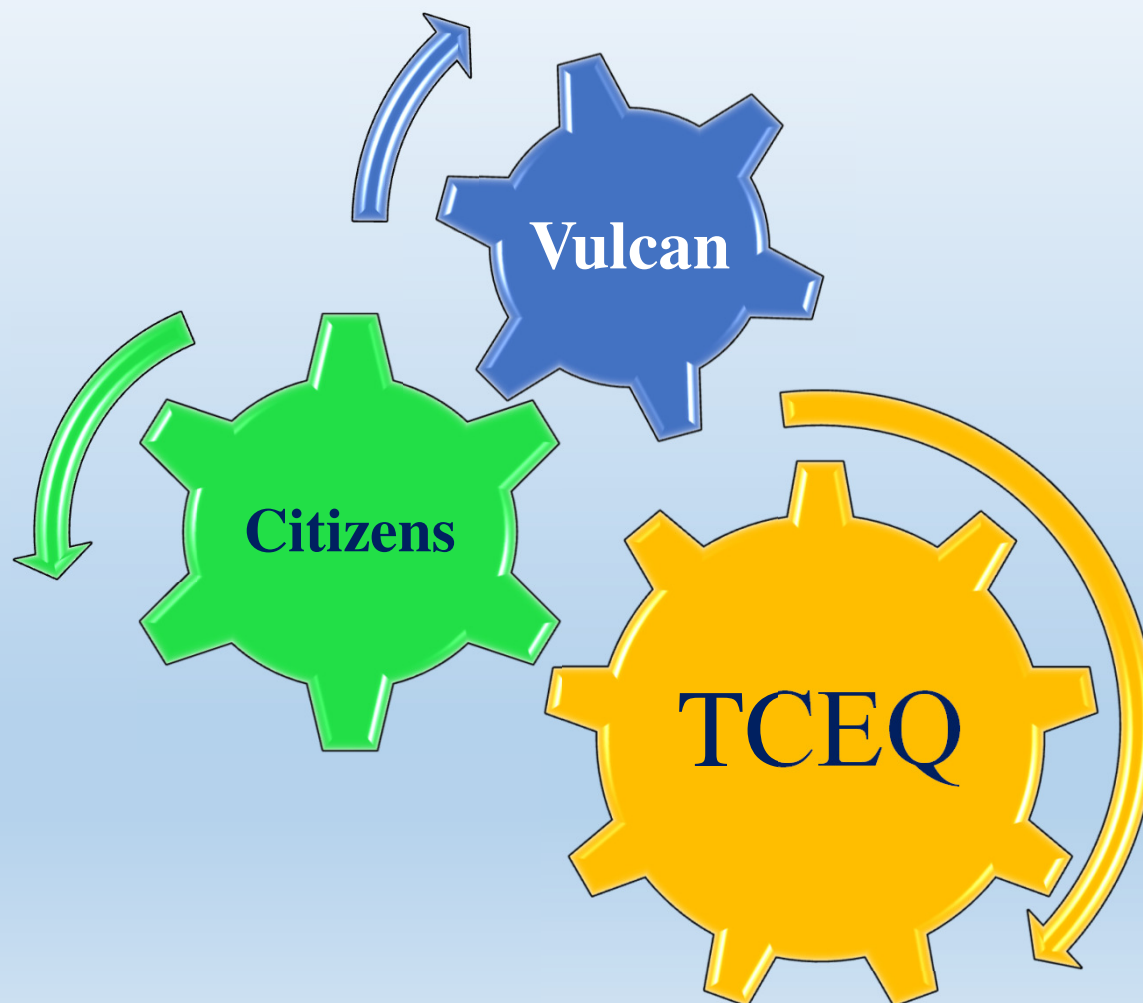


TCEQ's Path to Air Permit Decision



TCEQ Path to Air Permit Decision

- Introductions
- Acronyms
- Where are we TODAY?
- What's Next?
- SOAH Preliminary Hearing Procedures
- Legal Representation
- Call to Action & More 1:1 Trainings
- Definitions
- Questions and Answers

Acronyms

- **Response to Comments (RTC):**
- **Direct Referral**
- **Contested Case Hearing (CCH):**
- **Affected Persons (AP):**
- **Preliminary Hearing**
- **State Office of Administrative Hearings (SOAH):**
- **Administrative Law Judge (ALJ):**
- **Office of Public Interest Council (OPIC)**

Where are we NOW?

Key 'Estimated' Dates

As of 8/22/18:

- Status shows RTC referred to legal on 6/20/18

As of TODAY- 8/23/18

- RTC mailed to all commenters. **This is ONLY an assumed date for purposes of showing timeframes**
- Daily review of [project status](#)
- September 22nd due date to:
 - Make a CCH request (see template)
 - Request to be named AP (see template)
- November 28th: TCEQ Commissioner Hearing
- February 5, 2019: SOAH Preliminary Hearing
- Week of June 3, 2019. Actual CCH
- August 2, 2019: SOAH Judge Decision Rendered
- September 2, 2019: SOAH makes recommendations & Commissioners issue final decision

TRACKING ELEMENTS		
TE Name	Start Date	Complete Date
APIRT RECEIVED PROJECT (DATE)	06/27/2017	
ENHANCED ADMINISTRATIVE OR APPLICATIONS REVIEW (EAR)	06/27/2017	06/27/2017
EXPEDITED PERMITTING	06/27/2017	
SITE REVIEW RFC SENT TO REGION (DATE)	06/27/2017	
PUBLIC NOTICE DRAFT SENT TO COMPANY (DATE)	06/28/2017	
COMPANY APPROVED DRAFT PUBLIC NOTICE (DATE)	06/29/2017	
APIRT TRANSFERRED PROJECT TO TECHNICAL STAFF (DATE)	07/05/2017	
LEGISLATORS NOTIFIED OF APPLICATION RECEIVED (DATE)	07/05/2017	
PROJECT DECLARED ADMIN COMPLETE (DATE)	07/05/2017	
PROJECT RECEIVED BY ENGINEER (DATE)	07/06/2017	
AMENDED NOTICE FINALIZED AND SENT (DATE)	07/10/2017	
DEFICIENCY CYCLE	07/18/2017	10/05/2017
EMISSIONS MODELING CYCLE DONE BY APPLICANT	07/18/2017	10/05/2017
LEGISLATORS NOTIFIED OF DRAFT PERMIT	07/28/2017	
PUBLIC NOTICE COMMENT PERIOD (NSR 1ST NOTICE)	07/29/2017	08/30/2017
1ST NOTICE OCC COMPLETE (DATE)	09/01/2017	
MODELING AUDIT CYCLE	10/10/2017	11/29/2017
MODELING AUDIT DEFICIENCY CYCLE	10/26/2017	11/07/2017
MODELING MEMO TO WORK LEADER (DATE)	11/13/2017	
MODELING MEMO REWORK CYCLE	11/17/2017	11/20/2017
DRAFT PERMIT RFC SENT TO REGION (DATE)	11/20/2017	
WORKING DRAFT PERMIT REVIEW CYCLE	11/20/2017	12/15/2017
MODELING MEMO TO TEAM LEADER (DATE)	11/21/2017	
COMPLIANCE HISTORY REVIEW COMPLETED (DATE)	12/22/2017	
LEGISLATORS NOTIFIED OF DRAFT PERMIT	01/12/2018	
2ND PUBLIC NOTICE FINALIZED AND SENT (DATE)	01/19/2018	
PUBLIC NOTICE COMMENT PERIOD (TITLE V OR NSR #2)	01/27/2018	02/27/2018
PUBLIC MEETING HELD (DATE)	02/27/2018	
2ND NOTICE OCC COMPLETE (DATE)	02/28/2018	
RTC DRAFT PERIOD	02/28/2018	06/20/2018
RTC TO LEGAL (DATE)	06/20/2018	

NO

Applicant requests 'direct referral' for SOAH Hearing prior to issuance of RTC.

YES

RTC gives Commenters option to file for CCH and AP status (30 days to respond – due ~ 9/22/18)

Commissioner's Hearing to decide:
1. Whether there is a CCH. Yes or No
2. Names persons who are deemed AP
3. Relevant issues for SOAH

~ 11/28/18

Preliminary SOAH Hearing letter will be issued to Commenters announcing the date for SOAH Preliminary Hearing.

~ 12/28/18

Preliminary SOAH Hearing takes place.
You MUST be present to know whether you are or are not identified as an AP
If you are not named as an AP, you are given the right to request AP status. You must be prepared with AP information we discuss here

~2/5/19

RTC silent regarding CCH and AP process. May or may not state next steps as Preliminary Hearing and give a date

Assuming NO Preliminary SOAH Hearing is mentioned in RTC, then a letter will be issued to Commenters announcing the date for SOAH Preliminary Hearing.

~ 9/28/18 to 10/28/18

Preliminary SOAH Hearing takes place.
You MUST be present to know whether you are or are not identified as an AP
If you are not named as an AP, you are given the right to request AP status. You must be prepared with AP information we discuss here

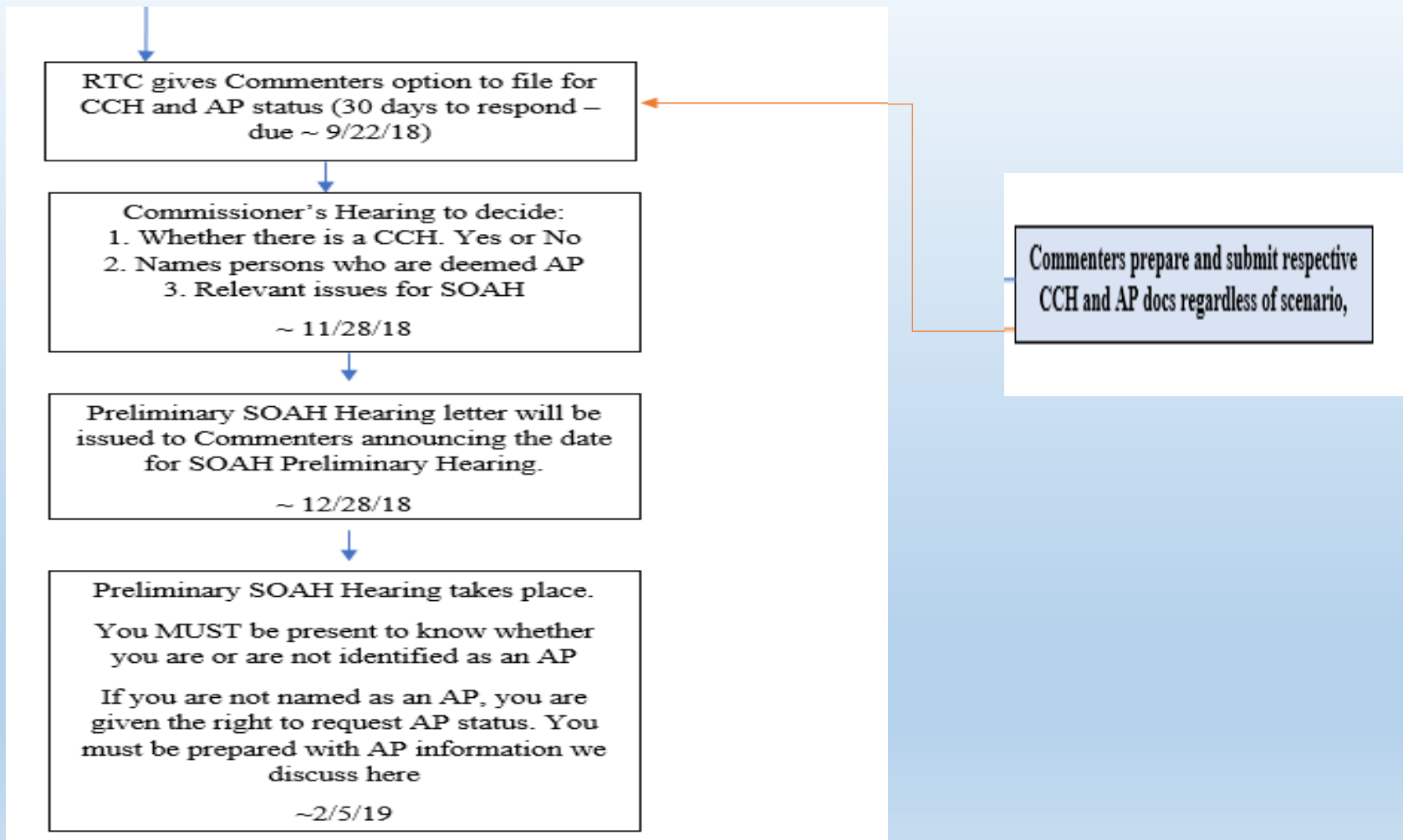
~10/28/18 to 11/28/18

Commenters prepare and submit respective CCH and AP docs regardless of scenario,

Workflow of TCEQ process related to Vulcan 3009 Quarry

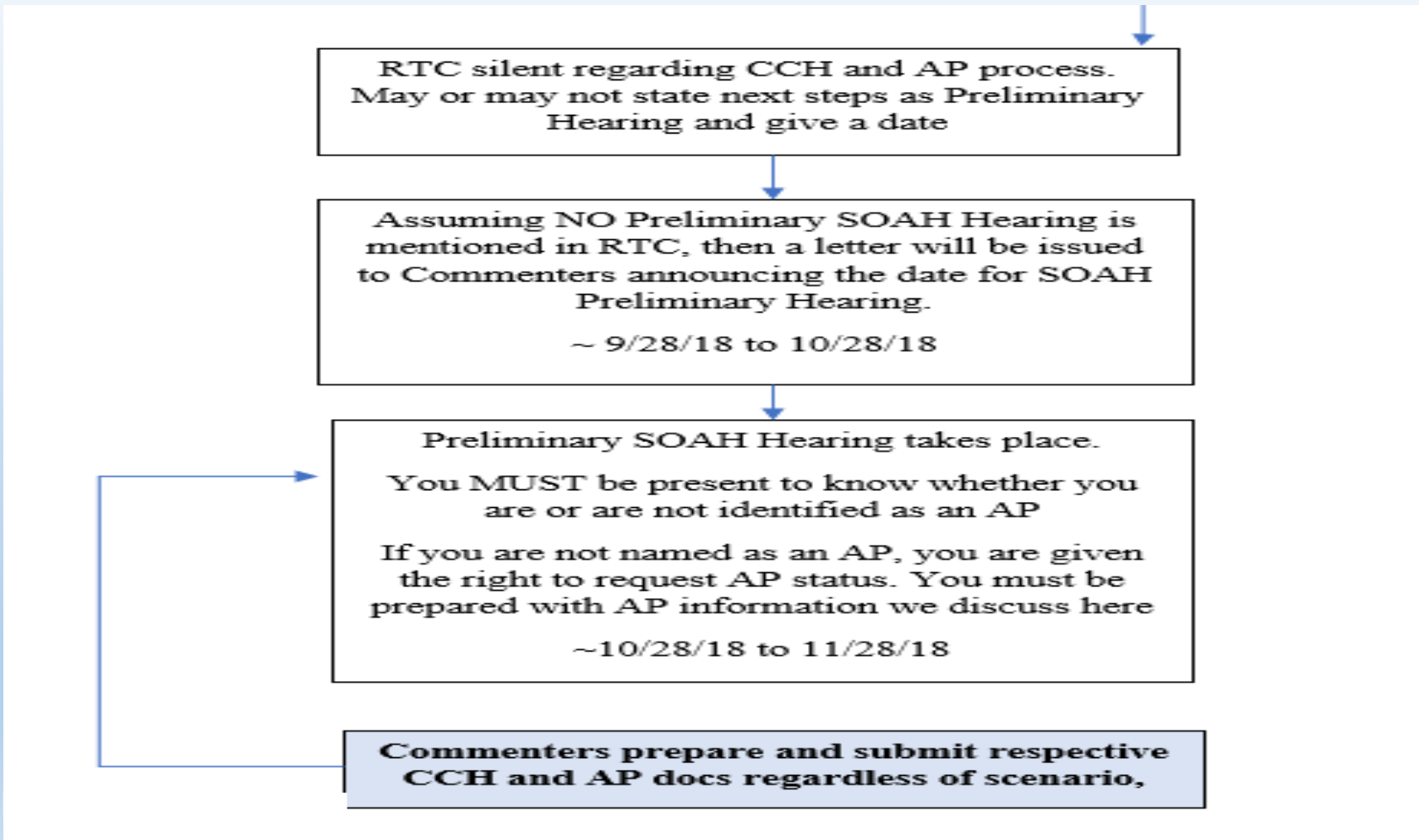
(Assume for this example, the RTC is issued on 8/23/18. All dates provided are based on turn-around-times that are either prescribed by rule or suggested by OPIC)

Scenario 1: Applicant DOES NOT file for 'direct referral' to SOAH prior to 'release' of RTC
ALL DATES ARE TENTATIVE AND BASED ON PRESUMPTION THAT 'RTC' IS SENT OUT BY 8/23/18



Scenario 2: Applicant DOES file for 'direct referral' to SOAH prior to 'release' of RTC

ALL DATES ARE TENTATIVE AND BASED ON PRESUMPTION THAT 'RTC' IS SENT OUT BY 8/23/18



Filing for a CCH and AP status

- In both scenarios, you and your family need to personally prepare your own ‘personalized’ document requesting a CCH and naming yourselves as AP
- Do NOT DELAY in preparing. Prepare as if you ONLY have 30 days to make a CCH and AP request. Start NOW!
- Requests for contested case hearings must include:
 - the requester’s name, address, and daytime telephone number
 - the permit number (**Permit 147392L001**) and applicant’s name (**Vulcan Construction Materials**)
 - a statement clearly requesting a “contested case hearing”
 - the location of the requester’s home, business, or property that is affected, and its distance from the proposed facility
 - a detailed explanation of how the requester would be adversely affected by the proposed facility or activity in a manner not common to the general public
 - a list of all the relevant and material disputed issues of fact, or questions of fact and law

Filing for a CCH and AP status (cont'd)

- What is an Affected Party?

- An affected person is one who has a personal *justifiable interest* related to a legal right, duty, privilege, power, or economic interest affected by the application.
- An interest common to members of the general public does not qualify as a personal justiciable interest.
 - In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person;

Filing for a CCH and AP status (cont'd)

- How do I outline that I am an Affected Party
- Consider the following: see sample Template
 - Proximity (downstream, within x miles) to applicant's fence line and rock crusher
 - Site location on a map and/or using distance markers
 - Address air quality issues and impact on health and quality of life
 - State an interest that is something TCEQ has jurisdiction to protect
 - TCEQ mandated by EPA to follow and enforce permittees to comply with
 - Texas Health and Safety Code
 - Texas Clean Air – Chapter 382
 - Texas Surface Water Quality Standards
- Check statute and rules applicable to that type of permit (there are differences)

Filing for a CCH and AP status (cont'd)

- Identify and discuss any and all ‘nuisance’ factors of the permit which will affect the use and enjoyment of the property and quality of life of the affected person(s)
 - 24/7 operations
 - Noise due to blasting and back up beepers
 - Night lighting – push for compliance with ‘night skies’
 - Water availability when wells pumped dry and have to redrill deeper
 - Water quality concerns, especially as water is rapidly depleted
 - Flooding as the site is located in 100 yr. floodplain, which will be disrupted due to the ‘sponge’ being removed: Land clearing, blasting of limestone structures, removal of limestone structures.
 - Impact of nuisance factors on your ability to enjoy your property: dust in your swimming pool, dust in your vegetable garden, yard upkeep and maintenance which will disturb settled dust, impact on your livestock and/or horses/bees if you are a beekeeper, impact on your livelihood
 - If you home school and are close to the quarry and/or your children attend a school which is in the path of 400+ trucks per day traveling up/down FM 3009

What Happens in a Preliminary SOAH Hearing

- At the preliminary hearing, the ALJ names the parties to the hearing, issues an order setting the discovery and procedural schedule for the case, and gives the parties an opportunity to discuss settlement
- At this hearing, the ALJ has the authority to designate as parties to the case persons whose hearing requests were initially denied by the TCEQ (as long as those persons filed comments).
 - To be designated as a party, you or your representative must appear at the preliminary hearing. You will be expected to attend so you can explain how you are affected by the application in a way that is different from the general public

What Happens in a Preliminary SOAH Hearing

DATE	EVENT
August 10, 2018	Deadline to serve additional discovery requests
August 20, 2018	Deadline to designate expert witnesses and make disclosures under Texas Rule of Civil Procedure 194.2(f)
September 10, 2018	Deadline to complete discovery
September 17, 2018	Deadline for Protestants and OPIC to prefile testimony and exhibits and planned order of witnesses
September 24, 2018	Deadline for ED to prefile testimony and exhibits and planned order of witnesses
August 6, 2018	Deadline for the ED to file prefiled direct testimony and exhibits
October 1, 2018	Deadline for the Applicant to prefile its rebuttal case in writing, including all testimony and exhibits, and planned order of witnesses
October 11, 2018	Deadline to file objections to and motions to strike any prefiled testimony and exhibits. Deadline to file motions for summary disposition
October 18, 2018	Deadline to file to objections to and motions to strike prefiled testimony and exhibits. Deadline to file responses to motion for summary disposition
October 19, 2018	Telephonic Prehearing Conference at 10 a.m, if necessary.
October 22-26, 2018,	Hearing on the merits. This case will be consolidated with 582-18-3933 for hearing. Any pending motions will be addressed at the beginning of the hearing
November 16, 2018	Parties file closing briefs
November 30, 2018	Parties file responses to closing briefs

The parties have agreed to email service.

CALL TO ACTION

YOUR CALL TO ACTION

- **RIGHT NOW...**start working on your ‘personalized’ request for a CCH and Affected Party Status
 - Develop 2 -3 key issues that are germane specifically to you and let us help you identify science, data, rules or regs with which to back it up
 - Write from the heart. **YOU CAN DO THIS!**

OUR CALL TO ACTION

- **More Training and Help: 1:1 meetings to help you complete your CCH and AP requests**
- Bulverde Spring Branch Library, 6 – 7:30 pm.
 - Tuesday, August 28th,
 - Thursday, August 30th
 - Tuesday, September 4th
 - Thursday, September 6th

Key Info To Look Up Project Status

<http://www2.tceq.texas.gov/airperm/index.cfm?fuseaction=airpermits.start>

- County: Comal
 - Region: Region 13
 - Action Status: All
 - Dates: 01/01/2017 to today's date
 - Order by: Company Name
-
- Detail of: **Air New Source Permit 147392L001**
 - For: **ROCK CRUSHING PLANT (RN109829721)**
 - FROM INTX OF HIGHWAY 46 & FM RD 3009 SITE IS L
 - Permit Status: **PENDING**
 - Held by: **VULCAN CONSTRUCTION MATERIALS LLC**
(CN600355465) [View 'Issued To' History](#)
 - **OWNER OPERATOR** Since 06/27/2017 [View Compliance History](#)
 - Mailing Address: PO BOX 791550 SAN ANTONIO, TX 78279 -1550

Questions and Answers

Definitions

- **Response to Comments (RTC):** After the public comment period closes, the TCEQ Executive Director (ED) considers all timely filed comments to determine whether any issues that were raised require changes to the preliminary decision or the proposed permit, and prepares a written response to all relevant comments. The ED's response and decision are sent to the mailing list, including all commenters. This response provides a final 30 -day period* to request a contested case hearing
 - *there is an 'exception' to this that could occur in our case called 'direct referral'. It will be discussed.
- **State Office of Administrative Hearings (SOAH):** an independent agency that conducts hearings for state agencies
- **Administrative Law Judge (ALJ):** presides over the hearing and will consider evidence in the form of sworn witness testimony and documents presented as exhibits.

Definitions (cont'd)

- **§55.210 Direct Referral** The ED or the applicant may file a request with the chief clerk that the application be sent directly to State Office of Administrative Hearings (SOAH) for a hearing on the application.
 - Usually occurs PRIOR to issuance of RTC. We are checking permit status daily
 - **Benefits the Applicant by:**
 - Forgoes public's opportunity to submit a request to be specifically named an affected party. The TCEQ and applicant make the decision based on public comments already made by the commenters.
 - Commenters are NOT notified that they have been named an affected party prior to preliminary hearing.
 - You only know that you are named an affected party by showing up at the Preliminary Hearing. You don't show, you are removed from the list.
 - If not named an affected party at preliminary hearing, you may be given opportunity to present your case to SOAH judge in 3 minutes
 - A decision will be made prior to preliminary hearing concludes
 - By making request for direct referral, it shaves of ~ 30 – 60 days. This process bypasses ability of commenters to make their own request to be considered an AP, as well as bypasses a determination by the 3 Commissioners to agree/disagree to a CCH and the ED to weigh in on who should be considered an AP based on their personal interest request vs their public comment.
- Sample language that will be in the Preliminary Hearing letter: *the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.*

Definitions (cont'd)

- **§80.105. Preliminary Hearing:** After the required notice has been issued, the judge shall convene a preliminary hearing to consider the jurisdiction of the commission over the proceeding.
- After the required notice has been issued, the judge shall convene a preliminary hearing to consider the jurisdiction of the commission over the proceeding, as well as:
 - name the ‘affected parties’
 - If not
 - establish a docket control order designed to complete the proceeding within the maximum expected duration set by the commission (180 days). The order should include a discovery and procedural schedule including a mechanism for the timely and expeditious resolution of discovery disputes
 - A proposed schedule will have already been established. Some negotiation allowed.

Definitions (cont'd)

- **§55.251 Contested Case Hearing (CCH):**

- A contested case hearing is a legal proceeding similar to a civil trial in state district court. Hearings are conducted by the State Office of Administrative Hearings , or SOAH, which is an independent agency that conducts hearings for state agencies

- **Requests for Contested Case Hearing**

- The following may request a contested case hearing under this section:

- (1) the commission = 3 Commissioners;
- (2) the executive director;
- (3) the applicant; and
- (4) “affected persons”, when authorized by law.

- To help the TCEQ determine the number and scope of issues to be referred to a hearing, the *requester* should, to the extent possible, specify any of the ED’s responses to comments by the (#) shown in the RTC, that the requester disputes and the factual basis of the dispute, and also list any disputed issues of law. *It is very important that requesters fully explain—in written comments and responses to briefs—their reasons that an application should not be approved.*

Definitions (cont'd)

- **Contested Case Hearing (CCH):**

- When an application is referred for a CCH, the TCEQ sends SOAH the administrative record, which includes the permit application, the ED's draft permit, and documentation regarding the review of the application and preparation of the draft permit.
- These documents establish a "prima facie" case, meaning that the draft permit meets all state and federal legal and technical requirements, and that the permit, if issued, would protect human health and safety, the environment, and physical property.
- The prima facie case may be rebutted by evidence that demonstrates that at least part of the draft permit violates a specifically applicable state or federal requirement. If there is such a rebuttal, the applicant and the ED may present additional evidence to support the draft permit.

Definitions (cont'd)

- **§55.203 'Affected Persons' (AP):** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
 - In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property* of the person; (**nuisance factors which will impact the quality of the use of your property*)
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person;

Definitions (cont'd)

- **Office of Public Interest Council (OPIC):** Assigned to ‘represent’ the public interest and is an independent party to all agency proceedings. While this office cannot represent any other party, it can provide information to anyone with questions about the legal aspects of the TCEQ's rules, permitting procedures, contested case hearing procedures, and enforcement proceedings.
 - The office's goal is to ensure that all relevant evidence is developed and made part of the record so that the commission may make informed decisions and issue permits that are protective of human health and the environment.
- OPIC considers the following:
 - (1) the extent to which the action may impact human health;
 - (2) the extent to which the action may impact environmental quality;
 - (3) the extent to which the action may impact the use and enjoyment of property;
 - (4) the extent to which the action may impact the general populace as a whole, rather than impact an individual private interest; Texas Commission on Environmental Quality Page 7 Chapter 80 - Contested Case Hearings
 - (5) the extent and significance of interest expressed in public comment by the commission regarding the action;
 - (6) the extent to which the action promotes economic growth and the interests of citizens in the vicinity most likely to be affected by the action;

For our permit, our OPIC assignee is:

Pranjal M. Mehta, Assistant Public Interest Counsel, Office of Public Interest Counsel

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