

INSIGHTS

The Texas Commission on Environmental Quality: What's New and What to Expect

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By: [Daniel J. Pope](#) and [Whit Swift](#)

On this episode of the Bracewell Environmental Law Monitor, host [Daniel Pope](#) is joined by [Whit Swift](#) for a discussion of developments at the Texas Commission on Environmental Quality (TCEQ).

Whit is partner in the firm's environmental strategies group, who regularly advises industrial companies on issues related to clean air quality.

What's going on at the TCEQ with their rulemaking process?

We are seeing rule development at the TCEQ that has an environmental justice angle to it. It's really based on the expansion of public notice requirements with regard to publishing notices in an alternative language. When you're publishing a notice of a project — say authorizing a new greenfield site or making a change at an existing site, and this is under permitting for air, water or other media — there are public notices that are sent out. Back in 2019, this process actually started when the Sierra Club and an environmental justice advocacy group submitted a petition for rulemaking to the TCEQ about expanding the alternative language notice requirements. There have been some requirements to publish alternative language notices in certain circumstances when you're getting permits from the TCEQ. What the TCEQ is doing right now is expanding the number of notices and the types of information that'll have to be provided in an alternative language.

Do you think there's going to be an issue down the road with project opponents looking at what's described in this two-pager, plain-language summary and then taking a pretty thorough look at the project that's been proposed in all of its detail and saying this is a really material part of your project you didn't include it?

The rule language that governs that summary document is pretty general, so hopefully it won't create a trap door or something that you'd likely stumble on. But it could be the case. Even though you're not talking about the actual impact on the environment, procedural issues are very commonly used by project opponents.

In the expansion of public notice requirements, when an alternative language notice is triggered, is there a substantive outcome being mandated under environmental justice concepts?

There's been real action by the TCEQ on the environmental justice front, but it is looking at it from a procedural side, working to enhance public participation particularly focused on

environmental justice communities that may not be native or may have at least a significant portion that aren't native English speakers. So, there's certainly an environmental justice angle here, but it is a procedural one, looking at additional participation.

The agency has always taken the position that the way it processes permits and looks at protectiveness is by looking at the fence line or the mixing zone for a discharge. They run it through a process to ensure that it is protective at the fence line and that analysis is blind as to who is on the other side of the fence. That has kind of been the agency's answer when environmental justice issues have been raised in permit proceedings.

And it'll be interesting to see with the federal agencies' focus on environmental justice issues, whether and how EPA might put pressure on TCEQ to either non-procedural permit review that would look at some kind of cumulative impact on environmental justice from the enforcement side.

For any questions on developments at TCEQ, please contact [Whit Swift](#) or [Daniel Pope](#).

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