



## TCEQ to Vote on State Agencies' Role in Contested Cases

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The [Texas Commission on Environmental Quality](#) will vote Wednesday on whether to adopt rules that would exclude state agencies from participation in contested case hearings on permits and licenses issued by the commission.

Some state agencies and environmental groups argue that the rules, if adopted, would limit state agencies' abilities to voice environmental concerns and provide information to the TCEQ before final decisions are made. Under the rules, state agencies would no longer be allowed to be parties providing evidence in contested case hearings over air quality, water and waste permit applications, unless they are applicants.

"Effectively, we have muffled the people who were supposed to be watchdogs on our behalf protecting our natural resources," said [Tom "Smitty" Smith](#), the Texas director of [Public Citizen](#), a nonprofit advocacy group.

The commissioners are voting on rules to implement HB 2694, a bill passed in the last legislative session that says state agencies "may not contest the issuance of a permit or license by the commission." The interpretation of those words has been a point of contention.

The rule changes reflect the Legislature's "concerns that state agencies should not be utilizing resources to fight one another," said TCEQ spokesman Terry Clawson. "In implementing this legislative directive, the TCEQ believes it has carefully evaluated comments received on the rule while remaining consistent with the context of the statutory change."

Contested case hearings take place when the TCEQ's issuance of a permit or license is challenged. A person or group could contest the issuance itself or seek to change the terms of the permit. The broader interpretation of the bill's language would limit the participation of state agencies in all cases. The narrower interpretation — favored by state agencies and environmental groups — would curtail state agency participation only in cases challenging the issuance of a permit, not just its terms.

"[The statute] does not say that an agency may not participate in a contested case hearing," the [Texas Chapter of the Coastal Conservation Association](#) wrote in comments to the commission. "It does not say that a state agency may not provide evidence on permit terms that would protect state resources. The new language only says that an agency 'may not contest the issuance of a permit' — that is, it may not argue that the Commission should not issue a permit on any terms or seek to overturn a Commission-approved permit."

The [Texas Parks and Wildlife Department](#) also submitted comments taking issue with the TCEQ interpretation that the bill "acts as a complete bar to state agency participation in contested cases." It acknowledged the Legislature intended to limit state agencies' participation but said "the limitation is narrow in scope."

David Frederick, a lawyer representing environmental groups who has participated in contested case hearings involving TCEQ permits, disagrees with that interpretation.

"The intent is to exclude agencies from contesting licensing activities from TCEQ," he said. "My view is that the courts are going to decide in the end that Texas Parks and Wildlife is not going to be a party to these proceedings."

Under the proposed rules before the commissioners, state agencies would be able to offer comments but not provide evidence for consideration in a contested case hearing. As a result, people affected by the granting of a permit would receive less help from state agencies, said Amy Hardberger, a staff attorney at the [Environmental Defense Fund](#). Hardberger said contested case hearings require resources that individuals or small nonprofit groups might not have.

Though the commissioners have not decided on the proposed rules, the TCEQ staff has prepared [a document that the commissioners will vote on](#). In the document, which addresses public comments, the TCEQ staff points out that state agencies will retain the opportunity to offer comments and notes that "historically state agencies have not participated as parties in contested case hearings, and the primary one that has participated, TPWD, only did so in a small number of water right permit application hearings."

Since 2000, the TPWD has participated in seven contested water right matters for which it was not a permit applicant, said Tom Harvey, the agency's media communications director. Three of those cases ended up in contested case hearings, two were settled before a hearing, one went to court and another is still pending.

The proposed rules would "have a significant impact on the TPWD's ability to carry out its statutory and regulatory obligations and its ability to protect the shared public resources of the State of Texas that are under TPWD's jurisdiction," the agency wrote in comments to TCEQ.

"We're concerned that the ability of the state agencies to fully participate and protect the natural resources that we're concerned about could be adversely affected by the rules," said Myron Hess, manager of Texas Water Programs for the [National Wildlife Federation](#). "Every Texan has a stake in this and will be adversely affected by potentially not having decisions made on as full of a record as they might otherwise be."

<http://www.texastribune.org/texas-environmental-news/texas-commission-on-environmental-quality-tceq/tceq-vote-state-agencies-role-contested-cases/>

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