

## **TCEQ Changes Needed**

**Summary:** To facilitate public participation, and maintain authority over federal permitting programs, Texas must allow full participation by all persons who will be personally impacted by a permit, while requiring an applicant to demonstrate that a permit meets all legal requirements.

- **TCEQ's permitting process bars full participation and judicial review by many personally impacted persons.**

In deciding who can be granted a hearing on a permit application, TCEQ often applies unwritten "rules of thumb," such as requiring that a person own property within 1 mile downstream of a discharge to be granted a hearing on a wastewater permit. TCEQ also fails to recognize interests that federal law recognizes, such as the interest of a person who regularly fishes or swims in an area. Since being granted a hearing is a requirement for a person to seek judicial review, these limits on who can obtain a hearing create an obstacle to judicial review for many people who are personally impacted by a permit, and are entitled to judicial review under federal law. Texas also limits participation by requiring that the public demonstrate that a contested permit should be denied, rather than requiring an applicant to demonstrate that the permit should be granted.

- **These limits exclude persons who should have greater input.**

As a result of the limits imposed on public participation, persons who own land downstream of a wastewater discharge, for example, can be excluded if they happen to be more than a mile downstream. Additionally, people who depend on an impacted natural resource for their livelihood (such as commercial fishermen) are kept from fully participating in decisions that will greatly impact their well-being.

- **These limits violate federal law, and risks Texas losing authority over its permitting programs.**

Several of Texas' permitting programs, including most air and water permits, are governed by minimum federal procedural requirements. One procedural requirement is that a state provide the same opportunity for judicial review as the federal system. Another is that the applicant be required to prove it complies with all legal requirements. By creating property ownership requirements, and not recognizing non-property interests such as commercial fishing, Texas does not meet the minimum requirements of federal law. In response to a citizens' petition, EPA is currently investigating these deficiencies, and would have the authority to revoke Texas' implementation of these programs on this basis.

- **These problems should be fixed.**

The Texas Legislature has an opportunity to correct these problems. It should act to ensure that all who are personally impacted by a permitting decision can fully participate at the agency, and in judicial review. It should also properly place the burden on the applicant to demonstrate that a contested permit should be issued. If these corrections are not made, EPA may require these changes if Texas wants to avoid losing its authority over many of its permitting programs.