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Resources for Fighting Problem Trash Facilities in Texas

Overview

If you haven't realized it yet, the Texas Commission on Environmental Quality (TCEQ) which has the biggest role in making decisions about permitting waste facilities, is probably not going to be a big help. While there are some dedicated public servants at the TCEQ, they generally see polluters as their customers and issuing permits as their job. The three Commissioners are appointed by the Governor and are not accountable to the public. Many of the Commissioners and staff leave the TCEQ and go work for the polluters where they get highly paid positions, so they have little incentive to cross potential future employers.

If the entity applying for a permit cannot provide a decent semblance of the required information TCEQ staff can reject the application, but usually they help the applicants fill out the boxes and basic information in the permit. Keep in mind that staff will NOT necessarily check the accuracy of the information. Unfortunately, that often falls to the people in the community to do. Texas law does not make it easy to fight these permits. It is highly advisable to get help from attorneys who are familiar with administrative law early in the process.

Get the Support of Your State Legislators

State legislators do have control of the purse-strings of state government including the TCEQ and can also pass legislation to prevent waste facilities from being built, as well as to make sure that public meetings are held. Securing the support of the state House member and Senator can be critical in these efforts. To find out who represents you, go to: <http://www.fyi.legis.state.tx.us/Home.aspx> and if you have your voter registration card, that can help you narrow it down – or contact TCE Fund and we can determine your legislative districts.

County Siting Ordinances

It can be critical to get the support local officials who are accountable to voters. In Texas, counties **do** have the authority to pass ordinances that place restrictions on where waste facilities can and/or cannot be located in a county.¹ However, they cannot say that there is no place in the County where a waste facility can be located. A number of counties have adopted ordinances including Jack, Palo Pinto, Guadalupe and Travis.² This makes it a politically challenging ordinance to pass, but there are ways around that problem. (TCE Fund can provide you with ideas on this.) In addition, a siting ordinance cannot be retroactive and affect a permit once an application has been submitted to the TCEQ.

Waste permits do have to be considered by the regional Council of Government (COG) for a determination on whether the permit conforms with the regional solid waste plan. Unfortunately, the TCEQ does not have to

¹ Health & Safety Code Sec. 363.112. PROHIBITION OF PROCESSING OR DISPOSAL OF SOLID WASTE IN CERTAIN AREAS. (a) To prohibit the processing or disposal of municipal or industrial solid waste in certain areas of a municipality or county, the governing body of the municipality or county must by ordinance or order **specifically designate the area** of the municipality or county, as appropriate, in which the disposal of municipal or industrial solid **waste will not be prohibited**.

² The DFW area Council of Government assisted its counties in the development of siting ordinances in the past. http://www.nctcog.org/envir/SEELT/reduction/NCTCOG-MSW_Facility_Applications_Final_ReportReviewProcess2005.pdf

abide by the COG's determination, but it can help make a case. (See <http://www.txregionalcouncil.org/> for a map and links to your local COG.)

There are a Variety of Issues that Can Sink a Permit

There are ways for the courts and federal government to play a role in defeating or shaping permits as well. While it can be an uphill fight, there are issues that come up that can make a big difference. One landfill permit was stopped because a railroad complicated the traffic patterns. In another case, there was an endangered species issue. Other possible issues to raise when fighting waste facilities include: mineral rights, land use compatibility, groundwater and surface water pollution controls, accuracy of the permit application including the details on geology and hydrology, problems with the public notice process, adequacy of the financial assurance, adequacy of the Site Operating Plan which govern the day-to-day operations of the facility. However, concerned individuals and groups must raise any issues early in the process.

The TCEQ Website is an Important Source of Information

There is a general page for MSW permits: https://www.tceq.texas.gov/permitting/waste_permits/msw_permits

At this webpage you can:

Search Municipal Solid Waste Database for Facilities, Applications, and Correspondence

Search the TCEQ Chief Clerk's Database for Status of Pending Applications Posted on the Internet³

See the text of correspondence regarding a facility⁴

TCEQ puts out an annual report that has the latest statistics and tables listing all trash facilities, including the expected years remaining on existing individual landfill permits. Check out "Municipal Solid Waste in Texas: A Year in Review."⁵

Enforcement Reports

Find out if there were violations of environmental standards at the facility in your community or others owned by the same permittee: <https://www.tceq.texas.gov/compliance/enforcement/enforcement-reports/annenfreport.html>

Another good national database to check for a wide range of violations by corporations is the Good Jobs First Violation Tracker which is the first national search engine on corporate misconduct.

<http://www.goodjobsfirst.org/violation-tracker>

Groundwater Monitoring Report

Check to see if the facility or any other facility owned by the same permittee have had groundwater contamination issues here: <https://www.tceq.texas.gov/publications/sfr/056>

Commissioner's Integrated Database - This search will show you:

1. Status of pending permit applications declared administratively or technically complete. Also the status of registrations, license applications, enforcement actions, transfers of ownership of facilities and issuance of bonds for water districts, utility and rate services.
2. Comment period deadline, information about whether a contested case hearing has been requested on an item or whether comments have been received. (The TCEQ Office of Public Assistance provides detailed information about scheduled contested case hearings or public hearings.)
3. Whether the item has been set for consideration at the TCEQ Commissioners' Agenda or for the Executive

³ https://www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw_posted_apps.html

⁴ <http://www14.tceq.texas.gov/epic/eCID/>

⁵ https://www.tceq.texas.gov/permitting/waste_permits/waste_planning/wp_swasteplan.html

Director's Agenda.

The URL for this database is: <http://www14.tceq.texas.gov/epic/eCID/>

Making and Tracking Complaints is Crucial to Showing there are issues with the Facility

Even though the TCEQ is notoriously bad at following up on complaints, if there are immediate issues with a facility – odors, windblown trash, lots of scavengers etc., folks should complain to the TCEQ – and if possible gather their own evidence. In addition, lots of MSW facilities are not being inspected on an annual basis and complaints can result in overall inspections. Here's the page with info on doing that:

<https://www.tceq.texas.gov/compliance/complaints/>

Activists should see if others have filed complaints. Track complaints after they have been filed here:

<http://www2.tceq.texas.gov/oce/waci/index.cfm>

Get the Big Picture

Our communities should be passing and implementing Zero Waste goals, not expanding problem trash facilities. There are reports and books that have excellent information on the problems with our current trash system and alternatives that are healthier for our families, communities and planets. Highly recommended reading:

Eco-Solutions Hub has great information about organizing for Zero Waste. Check out:

<http://ecocyclesolutionshub.org/> and in particular download the complete Community Zero Waste Roadmap here: <http://ecocyclesolutionshub.org/how-to-get-there/community-zero-waste-roadmap/>

“Stop Trashing the Climate” at www.stoptrashingthecolimate.com

Garbage Land: On the Secret Trail of Trash by Elizabeth Royte

Gone Tomorrow: The Hidden Life of Garbage by Heather Rogers

You can get lots of great ideas on implementing Zero Waste here:

<http://www.austintexas.gov/department/zero-waste-2040>

www.zerowasteurope.eu/2013/09/the-story-of-capannori-a-zero-waste-champion/

Organizing Resources

Learn how to plan and run meetings, do media, fundraise, put pressure on companies and the officials more effectively. Use existing organizing resources, such as The Good Neighbor Campaign Handbook⁶, Organizing for Social Change - Midwest Academy Manual for Activists⁷.

Other great websites include:

Center for Health, Environment and Justice: <http://chej.org/organizing-and-leadership/>

Environmental Research Foundation www.ejnet.org/landfills/ which covers The Basics of Landfills

Legal Assistance

Get knowledgeable legal help early. Fighting problem trash facilities is a very specialized field of the law. Ask TCE Fund for ideas on law firms that have experience working with community groups and neighboring property-owners on problem trash facilities.

⁶ <http://www.ohiocitizen.org/about/finalinside.pdf>

⁷ <http://www.midwestacademy.com/manual/>