or more students in any language classification in the same grade level district-wide—this requirement will become mandatory in populous counties as well as the Rio Grande Valley. A list of all ESL programs in Texas can be found [here](#).

These requirements now will apply to notices for public meetings and to actions by the Executive Director of the TCEQ or the Commissioners related to public participation in the permitting process. Additionally, alternative language notice will be required whenever the Executive Director, in his discretion, determines that language notice is “necessary to provide proper notice and meaningful access to affected communities.” When alternative language notice requirements are triggered, the new plain-language summary must be translated and posted on TCEQ’s website as well.

In its response to public comments, the TCEQ clarified that nothing in the new requirements prevents an applicant from using an in-house interpreter for a public meeting, so long as the interpreter is familiar with the project. Although the TCEQ has eschewed requiring specific translation services, it advises that “interpretation/translation services are those services provided

by trained professionals who adhere generally to interpreter/translator ethics and have demonstrated proficiency in speaking English and at least one other spoken language.” The TCEQ is preparing templates and guidance to assist permit applicants in complying with the new requirements, which, when finalized, will be available on the agency’s website.

The new plain-language summary is intended to provide a brief explanation of what a permit application would allow. At a minimum, the summary should explain the function of the proposed facility, its expected output, the expected pollutants emitted or discharged, and how any pollutants will be controlled so as not to have an adverse impact on human health and the environment. Importantly, the TCEQ has clarified that the plain language summary may not be used by an opponent of the permit application as a means of re-opening the entirety of a permit and is not intended to apply to anything other than changes or modifications being proposed in any permit application. Nonetheless, the summary is a requirement that permit applicants must comply with and, just like any other permit application requirement, an applicant who fails to provide the required summary may face delays in the processing of its application.

Applicants will be responsible for translating notices, the plain-language summary, and, potentially, the applicant’s response to hearing requests. Although the TCEQ expects the rules to have a “minimal impact” on the permitting application process, applicants will bear the cost of translating notices, providing an interpreter for a public meeting, or translating responses to a hearing request, which will certainly impact all applicants, particularly small businesses.

Permit applicants should prepare for increased public participation due to these requirements, which will likely add more time and expense to the permit application process. Further, public interest groups will seek to enforce these requirements. Indeed, the rulemaking was prompted by the environmental justice organization TEJAS and the Sierra Club’s filing of a Title VI administrative civil rights complaint against the TCEQ with the U.S. Environmental Protection Agency’s Office of Civil Rights (“EPA OCR”) in late 2019. As part of a settlement with EPA OCR, TEJAS, Sierra Club, and the TCEQ agreed to develop new, expanded alternative language requirements. Because the Biden Administration views “environmental justice” as a priority, and has increased EPA’s involvement in this area, particularly in the enforcement context, EPA may demand more of the TCEQ in the ways it considers environmental impacts on “overburdened communities” during substantive permit reviews.