

A Review of

Selected Permitting Processes and Activities:

Department of Commerce,
Alcoholic Beverage Commission, and
Railroad Commission



Office of the State Auditor
Lawrence F. Alwin, CPA

October 1994

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Members of the Legislative Audit Committee:

Our review of permitting processes identified opportunities for improving the dissemination of permitting information at the Texas Department of Commerce and for streamlining permitting processes at the Alcoholic Beverage Commission and the Railroad Commission. In particular, we noted the following:

- Statutory changes could be made to enable the Department of Commerce to provide more timely and accurate permitting information.
- Procedural and statutory changes at the Alcoholic Beverage Commission could reduce permit processing time by three days (potentially increasing gross receipts for new businesses by \$6.3 million), increase state revenue by approximately \$147,000, and decrease operating expenditures by \$105,000.
- Procedural and statutory changes at the Railroad Commission could encourage oil and gas operators to pay their unpaid fines totaling over \$800,000 and improve the efficiency of permitting processes within the Oil and Gas Division.

At the beginning of our review of permitting activities, we identified 84 state agencies that issue 836 different types of permits. We hoped to identify a model for and make recommendations relating to a one-stop permitting process for the State. After obtaining information from other states and cities, we found no indication that one-stop permitting had been achieved by government organizations. However, some levels of government, including the Texas Department of Commerce and several Texas cities, do provide a central location for dissemination of permitting information.

Government Code, Section 481.123 required the State Auditor to initiate a business permit reengineering review process involving all state agencies. The purpose of the review was to make recommendations for eliminating, consolidating, simplifying, expediting, or otherwise improving permit procedures affecting business enterprises. After concluding that the complexity of Texas' permitting requirements and regulatory efforts precluded one-stop permitting, we focused our work on identifying ways to improve business permitting processes within specific agencies.

Management of agencies responding to this report generally agreed with our recommendations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence F. Alwin".

Lawrence F. Alwin, CPA
State Auditor

LFA:asc

Key Points Of Report

A Review of Selected Permitting Processes and Activities: Alcoholic Beverage Commission, Railroad Commission, and Department of Commerce

October 1994

Key Findings

- The Texas Department of Commerce, which is designated to facilitate and coordinate the state permitting and licensing process, generally provides satisfactory permitting services. However, statutory changes could improve the dissemination of permitting information by the Department.
- Changes in the Alcoholic Beverage Commission's permitting and licensing processes could reduce processing time by three days (potentially increasing gross receipts of applicants by \$6.3 million a year), increase state revenue by \$147,000 per year, and reduce the agency's annual operating expenditures by \$105,000.
- While the Railroad Commission processes permitting applications without unnecessary delay in most divisions, certain procedures could be streamlined in the Oil and Gas Division. Due to the limitation of existing state statutes, at least 45 oil and gas operators with unpaid fines totaling over \$800,000 continue to do business in the State.
- In Texas, 84 state agencies issue 836 types of permits and licenses.

Contact:

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Table of Contents

Executive Summary	1
--------------------------------	---

Texas Department of Commerce

Section 1:

Beneficial Permitting Services Are Provided but Improvements Could Be Made	5
---	---

The Comprehensive Permit Handbook (<i>The Permit Guide</i>) Prepared by The Department Should Be Discontinued	5
---	---

State Agencies Should Be Required to Maintain Up-To-Date Permitting Information in TexasOne, the State's Electronic Information System	6
--	---

Alcoholic Beverage Commission

Section 2:

Enhanced Processing and Statutory Changes Could Decrease Permit Processing Time, Increase State Revenue, and Reduce the Commission's Operating Expenditures While Strengthening Enforcement	7
--	---

Parallel Processing of Permits Could Decrease Processing Time by 3 Days per Application, Thus Potentially Increasing Gross Receipts by \$6.3 Million For Businesses Applying for Permits	8
--	---

State License Fees for Beer and Wine Paid Directly To the State Rather than to Counties Could Increase State Revenue by \$147,000	11
---	----

Greater Reliance on the Work of Field Office Personnel And Reduction of Unnecessary Paperwork Could Decrease Annual Operating Expenditures By \$51,000	11
--	----

Table of Contents, continued

Making Statutory Changes to Streamline Licenses and Coordinating Renewal Dates Could Reduce Operating Costs by \$40,000	13
Updating the Automated System Would Increase Timely Processing and Reduce Operating Expenditures of \$13,000	14
The Commission Should Perform Background Checks As Mandated and Perform Additional Criminal History Checks To Strengthen Enforcement	15

Railroad Commission

Section 3:

License Applications Are Processed Without Unnecessary Regulatory Delay in Most Divisions, But Certain Procedures Could Be Streamlined in the Commission's Oil and Gas Division	16
--	-----------

At Least 45 Oil and Gas Operators with Unpaid Fines Totaling over \$800,000 Continue to Do Business in The State	17
--	----

An Uncontested Injection/Disposal Well Permit Can Take up to Three Months to Be Issued	18
--	----

Depending on the Area of the State, from 12 to 80 Percent of Texas Natural Resource Conservation Commission Water Letters Could Be Eliminated	20
---	----

Commissioners' Review of Unprotested Requests for Rule 38 Exceptions Adds 10 to 12 Days to the Permit Process	21
---	----

Section 4:

Information Request from the Senate Natural Resources Committee	23
--	-----------

Table of Contents, concluded

Appendices:

1 - Objective, Scope, and Methodology	31
2 - Agency Profiles	
2.1 - Agency Profile: Department of Commerce	33
2.2 - Agency Profile: Alcoholic Beverage Commission	34
2.3 - Agency Profile: Railroad Commission	36
2.4 - Agency Profile: Texas Natural Resource Conservation Commission	37
3 - Summary of Recommended Statutory Changes	38
4 - Management Responses from Texas Natural Resource Conservation Commission	39

Executive Summary

Our review of permitting processes identified opportunities for improving the dissemination of permitting information at the Department of Commerce and for streamlining permitting processes at the Alcoholic Beverage Commission and the Railroad Commission. These changes could increase state revenues, decrease state operating expenditures, encourage the collection of unpaid fines, and potentially increase gross receipts for businesses receiving permits sooner.

The State Auditor was mandated to initiate a business permit reengineering review process involving all state agencies. The purpose of the review was to make recommendations for eliminating, consolidating, simplifying, expediting, or otherwise improving permit procedures affecting business enterprises.

At the beginning of our review of permitting activities, we identified 84 state agencies that issue 836 different types of permits. While 84 state agencies issue permits, individual businesses are generally required to deal with a comparatively small number of these agencies. For example, the Texas Department of Commerce's business start-up check list directs potential businesses to contact up to six state agencies for state permits and regulatory requirements.

What is considered a permit?

A "permit" means any license, certificate, registration, permit, or other form of authorization required by law or state agency rules to be obtained by a person in order to engage in a particular business but does not include a permit or license issued in connection with any form of gaming or gambling. (Government Code Sec. 481.121)

We hoped to identify a model and make recommendations for a one-stop permitting

process for the State. (One-stop permitting means a central location where applicants could obtain all necessary permits.) After obtaining information from other states and cities, we found no indication that one-stop permitting had been achieved by government organizations. However, some levels of government, including the Texas Department of Commerce and several Texas cities, do provide a central location for dissemination of permitting information.

After concluding that the complexity of Texas' permitting requirements and regulatory efforts precludes one-stop permitting at the state level, we focused our work on identifying opportunities to improve business permitting processes within specific agencies. Our selection of agencies reviewed was based upon the number of permit types issued, the impact of the regulated industry on the Texas economy, the extent of previous reviews on the agency's permitting processes, and the impact of the agency's activities on the permitting processes of other agencies.

We selected the Alcoholic Beverage Commission and the Railroad Commission because of the number of permit types issued and their impact on the State's economic development. We also included the Department of Commerce because of its designation as the central agency to facilitate and coordinate permitting within the State. Finally, we addressed specific issues raised by the Senate Natural Resources Committee relating to the permitting processes at the Texas Natural Resource Conservation Commission.

The Department of Commerce provides satisfactory permitting services. However, the following improvements could be made:

- The comprehensive permit handbook (*The Permit Guide*) prepared by the

Executive Summary

Department should be discontinued because more timely and accurate information is available through the Department's data base.

- State agencies should be required to maintain up-to-date permitting information in TexasOne, the State's electronic information system, so that applicants accessing the system receive current information.

Our review of the Alcoholic Beverage Commission's (Commission) licensing process identified opportunities to reduce licensing processing time by an average of three days, increase state revenue by approximately \$147,000, and save the Commission approximately \$105,000 in operating expenditures. Specifically, we noted the following areas for improvement in the Commission's licensing process:

- Parallel processing within the Commission could decrease processing time by an average of three days per application, resulting in a potential increase of \$6.3 million in gross receipts for businesses applying for permits.
- State beer and wine license fees paid directly to the State rather than to counties could increase state revenue by \$147,000, even with the hiring or reassignment of three people to collect these fees.
- Making statutory changes to streamline licenses and coordinating renewal dates could reduce operating costs by \$40,000.
- The Commission could reduce operating expenditures by approximately \$51,000 if the main office did not duplicate the work of the field offices and reduced unnecessary paperwork.

- The Commission could further reduce application processing time and operating expenditures by confining their requests for additional information from applicants to only that information that is essential to the processing of the application.
- Updating the automated license system would increase timely processing and reduce operating expenditures by \$13,000. The automated license system uses only one identifier (last name) rather than multiple identifiers (driver's license and social security number) which means additional manual work for main office personnel.
- The Commission could strengthen enforcement by performing all mandated background checks and additional checks as well. The Commission does not check spouses for illegal interests nor inquire about applicants' legal residency. Also, it does not re-perform a criminal history check on applicants applying for a renewal license.

Our review of the Railroad Commission revealed no unnecessary regulatory delay. However, we did identify the following opportunities for improvement in the permitting processes within the Oil and Gas Division:

- At least 45 oil and gas operators with unpaid fines totaling over \$800,000 continue to do business in the State.
- An injection/disposal well permit takes up to three months to be issued if no hearing is required and up to nine months if a hearing is required.
- Depending on the area of the State, 12 to 80 percent of Texas Natural Resource

Executive Summary

Conservation Commission water letters could be eliminated which would save applicants up to four days in processing time. Some of these water letters could be eliminated due to water depth information the Railroad Commission and Texas Natural Resource Conservation Commission already have.

- Commissioners' review of unprotested requests for Rule 38 exceptions adds 10 to 20 days to the process. Rule 38 sets limits on the number of wells that can be drilled in a given area.

Summary of Management's Responses

Management of the agencies responding to this report generally concurred with our recommendations. Management's specific responses are included following each of our individual recommendations. The responses from management of the Texas Natural Resource Conservation Commission are included in Appendix 4.

Summary of Audit Objective and Scope

The objective of this audit was to evaluate permitting processes within the State and to make recommendations for eliminating, consolidating, simplifying, expediting, or otherwise improving permit procedures affecting business enterprises.

The scope of the audit included examining the role of the Texas Department of Commerce, the coordinating agency within the State for business permitting, and the permitting functions at the Texas Alcoholic Beverage Commission and the Texas Railroad

Commission. In addition, we reviewed permitting processes at the Texas Natural Resource Conservation Commission for the purpose of answering specific questions from the Senate Natural Resources Committee.

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Texas Department of Commerce

Section 1:

Beneficial Permitting Services Are Provided but Improvements Could Be Made

The Department is mandated (Government Code Sec. 481.123) to facilitate the permitting process. The Department provides several permitting services to achieve that mandate. It distributes a comprehensive application packet to applicants, dispenses permitting information and answers to specific questions over a 1-800 telephone line, and maintains a data base that applicants can access by computer. However, we identified the following opportunities for improvement:

- The comprehensive permit handbook (*The Permit Guide*) prepared by the Department should be discontinued.
- State agencies should be required to maintain up-to-date permitting information in TexasOne, the State's electronic information system.

Our review of the Department included surveying five different groups who are involved with some aspect of permitting. The five groups included chambers of commerce, small business development centers, state regulatory agencies, individual users of the Department's services, and potential users who started a business and may or may not have used the Department's services.

Survey responses received from chambers of commerce, small business development centers, and state regulatory agencies who are knowledgeable about department services indicate a satisfaction with those services (i.e. the Texas Marketplace Bulletin Board system and the comprehensive application packet). We did not use the survey results from either of the last two groups because those groups did not meet our targeted survey response rate of at least 55 percent.

Section 1-A:

The Comprehensive Permit Handbook (*The Permit Guide*) Prepared by the Department Should Be Discontinued

The comprehensive permit handbook should be discontinued because more timely and accurate permit information is available through the Department's data base. The Department is mandated (Government Code Sec. 481.125) to compile a comprehensive list of all state permits required of a person desiring to operate a business enterprise in the State. The Department is required to make the handbook

available to: persons interested in establishing a business enterprise, public libraries, educational institutions, and the state agencies listed in the handbook. In response to the mandate, the Department publishes *The Permit Guide*, a comprehensive listing of permits and licenses, state agencies that issue licenses, and general information a person in business needs. Information in the handbook may become outdated because it is published only every two years.

Recommendation:

We recommend that the statute requiring the Department to publish a comprehensive permit handbook be eliminated.

Management's Response:

We concur.

Section 1-B:

State Agencies Should Be Required to Maintain Up-To-Date Permitting Information in TexasOne, the State's Electronic Information System

The Department is converting all permit information from Texas Marketplace onto the new TexasOne electronic information system which can be accessed by computers through the Internet. The Department has been maintaining an additional data base of permit information apart from that on Texas Marketplace. The Department has indicated that combining all data on TexasOne would create an extensive, user-friendly, and expeditious way for businesses to acquire permit and license information. TexasOne, jointly operated by the Department of Commerce and the Department of Information Resources, will link computer bulletin boards of several agencies.

Currently, state agencies are contacted twice annually by the Department to update permit and license information but this often becomes outdated quickly. If agencies updated all relevant data on-line, users could have immediate access to current permit information such as contact persons, costs, and required processes. This would require agencies to provide timely updates for permit information maintained on TexasOne.

Recommendation:

We recommend that agencies that issue licenses and permits be required by statute to maintain current permitting information for their agency in TexasOne.

Management's Response:

We concur.

Alcoholic Beverage Commission

Section 2:

Enhanced Processing and Statutory Changes Could Decrease Permit Processing Time, Increase State Revenue, and Reduce the Commission's Operating Expenditures While Strengthening Enforcement

Enhancements to the Alcoholic Beverage Commission (Commission) licensing process and statutory changes could reduce licensing time by an average of three days, increase state revenue by approximately \$147,000, and save the Commission approximately \$105,000 in operating expenditures. In addition, the reduced licensing time could potentially increase gross receipts for businesses that apply for permits by \$6.3 million a year, based on total gross receipts for 1993.

Figure 1

Summary of Revenue Enhancements and Cost Savings at the Commission

Description	Increase/ (Decrease) in Full-time Equivalents (a)	Amount of Revenue Enhancement and Cost Savings
INCREASED REVENUE		
Increased state revenues by collecting beer and wine license fees at state level	3.0	\$ 146,770
REDUCED EXPENDITURES (b)		
Streamlined Processing	(1.5)	(c) 51,180
Streamlined Licenses	(1.5)	40,065
Automation	(0.5)	13,355
Subtotal for reduced expenditures	(3.5)	\$104,600
NET TOTAL	(0.5)	\$251,370

- (a) Efficiencies are expressed in FTEs to indicate a reduction in staffing or a reallocation of resources to make better use of personnel. The FTEs are based on revised procedures and the hours related to performing those procedures. One FTE represents 1,800 hours, based on 50 weeks per year and 36 hours per week.
- (b) Based on an average of the agency administrative technician's salaries and benefits of \$26,710.
- (c) Based on 1.5 FTEs salary and benefits + \$11,115 in annual savings for office supplies and postage.

Section 2-A:

Parallel Processing of Permits Could Decrease Processing Time by Three Days per Application, Thus Potentially Increasing Gross Receipts by \$6.3 Million for Businesses Applying for Permits

The Commission could reduce application processing time by an average of three days which could result in a potential increase of \$6.3 million in gross receipts for new applicants. The \$6.3 million represents the number of new permit applicants (5,252 for fiscal year 1993) multiplied by the average daily beer/wine and mixed beverage gross receipts (\$400) multiplied by three days. Because applicants would be able to open their doors an average of three days earlier, they would be able to increase their sales (gross receipts) by at least \$6.3 million, provide jobs earlier, and begin paying sales taxes earlier. Under current procedures (see Figure 2), the Commission begins the licensing process in the field offices; the total process takes approximately 4 to 6 weeks.

Final processing is done at the main office and takes an average of 4.5 days. This average excludes permits that are processed in excess of seven days because, generally, those permits are delayed due to applicant errors, need for additional information, or protests. Most of the processing at the main office could be performed simultaneously with the processing by the field offices and local governments. Only the last 1.5 days of main office processing must be performed after all other processing is completed. By performing most of the main office processing parallel with processing by the field offices and local governments, an average of three days would be eliminated from the total processing time. (See Figure 3.)

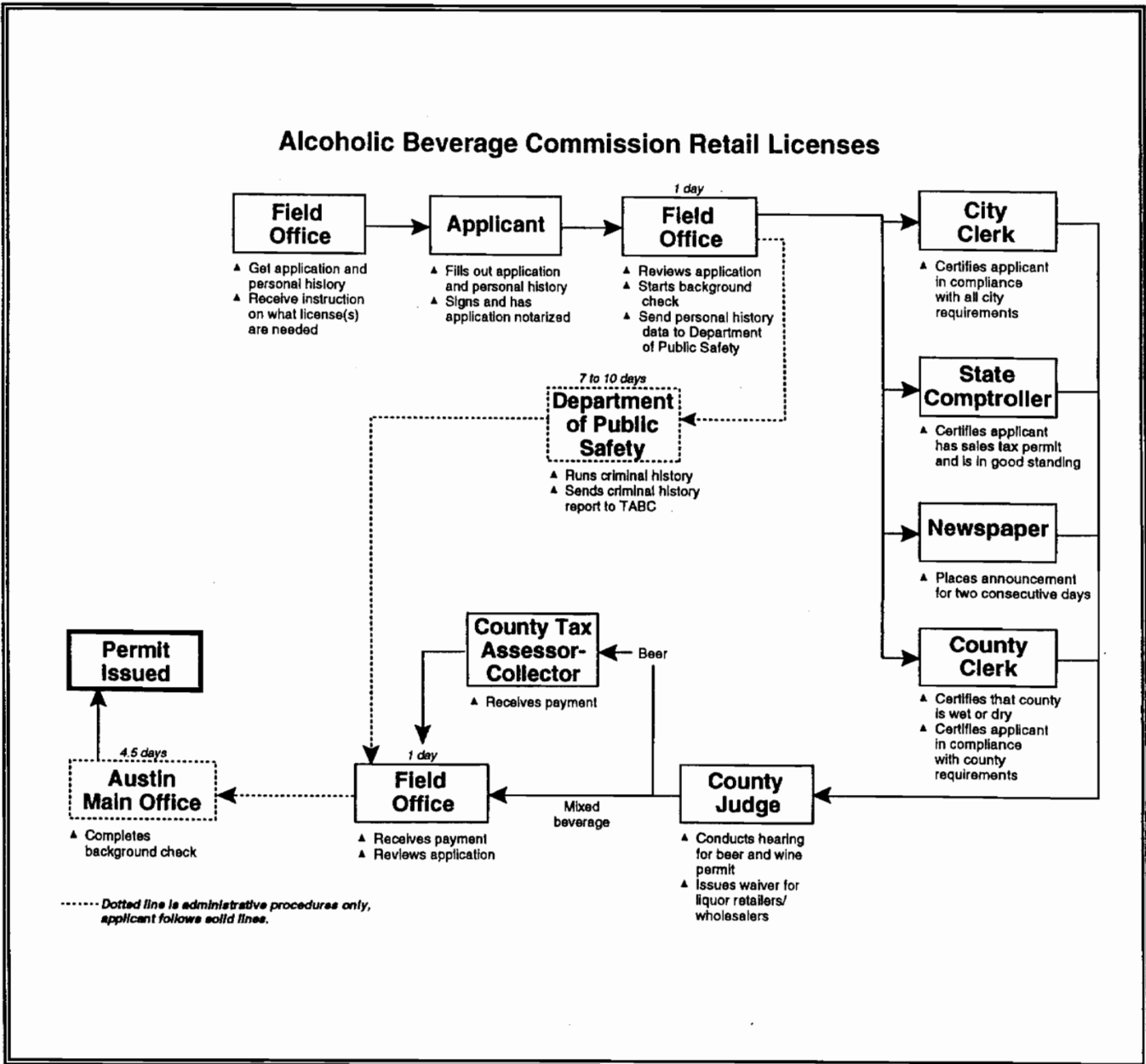
Recommendation:

We recommend that the Commission replace the current sequential processing of license applications with parallel processing. The Commission's main office should begin processing the applications at the same time that field offices and local governments are processing the applications, as shown in Figure 3.

Management's Response:

The Commission will consider parallel processing and all other recommendations that may reduce the length of time for processing an application; however, the agency cannot agree with the auditors' assumptions made in reaching their conclusion.

Figure 2
Texas Alcoholic Beverage Commission's Current Process



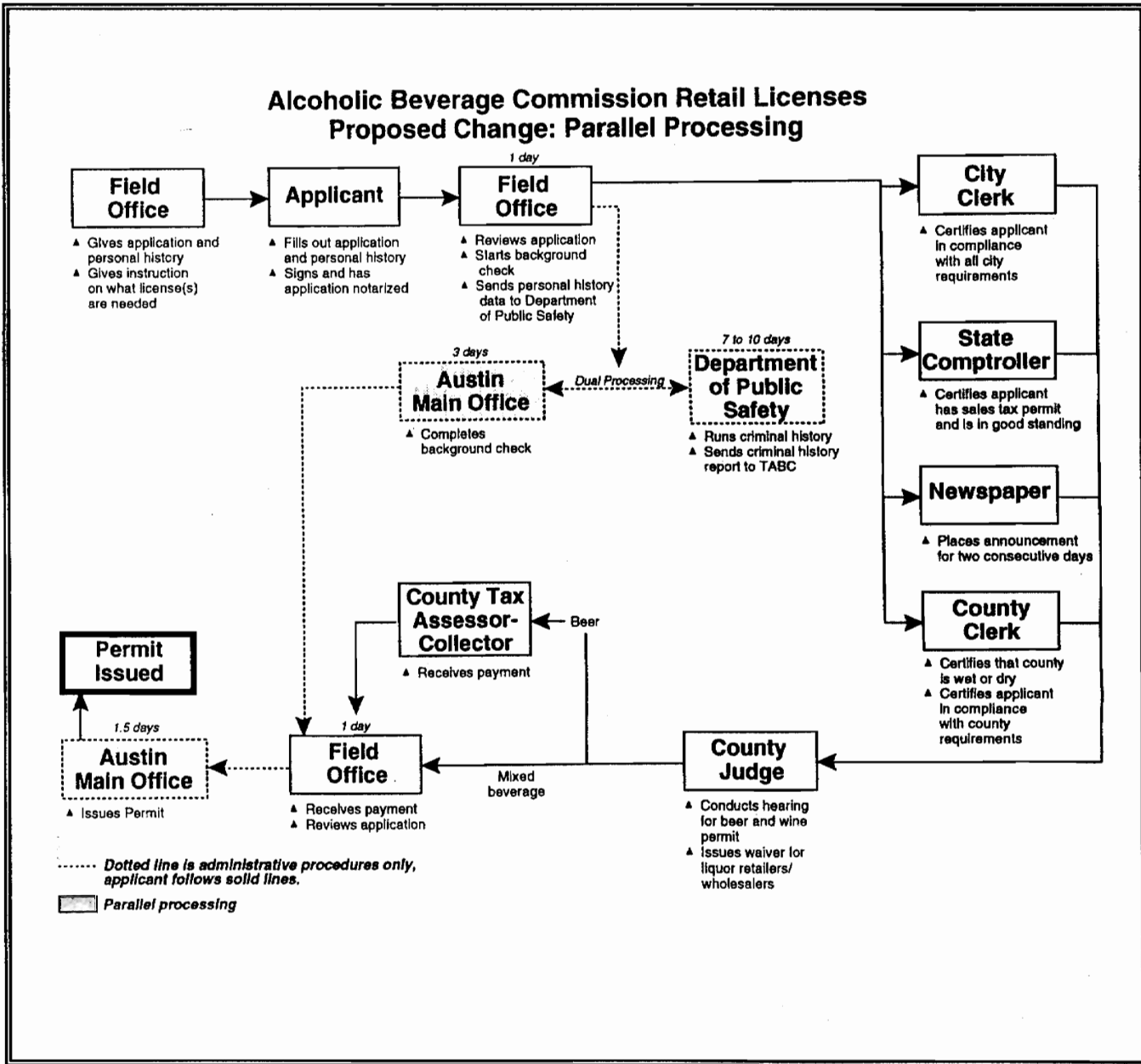


Figure 3
Texas Alcoholic Beverage Commission's Proposed Process

Section 2-B:

State License Fees for Beer and Wine Paid Directly to the State Rather than to Counties Could Increase State Revenue by Approximately \$147,000

State fees for liquor permits are paid directly to the State, whereas state fees for beer and wine licenses are collected by the counties and forwarded to the State on a monthly basis. The State pays counties a five percent rebate for collecting state fees along with county fees. Counties collected beer and wine fees amounting to \$4.3 million for the State in fiscal year 1993. Based on state fees paid to the counties in fiscal year 1993, the State could increase annual state revenue as follows:

Amount of 5 percent rebate paid to counties, plus additional interest earned by State	\$ 226,900
Less: cost of personnel needed to collect state fees for beer and wine licenses	<u>(80,130) *</u>
Annual Increase in State Revenue	<u>\$ 146,770</u>

* Estimated three additional positions at an average salary and benefits of \$26,710 each.

Recommendation:

We recommend that the Commission seek statutory change that would allow the State to collect beer and wine fees directly from applicants, rather than having the counties collect the fees and forwarding them to the Commission.

Management's Response:

This is certainly an alternative to the current statutory requirement; however, some consideration must be given to the needs of the taxpayer and potential increase in license cancellations due to failure to pay city/county fees.

Section 2-C:

Greater Reliance on the Work of Field Office Personnel And Reduction of Unnecessary Paperwork Could Decrease Annual Operating Expenditures by \$51,000*

* (This amount represents savings of FTEs based on eliminated procedures and the hours required to perform them plus \$11,115 in annual savings for office supplies and postage.)

The Commission can reduce its annual operating expenditures by \$51,000 by not duplicating work of its field offices and reducing the number of non-compliance

letters sent by the main office. The Commission spends over \$985,000 annually for administrative personnel in the field offices to process license and permit applications. However, the Commission duplicates their work in the main office and does not provide them with procedure manuals. The field offices check applications for completeness, review license locations for other active licenses, and conduct background checks on the applicants for illegal interests. The Commission's main office duplicates the work of the field office by repeating these same checks and entering some of the same applicant data already entered at the field office.

In fiscal year 1993, the Commission sent 16,225 non-compliance letters either directly to applicants or via the field offices. Our review of a sample of non-compliance letters sent by the main office between January 1, 1992, and June 14, 1994, disclosed that approximately 46 percent of the letters could have been avoided. For example, the main office requested information available elsewhere in the applicant's file or which did not affect an applicant's qualification to hold a license, such as a lack of a telephone number or the misspelling of a middle name. For original applications, unnecessary letters caused an average delay of 7.4 days. In financial terms, such a delay represents an approximate loss of \$3,000 in gross receipts per applicant. The \$3,000 represents the average delay of 7.4 days caused by a correction letter multiplied by the average daily beer/wine or mixed beverage gross receipts (\$400).

Recommendation:

We recommend that the Commission develop and implement standard procedures so it can rely more on field office work and eliminate duplicate procedures at the main office. The Commission should provide better training for field office personnel and provide them with a procedure manual. To target further training, the Commission may want to identify field offices which have the highest number of non-compliance letters due to incomplete or incorrect applications. Lastly, the Commission should focus on what application data is essential and non-essential to effective regulation and eliminate non-compliance letters concerning the latter.

Management's Response:

The Commission will implement all reasonable recommendations which do not jeopardize the integrity of our licensing function to eliminate duplication. Any savings generated would be appropriately required in the area of additional training.

Section 2-D:

Making Statutory Changes to Streamline Licenses and Coordinating Renewal Dates Could Reduce Operating Costs by \$40,000*

* (This amount represents savings of 1.5 FTEs based on eliminated procedures and the hours required to perform them.)

In December 1992, the Legislative Budget Board recommended that the Commission re-evaluate whether the current number and classification of licenses and permits (58) are necessary to maintain effective regulation of the industry and that the Commission report their findings to the 74th Legislature. Although the Commission had not begun its evaluation at the time of our review, with the help of the Commission, we identified the following specific licensing issues that would further support Legislative Budget Board recommendations and reduce operating costs by at least \$40,000:

- In fiscal year 1993, the Commission issued 16,273 agents' licenses that it feels are no longer needed. Eliminating agents' licenses would reduce related staffing and administrative costs.
- Liquor store owners must have two separate licenses and complete two separate applications to sell beer, wine, and liquor; yet, a retailer of mixed beverages can sell all alcoholic beverages with one application and one license.
- Beer distributors do not need a separate license to transport beer within the State, but liquor wholesalers, package stores, and wine-only package stores do.
- A newly created tasting permit applies to package stores only. The permit costs \$30 and could easily be combined with the package store permit.
- Several application forms apply to the 58 licenses and permits. Most application forms require identical information and supporting documentation. Some duplication unnecessarily lengthens the applications. For example, if the holder of a mixed beverage permit wants to operate during late hours, the city secretary or county clerk must certify the same application twice.

In addition to the need to eliminate, redefine, or consolidate certain licenses, as per the examples above, we also noted a need for a new type of license. Currently, temporary permits are generally issued to applicants who already have a primary license to sell alcoholic beverages. However, two groups of applicants who do not yet hold a license would also benefit from a temporary permit: (1) people who have bought an existing business and need a new license or permit in their own name to continue operations uninterrupted and (2) businesses that have scheduled a grand

opening but have not yet received their initial licenses. If such a license were adopted by the Legislature, the Commission would need to monitor such licenses to avoid abuse.

Further streamlining could also include coordinating renewal applications. Last year, there were 59,155 renewal applications, over 75 percent of the total number of applications processed by the main office. Coordinating renewal dates would reduce annual renewals by 10,000 applications, further reducing staffing needs. Under current procedures, multiple licenses at a single location are reviewed separately according to its renewal date. Although coordinating renewal dates is a current option for applicants under the Alcoholic Beverage Code, the Commission does not routinely communicate this option to licensees.

Recommendations:

We recommend that the Commission evaluate and report to the Legislature on the need for the number and types of licenses, as recommended by the Legislative Budget Board. Furthermore, the Commission should evaluate licensing procedures, such as consolidating renewals dates. We have provided some examples of areas for consolidation and simplification, but we believe that the Commission can identify additional areas for efficiencies and cost savings. In no situation do we advocate a reduction in fees due to any consolidation or simplification. In fact, the Commission should exercise extreme care to ensure that no revenue loss occurs inadvertently due to any legislation to consolidate or simplify.

Management's Response:

The Commission agrees with the recommendation concerning the need for the number and types of licenses.

Section 2-E:

Updating the Automated System Would Increase Timely Processing and Reduce Operating Expenditures by \$13,000*

* (This amount represents the savings of .5 FTE, based on eliminated procedures and the hours required to perform them.)

The automated license system was designed in 1985 to assist the manual system in reviewing amendments, renewals with changes, and all original applications for potential tier violations. The system was designed to search for only the last name because other identifiers were not required of applicants. Although the Commission has required and captured multiple identifiers (e.g., driver's license number, social security number) in its data base since 1990, the automated system has not been updated to use these identifiers. The use of just one identifier has created additional

manual work for the processors by generating long lists of names which must be reviewed to identify the applicant.

Recommendation:

We recommend that the Commission revise its program code to sort and search multiple identifiers for applicants. An exception or variance report can be designed to quickly identify any problems that require investigation. This recommendation would significantly reduce the wasted time of manually searching for all similar names. More importantly, multiple identifiers can provide a more thorough and comprehensive approach to search the Commission data base for potential illegal interests.

Management's Response:

We concur with the recommendation.

Section 2-F:

The Commission Should Perform Background Checks as Mandated and Perform Additional Criminal History Checks to Strengthen Enforcement

Our review of the state process noted that the following mandatory checks are not being performed:

- Illegal interests of a spouse are grounds for denying a license, yet the Commission does not check spouses for illegal interests. Illegal interests refer to a violation of the strict separation between the manufacturing, wholesaling, and retailing levels of the industry. Currently, the Commission requires an applicant to provide information on a spouse but completes only a criminal history check. The Commission performs a criminal history check to determine if there was a previous criminal conviction or deferred adjudication that might indicate that the applicant is not qualified for a license or permit.
- Lack of legal residency in Texas is grounds for a mandatory denial of a license but applications do not inquire about legal residency. Currently, the Commission falsely assumes that an individual with a Texas address for over one year is a current legal resident. Such an assumption proves little more than an applicant was domiciled at an address rather than as a legal resident.

In addition to the mandatory checks, the Commission could further strengthen enforcement by conducting criminal history checks on applicants at renewal time. The Commission routinely does a criminal history check when applicants first apply

for a license, but it relies on the applicants' written testimony that they have no criminal history at each renewal date. An automated criminal history check at renewal time would provide a more thorough check.

Recommendation:

We recommend the Commission include checks on spouses for illegal interests. Such a check would incur a nominal change in process but would provide the necessary assurance that the applicant is in compliance with statute. Furthermore, we recommend that the next time the Commission revises its applications that it include a question and/or request for documentation of legal residency.

We also recommend the Commission perform an automated criminal history check at renewal time for all licensees. The Commission can easily download a tape each month and send it to the Department of Public Safety. This process is similar to one they undertake with original applications. The Commission might consider an additional fee to recover the cost of processing the criminal history checks by the Department of Public Safety.

Management's Response:

Although this recommendation goes beyond the scope of "improving permit procedures affecting business enterprises", the Texas Alcoholic Beverage Commission accepts the recommendation and will explore with the Department of Public Safety their ability to handle this increase in request for criminal histories though we do not necessarily agree with the conclusions reached by the audit staff.

Railroad Commission

Section 3:

License Applications Are Processed Without Unnecessary Regulatory Delay in Most Divisions, but Certain Procedures Could Be Streamlined in the Commission's Oil and Gas Division

Overall, our review of the Railroad Commission revealed no unnecessary regulatory delay. In particular, we observed no opportunities for streamlining permitting processes within the Transportation, Liquid Petroleum Gas, and Surface Mining and Reclamation Divisions. However, we identified some areas for improvement relating to the Oil and Gas Division.

Section 3-A:

At Least 45 Oil and Gas Operators with Unpaid Fines Totaling over \$800,000 Continue to Do Business in the State

At least 45 oil and gas operators with unpaid fines totaling over \$800,000 continue to do business in the State. Under a newly revised section of the Natural Resource Code, no applicant with an outstanding unpaid fine within the last five years can obtain a new drilling permit, without first paying their fine. Despite the revised code, the requirements do not extend to other permits and agency filings. For example, 80 percent of permits to operate an injection/disposal well do not require a companion drilling permit and anyone taking over an existing well can do so without being checked for outstanding fines. In addition, operators have found a way of circumventing the requirements for well permits by getting other operators to obtain the drilling permits for them or by starting a new company. During the first six months of 1993, for example, operators owing \$31,000 in fines obtained drilling permits using these means to circumvent the check for outstanding fines.

Recommendation:

We recommend that the Natural Resource Code be amended to require the Commission to check for unpaid fines for all permits issued by the Oil and Gas Division, not just drilling permits. Furthermore, the amendment should also apply to any individuals or organizations filing a notice for taking over an existing well (P-4 Form). In the long run, this recommendation could reduce enforcement costs at the Commission and the number of wells plugged at state expense.

Management's Response:

The current law, which dates from 1991, denies a drilling permit to operators in this category and puts heavier financial assurance requirements for the renewal of their organization report. This is a great incentive for operators to put their property in compliance with Railroad Commission rules, pay penalties, and reimburse the state for cleanup costs. However, the state law does not require operators with outstanding fines to cease all operations. When this legislation was passed in 1991, the Commission sought the authority to shut-down operations until the fines were paid, however, this part of our legislative package was not successful. It only prevents them from getting new drilling permits. The Commission believes that extending similar requirements to all permit applications will further ensure compliance with Commission rules and orders. Therefore, the Commission will consider proposing the necessary legislation to amend the Natural Resources Code to give this agency additional options in this area. At this time, we are doing everything possible under the current law to pursue compliance with our rules and orders. We would point out that piercing the corporate veil is very difficult. It is not unusual for companies we are pursuing for violations to vanish, then reappear under a different person's name, for example, a different family member. This person will appear to be

in compliance with Commission rules, but in effect the original violator still runs things from the background. Our attorneys indicate that there is nothing we can do about this.

Section 3-B:

An Uncontested Injection/Disposal Well Permit Can Take up to Three Months to Be Issued

The current processing time for an injection/disposal well is from one to three months if no hearing is required and up to nine months if a hearing is required. (See Figure 4.) In 1993, Environmental Services, a department within the Oil and Gas Division, reviewed the permitting process for injection/disposal wells and identified problem areas and solutions. Currently, Environmental Services is working to decrease the processing time by providing applicants with better information before the application is filed, continuing additional training for agency personnel, and working toward replacing applicant-provided information with automated data from within the agency. We commend the Commission for their efforts to reduce processing time.

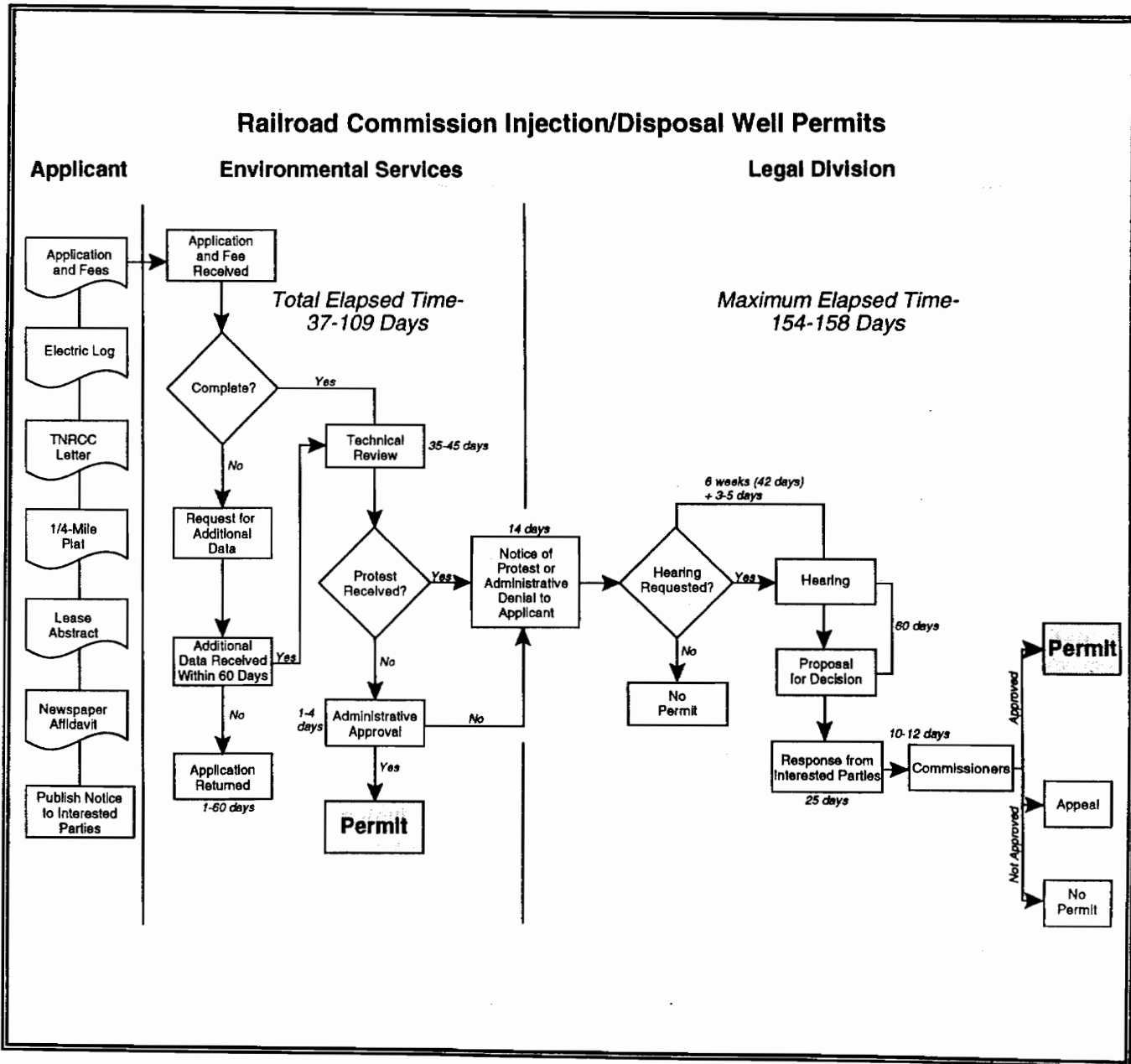
Recommendation:

We recommend that the Commission continue to work toward reducing the processing time for injection/disposal well applications.

Management's Response:

We have been working to significantly reduce the processing time for injection/disposal well applications over the last year. As evidenced by your Figure 4, one of the major causes of delay in this and other areas is incomplete and inaccurate information in applications. A focus of our current effort is to assist applicants in filing complete and accurate applications with all required attachments, in order to minimize the number that must be returned to operators for additional information. Success in this area will further reduce the time required for the approval of applications. We would note that applications that have all the data needed when they are submitted only take about 45 days on average to complete the permitting process.

Figure 4
Injection/Disposal Well Application Processing



Section 3-C:

Depending on the Area of the State, from 12 to 80 Percent of Texas Natural Resource Conservation Commission Water Letters Could Be Eliminated

Permits for new drilling, reworking a well that is over five years old, and injection/disposal wells require a letter (water letter) from the Texas Natural Resource Conservation Commission (Natural Resource Commission) that recommends the zones of fresh water to be protected. After the Natural Resource Commission identifies where the fresh water is, the Railroad Commission determines how deep the casings are to be set. Depending on the area of the State, from 12 to 80 percent of the water letters could be eliminated due to water-depth information the Railroad Commission and the Natural Resource Commission already have.

Eliminating unnecessary water letters would save applicants from one to four days in processing time. Furthermore, the Natural Resource Commission is considering a proposal to charge applicants \$50 per letter. If the letters were eliminated for areas in which casing depth requirements are already established, applicants would be saved the proposed \$50 fee in addition to the processing time. The Railroad Commission is studying this issue and formulating a plan for implementation.

Recommendation:

We recommend that the Railroad Commission continue to formulate and then implement a plan of action regarding elimination of water letters for those areas of the State for which casing-depth requirements are already established.

Management's Response:

As we had started this project prior to the arrival of the audit team, we agree that this area needs attention. At this time, staff of the Oil and Gas Division is making a detailed study of this matter. In July, meetings were held to discuss options available for reducing the number of surface casing letters required by the Commission for the for the processing of Forms W-1, W-3A, and H-15 without jeopardizing the protection of usable-quality water. Although it is evident that the ability to reduce these letters will vary significantly from district to district due to technical considerations, we feel that progress can be made. Several data sources were identified to aid in further reducing the number of letters required including coordination of data with the Texas Natural Resource Conservation Commission. This action committee has set a goal of January, 1995 for a presentation of a proposed plan of action to this Commission for approval.

Section 3-D:

Commissioners' Review of Unprotested Requests for Rule 38 Exceptions Add 10 to 12 Days to the Permit Process

Due to a 10-day rule for posting notice of a Commissioners' decision, Commissioners' review of unprotested requests for Rule 38 exceptions adds 10 to 12 days to the permitting process. (See Figure 5.) The Oil and Gas Division issues rulings on how near a property line a well can be drilled (Rule 37) and how many wells can be drilled within a given area (Rule 38). These rules are designed to protect adjacent landowners and the environment. However, applicants can apply for exceptions to these rules. If an applicant's request for a Rule 37 exception is unprotested, the request will be administratively granted to the applicant after technical review. However, a similar request for an exception to Rule 38 is reviewed and approved by the Commissioners. The intent of the review is to keep the Commissioners apprised of well densities.

Recommendation:

We recommend that the Commission eliminate Commissioners' review of requests for Rule 38 exceptions. Instead, a summary report of well densities and Rule 38 exceptions could be compiled and forwarded to the Commissioners on a routine basis. This would save applicants at least 10 to 12 days in the permitting process for Rule 38 exceptions.

Management's Response:

The Commissioners have elected to review these applications to keep abreast of activities in the various areas of the state and to determine if action is required to amend field rules.

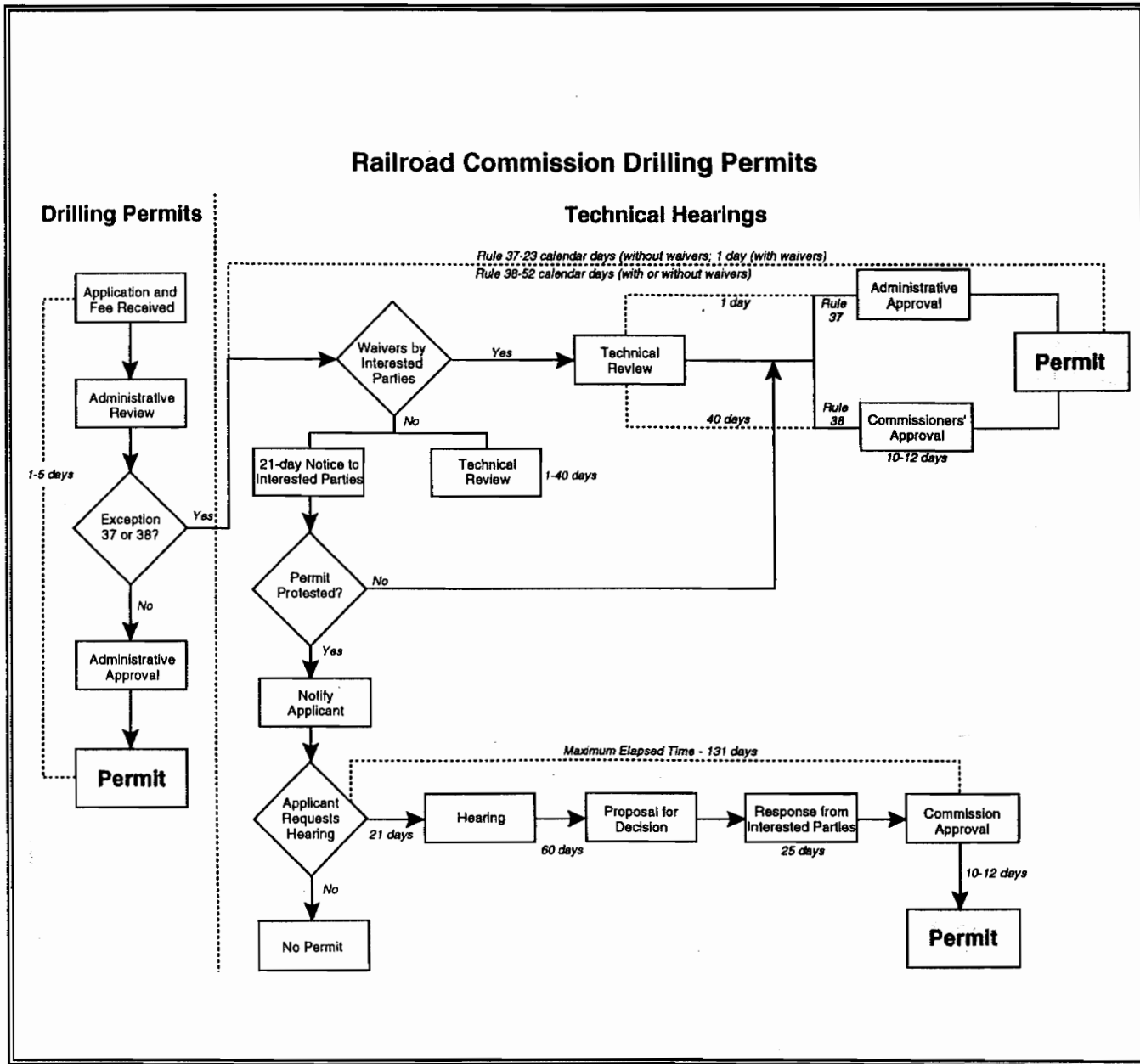


Figure 5

Information Request from the Senate Natural Resources Committee

In our preliminary planning, we identified the Texas Natural Resource Conservation Commission as an agency that should be considered for an individual review of its permitting processes. However, we determined that significant work had been done which included the following:

- Since January 1989, 14 internal and external reports had been completed relating to the permitting process at the agencies merged into the Texas Natural Resource Conservation Commission. Eleven of these reports were completed within the last two years. The emphasis of these reports was far reaching and focused on the efficiency of the process while maintaining or improving the effectiveness of the permitting process.
- The Commission designated an executive team member to monitor the reengineering of the permit process in July 1993 prior to the consolidation on September 1, 1993. Almost 30 percent of the 112 recommendations had been completed as of April 1994.

Prior to deciding whether to include the Texas Natural Resource Conservation Commission within the scope of our review, the Senate Natural Resources Committee requested that we obtain and review information from the Commission. The Senate Natural Resources Committee had received an interim charge from the Lieutenant Governor to study the permitting procedures at the Commission and to make recommendations for changes and statutory amendments to eliminate any unnecessary costs and delays. At the direction of the Committee, we obtained and reviewed information from the Commission in order to do the following:

- Determine whether sequential permitting is a problem.
- Determine how many permits are denied and for what reasons.
- Gather evidence from agency research on economic impact of permitting in Texas.
- Determine what the agency has done to improve relations with applicants and protestants.
- Compare state and federal environmental regulations.
- Review the hearings process.
- Gather data on contested cases.

Determine whether sequential permitting is a problem. Sequential permitting refers to one agency or department waiting for another agency or department to issue a permit before beginning an application review. Dos Republicas, an American company licensed in Delaware, was used as a case study when looking at the sequential permitting issue. The company, partially financed by Mexican investors, is seeking to operate a coal mine in Maverick County, Texas. In this case, it was determined that sequential permitting is not a problem at either the Texas Natural Resource Conservation Commission or the Railroad Commission.

In the case of Dos Republicas, each permit has suffered delays, but for different reasons:

- The air permit is currently held up because the applicant has failed to submit their model for review; there may also be a problem with the right-of-way on the railroad which runs through the property.
- The water permit was held up waiting for a federal agency to give an indication that the project is viable.
- The surface mining permit suffered a change in hearings examiners and late entry of two protestants.

The only waiting has been by the Water Permit Division of the Texas Natural Resource Conservation Commission for the U.S. Fish and Wildlife Department. The Commission decided not to waste staff, applicant, and protestant time and money on a hearing if the U.S. Fish and Wildlife Department was not going to approve the project. After the U.S. Fish and Wildlife Department made a preliminary ruling to continue considering the project, the Commission resumed the hearings process.

Determine how many permits are denied and for what reasons. We compiled data for applications received, issued, withdrawn, denied, and still pending for wastewater, water quality, hazardous waste, air, and solid waste permits. (See Figures 6 through 10.) However, we could not corroborate the integrity of data, nor were we able to determine why permits were denied due to poor records management. The Texas Natural Resource Conservation Commission's Program Evaluation Division is aware of the data-management problems and has begun a review of records management, including the data bases maintained by the Commission.

Figure 6
Wastewater Permits for Agriculture
Calendar Years 1991-1993

Applications Received	Applications Issued	Applications Withdrawn	Applications Denied	Applications Still Pending
156	112	19	2	23

Source: Texas Natural Resource Conservation Commission (Unaudited)

Figure 7
 Water Quality Permits
 Calendar Years 1991-1993

Category	Applications Received	Applications Issued*	Applications Withdrawn	Applications Denied	Applications Still Pending
Public/Private Domestic Sludge	1,078	1,421	33	0	104
Industrial	598	625	17	0	66
TOTAL	1,676	2,046	50	0	170

Source: Texas Natural Resource Conservation Commission (Unaudited)

* For Water Quality Permits only, the agency counted as Applications Issued the total number of permits issued during the period, regardless of the period in which they were received.

Figure 8
 Hazardous Waste Permits
 Calendar Years 1991 Through May 1994

Category	Applications Received	Applications Issued	Applications Withdrawn	Applications Denied	Applications Still Pending
Class 1	46	33	4	0	9
Class 2	62	46	8	0	8
Class 3	43	12	4	0	27
Major Revision	28	12	0	0	16
Minor Revision	31	16	2	0	13
Interim Status	8	2	0	0	6
Renewals	41	21	1	0	19
New Permits	35	8	4	0	23
TOTAL	294	150	23	0	121

Source: Texas Natural Resource Conservation Commission (Unaudited)

Figure 9
 Air Permits
 Calendar Years 1991-1992

Time Period	Applications Issued	Applications Received	Applications Withdrawn	Applications Denied	Applications Still Pending
Calendar Years 1991 through 1992	1,927	2,689	301	16	445

Source: Texas Natural Resource Conservation Commission (Unaudited)

Figure 10
 Solid Waste Permits
 Calendar Years 1991-1993

Time Period	Applications Received	Applications Issued	Applications Withdrawn (none denied)	Applications Still Pending
Calendar Years 1991 through 1993	89	41	26	22

Source: Texas Natural Resource Conservation Commission (Unaudited)

Gather evidence from agency research on economic impact of permitting in Texas. Only one study has been done by the agency on the economic impact of permitting in Texas. That report, *The Price of Clean Air*, discusses the cost of compliance with the federal Clean Air Act. The report lists costs for the State and by county in non-attainment areas (areas which have not met Environmental Protection Agency (EPA) requirements for air quality). The report concentrates on the effects on small business. It estimates a cost of at least \$1 billion for one-third to one-half of small industries but warns that the cost may be much higher because not all costs have been identified.

Determine what the agency has done to improve relations with applicants and protestants. The Commission has documented implementation of the following steps toward improving relations with customers in the Air, Municipal Solid Waste, Watershed Management, and Industrial and Hazardous Waste Divisions:

- Internal and external training which covers permitting topics
- A Quality Management Division dedicated to responding to the agency's customers

- New hearing rules to provide guidelines that assist interested parties through the process
- A Small Business Advocate Office to provide regional education programs to businesses and trade associations and technical assistance on the federal Clean Air Act amendments
- Small business advisory committees in major Texas cities to assist small businesses in voluntary compliance with environmental laws

Compare state and federal environmental regulation. We compared environmental regulation by the EPA with state regulations followed by the Texas Natural Resource Conservation Commission. (See Figure 11.) Texas is a delegated state in regulating air and hazardous waste, whereas wastewater is regulated by both the State of Texas and the EPA. A delegated state is one that has been authorized by the EPA to operate various programs of the Resource Conservation and Recovery Act (RCRA).

Figure 11

A Comparison Between the Environmental Protection Agency and the Natural Resource Conservation Commission For Environmental Regulation

Texas Natural Resource Conservation Commission	Environmental Protection Agency
AIR	
Regulates all sites	Regulates sites which pollute above a certain level
Evaluates more toxics than the EPA	Evaluates some toxics
Evaluates catastrophic potential of the project	Does not evaluate catastrophic potential of the project
Reviews compliance history of applicant	Reviews compliance history if someone raises the issue
HAZARDOUS WASTE	
Regulates all emission levels	Regulates all emission levels
Reviews sensitive areas, faults, floodplains, land use, financial assurance, ability to operate a facility	Verifies that enough money is available to close the facility
Gives priority to what is being permitted	Gives priority to facilities with poor environmental record

Figure 11, concluded	
WASTEWATER	
Permits all facilities	Only permits facilities producing over 1 million gallons per day
Evaluates facilities' technologies and feasibility, inputs and outputs	Evaluates inputs and outputs
HEARINGS PROCESS	
Conducts an evidentiary hearing for permit decision	Accepts public comments in place of evidentiary hearing for permit decision
Rules of evidence apply to evidentiary hearings	Rules of evidence do not apply to public comments
Requires a person to show a legal interest to affect permit decision	Requires a person to show an interest to affect the permit decision

Source: Texas Natural Resource Conservation Commission (Unaudited)

Review the hearings process. In general, after an applicant has filed an application and the Commission completes its administrative and technical review, the Commission drafts a permit. If someone protests the application, however, the case enters the hearings process. The parties proceed through pre-hearing conferences and discovery, and then the actual hearing begins. The applicant presents his or her evidence, followed by the protestant, executive director's staff, and the public interest counsel, and the applicant closes. The examiner, who hears all the evidence, writes a proposal for decision and the Commissioners then make a decision on the proposal.

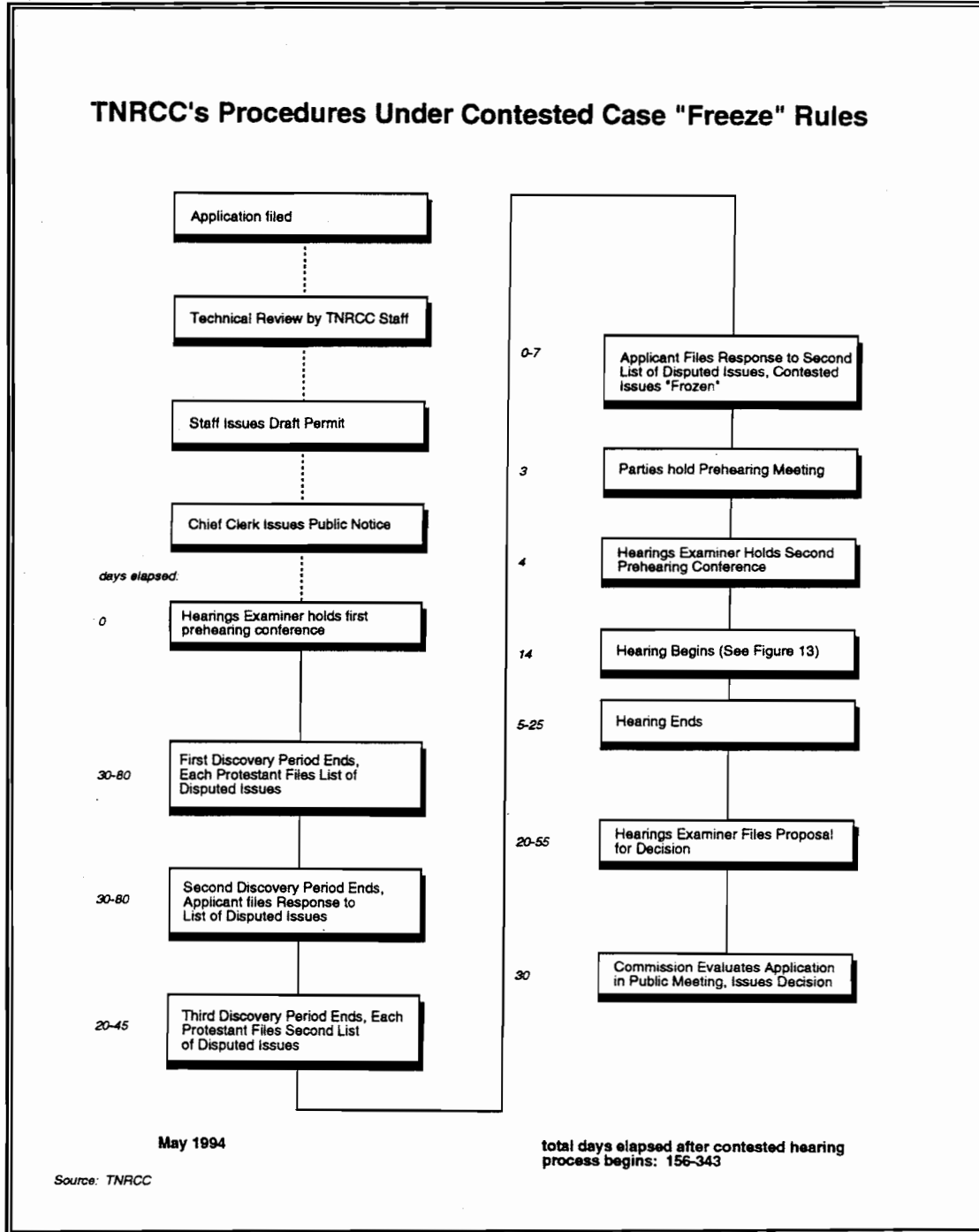
In July 1994, the Commission adopted new rules that will set a maximum time limit of 343 days for the hearings process, in comparison to 3 to 4 years in the past. In addition, the new rules specify time periods for pre-hearing conferences, discovery, the hearing itself, and issuance of the decision. (Figures 12 and 13 provide an overview of the new rules for contested hearings.)

Gather data on contested cases. Data gathered on contested cases include the following:

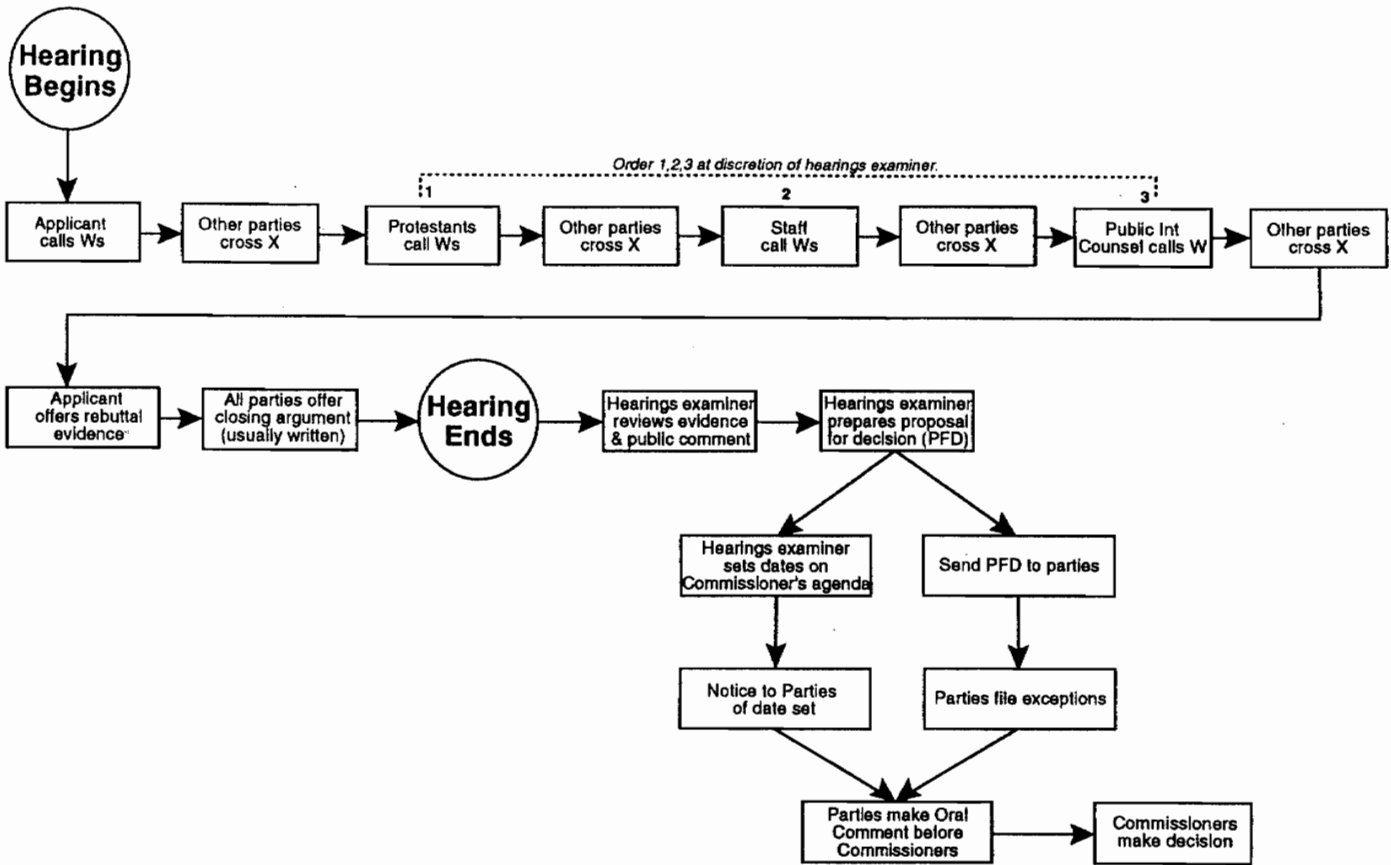
- The number of hearings has remained stable since fiscal year 1992. In fiscal year 1992, the agency had 27 hearings, compared with 29 and 26 in fiscal years 1993 and 1994, respectively.
- The examiner sided with the staff (and the Commissioners with the examiner) half of the time in fiscal year 1994 and 71 percent of the time in fiscal years 1992 and 1993.

- Twenty percent of contested cases were denied over the three-year period, and 24 percent were withdrawn over the same period.

Figure 12



TNRCC Hearings Process



Source: TNRCC

w = witnesses
cross X = cross examine

Figure 13

Objective, Scope, and Methodology

Objective

Our audit objective was to review and make recommendations for eliminating, consolidating, simplifying, expediting, or otherwise improving permitting procedures affecting business enterprises. Section 481.18 of the Government Code mandates that the State Auditor, with the advice and support of the Department of Commerce, complete the implementation of the business permit review process on or before September 1, 1994, and to provide all recommended statutory changes, as needed, to the Legislature on or before January 1, 1995.

Scope

We determined the state agencies responsible for permitting and, through a risk assessment, the agencies to review. As a result, the scope of our review focused on the following:

- The Department of Commerce's role in disseminating permitting information, how the Department works with other state agencies, and the usefulness of its data bases.
- The permitting process at the Alcoholic Beverage Commission and recommended areas for improvement from the applicants' perspective as well as the Alcoholic Beverage Commission's.
- The permitting process at the Railroad Commission and recommended areas for improvement from the applicants' perspective as well as the Railroad Commission's.
- Issues relating to permitting at the Texas Natural Resource Conservation Commission raised by the Senate Natural Resources Committee.

Methodology

The methodology used on this audit consisted of collecting information, performing tests and procedures, and analyzing and evaluating information.

Information collected to accomplish our objectives included the following:

- Interviews with the staff of the Department of Commerce, Alcoholic Beverage Commission, Railroad Commission, Texas Natural Resource Conservation Commission, Senate Natural Resources Committee, and trade associations

- Documentary evidence such as:
 - Standard Industry Code (SIC) data
 - Surveys of Texas Department of Commerce customers
 - Industry final-demand multipliers
 - Laws, regulations, and rule books
 - Current events as reported in newspapers and magazines
 - Agency-generated data on permitting and licensing

Analysis techniques used:

- Flow charting
- Surveys
- Statistical analysis
- Projecting economic impact
- Timeline processes
- Testing data integrity

Other Information

Fieldwork was conducted from March through July 1994. The review was conducted in accordance with applicable professional standards, including:

- Generally Accepted Government Auditing Standards
- Generally Accepted Auditing Standards

There were no significant instances of noncompliance with these standards.

The review work was performed by the following members of the State Auditor's staff:

- Donald McPhee, CPA (Project Manager)
- Eric Corzine, MBA
- Susan Driver, CPA
- Amy Graves, JD
- Thomas Ng, MBA
- Deborah Powers, CPA
- Randy Townsend, CPA (Audit Manager)
- Deborah Kerr, Ph.D. (Director)

Agency Profiles

Appendix 2.1:

Agency Profile: Department of Commerce

The Department of Commerce was created by the 70th Legislature in 1987. The Department is the primary economic development agency in the State, designed to serve as a catalyst in creating new jobs and improving the State's business and economic climate. Specifically, the Department's responsibilities include the following:

- Attracting new businesses and encouraging the growth of existing business
- Improving the economic prosperity of Texas communities
- Promoting Texas as a travel destination
- Improving the skill level of the Texas workforce

The Department is organized into three core program divisions supported by a central administrative division: Business Development Division, Workforce Development Division, and Tourism Division. Appropriations to the Department for the 1994-1995 biennium total \$513 million, of which \$11 million is general revenue and \$23 million is dedicated hotel/motel tax. Over \$465 million, or 91 percent, of the Department's budget consists of federal funds associated with the Job Training Partnership Act program.

Business Development Division

The Business Development Division is responsible for programs that improve the economic prosperity of the State and create new jobs. These programs include Texas Marketplace/TexasOne, Business Finance, National and International Marketing, Small Business, and Community Economic Development. During this review, we specifically focused on the Business Permit Office within the Business Development Division.

The Business Permit Office provides the following services:

- Comprehensive information on permits
- Timely permit reviews
- Comprehensive application process
- Coordination between different levels of government

These services are offered through a written guidebook on permitting, a 1-800 telephone service, Texas Marketplace (i.e. computer bulletin board), and walk-ins. Appropriations to the Division for the 1994-1995 biennium total \$13.8 million, of which \$2.8 million is for Finance Programs, \$2.6 million is for the Texas Marketplace, and \$2.9 million is for International Marketing.

Section 481.123 of the Government Code states the duties of the Department of Commerce as it relates to permitting. The Department shall:

- "(1) provide comprehensive information on permits required for business enterprises in the state and make that information available to applicants and other persons;
- (2) assist applicants in obtaining timely and efficient permit review and in resolving issues arising from the review;
- (3) facilitate contracts between applicants and state agencies responsible for processing and reviewing permit applications;
- (4) assist applicants in the resolution of outstanding issues identified by state agencies, including delays experienced in permit review;
- (5) develop comprehensive application procedures to expedite the permit process;
- (6) compile a comprehensive list of all permits required of a person desiring to establish, operate, or expand a business enterprise in the state;
- (7) encourage and facilitate the participation of federal and local government agencies in permit coordination;
- (8) make recommendations for eliminating, consolidating, simplifying, expediting, or otherwise improving permit procedures affecting business enterprises by requesting that the state auditor, with the advice and support of the office, initiate a business permit reengineering review process involving all state agencies;
- (9) develop and implement an outreach program to publicize and make small business entrepreneurs and others aware of services provided by the office;
- (10) adopt rules, procedures, instructions, and forms required to carry out the functions, powers, and duties of the office under this subchapter; and
- (11) except as provided in Section 481.129, complete the implementation of the business permit review process on or before September 1, 1994, and provide all recommended statutory changes as needed to the legislature on or before January 1, 1995."

Appendix 2.2:

Agency Profile: Alcoholic Beverage Commission

The Texas Liquor Control Board was created in 1935, at the end of Prohibition, to regulate the manufacture, distribution, storage, and sale of alcoholic beverages in the

State. In 1970, the name was changed to the Texas Alcoholic Beverage Commission. In 1971, the Texas Legislature passed liquor-by-the-drink legislation which allowed voters, by local option elections, to determine whether mixed beverages could be sold in restaurants and bars in their locality.

Licensing is a means to fulfill three public policies as defined in the Texas Alcoholic Beverage Code: (1) to ensure that the person who receives a license or permit has been a citizen of Texas for at least a year and is therefore known by his community, (2) to enforce strict cash and credit laws as a means of preventing those engaged in the distribution of alcoholic beverages from exerting undue influence over any level of the industry selling or serving alcoholic beverages, and (3) to maintain and enforce the three-tier system (strict separation between the manufacturing, wholesaling, and retailing levels of the industry) to prevent overlapping ownership or other prohibited relationships between those engaged in the industry at different levels.

Each applicant, whether it be a sole proprietorship, a partnership, or a corporation, must qualify by residency, age, and criminal background to hold a license to sell alcoholic beverages. A license is applicant- and site-specific, so an applicant with multiple locations must obtain a license for each location, and the new owner of an existing establishment must begin the license process anew to obtain his own license(s) for that location. Licenses are renewed annually, and each applicant must continue to qualify for the license.

The licensing process begins in one of the 21 district offices of the Commission. The applicant receives an application packet and turns in a completed application and a personal history. Information from the personal history is sent to the Department of Public Safety for a criminal history check, and the Commission's field office checks for any previous Commission violations or illegal interests (participation in more than one tier of a three-tier industry: manufacturing, distributing, and retailing). City or county government certifies that the location of the applicant's establishment is in a wet area, and the Comptroller of Public Accounts certifies that the applicant has a sales tax permit and is in good standing.

Following the necessary certifications by local government, the county judge must hold a hearing for wine and beer licenses, and the Commission holds a hearing in the home county if there is any public protest over a proposed liquor license. Following a hearing, if applicable, the application receives final clearance from a field office, and the application is forwarded to the Commission's main office in Austin for final processing and issuance of a license.

For fiscal year 1994, total licensing staff is 70.3 full-time equivalents (FTEs), with a total budget of \$3,523,008, or approximately one-seventh of the Commission's total budget in both dollars and FTEs. Of the 70.3 FTEs, 38.3 are in the field office, and 32 are at the main office.

A multi-billion dollar industry, the retail sale of alcoholic beverages alone produced \$892.8 million in sales tax revenue for 1992, whereas, license and permit fees generated \$17,693,388 of agency revenue in fiscal year 1993.

Agency Profile: Railroad Commission

The Railroad Commission of Texas was founded in 1891 to regulate the railroad industry within the State. In subsequent years, its statutory responsibilities were expanded to include regulation of the oil and gas industry; natural gas utilities and pipelines; liquid petroleum gas; surface mining of coal, lignite, and uranium; and commercial motor vehicle transportation.

The Commission is administered by three commissioners elected to serve overlapping six-year terms. In 1992, the industries regulated by the Railroad Commission had total annual revenues of \$7.6 billion and a combined economic impact of \$22.3 billion. The Railroad Commission is divided into four regulatory divisions:

- The Oil and Gas Division licenses oil and gas wells in the State to conserve oil and gas and to protect the environment. The Oil and Gas Division issued 17,201 permits (13,666 drilling permits, 3,008 injection well permits, and 527 disposal well permits) in 1993. The Oil and Gas Division utilizes \$1.1 million and 39 personnel for its permitting function out of a total of \$13 million for the entire division. The oil and gas industry had \$6.4 billion in gross sales with an economic impact of \$18.8 billion.
- The Transportation Division regulates intrastate motor carriers, motor bus operators, railroads, transportation brokers, certified interstate carriers, and exempt interstate carriers operating in Texas to establish a safe and economical ground transportation system for the State. The Division currently regulates over 2,700 active carriers. The Division utilizes \$550,000 and 23 FTEs for its permitting function and \$4 million and 106 FTEs for its enforcement function, out of a total of \$6 million and 172 FTEs for the entire division. The Transportation Industry had \$473.8 million in gross sales with an economic impact of \$1.5 billion.
- The Liquid Petroleum Gas (LPG) Division permits and regulates LPG and compressed natural gas (CNG) to promote safety. The LPG Division issued 2,207 LPG/CNG licenses in 1993. The LPG Division utilizes \$160,000 and 5 FTEs for its permitting function and \$671,000 and 21 FTEs for its enforcement function, out of a total of \$1.6 million and 46 FTEs for the entire division. The LPG Industry had \$495.9 million in gross revenues with an economic impact of \$1.5 billion.
- The Surface Mining and Reclamation Division licenses coal and uranium surface mining operations and the reclamation of mined areas to protect the environment. The Surface Mining and Reclamation Division currently licenses 17 coal mining operations within the State. The Surface Mining and Reclamation Division utilizes \$641,912 and 18 FTEs for its permitting function and \$859,000 and 25 FTEs for its enforcement function, out of a total of \$5.8 million and 67 FTEs for the entire division. The Surface Mining

and Reclamation Division had gross revenues of \$157 million with an economic impact of \$442 million.

Appendix 2.4:

Agency Profile: Texas Natural Resource Conservation Commission

The Texas Natural Resource Conservation Commission was created in 1991 by the Legislature to handle state environmental functions. The agency officially came into existence on September 1, 1993. The agency is the combination of several agencies, the largest of which are the Texas Water Commission and the Texas Air Control Board. The agency also took over environmental programs previously administered by the Texas Department of Health. The agency's responsibilities include the regulation of air, hazardous waste, solid waste, and water.

The Texas Natural Resource Conservation Commission is led by a full-time, three-member board, following the organization of the old Water Commission. The agency is organized along media lines similar to the U.S. Environmental Protection Agency and state and federal statutes. This structure provides a way for one agency to handle specific and complex subject areas but requires strong coordination to maintain unity among sections. The agency also has 15 field offices which cover limited geographic areas, providing enforcement and customer service locally.

Appropriations to the Texas Natural Resource Conservation Commission for the 1994-1995 biennium total \$676.3 million, of which \$129.2 million is general revenue (19.1 percent). Of the total general revenue funds, \$24.4 million are undedicated general revenue funds and \$105.7 million are general revenue funds collected from dedicated fees that can only be used for specifically identified environmental activities. The three next largest sources of funding are \$143.0 million in federal funds (21.1 percent), \$120.0 million in the Petroleum Storage Tank Remediation Fund (17.7 percent), and \$114.4 million in the Clean Air Fund (16.9 percent).

Summary of Recommended Statutory Changes

Agency Affected	Recommended Statutory Change
Alcoholic Beverage Commission	Amend the Texas Alcoholic Beverage Code, Sections 61.32, 61.33, and 61.48 to allow the State to collect beer and wine fees directly from applicants rather than have the counties collect these fees.
Railroad Commission	Amend the Natural Resource Code by adding a requirement for the Railroad Commission to extend the check for unpaid fines to applications for <u>any</u> permit issued by the Oil and Gas Division and for the Form P-4 (change of ownership).
Department of Commerce	Eliminate Government Code, Section 481.125 that requires the Department to publish a comprehensive permit handbook.
All Licensing Agencies	Require all licensing agencies to maintain current permitting information for their agency in TexasOne.

Appendix 4:

**Management's Responses from the Texas Natural Resource
Conservation Commission**

John Hall, *Chairman*
Pam Reed, *Commissioner*
Peggy Garner, *Commissioner*
Anthony Grigsby, *Executive Director*



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

September 13, 1994

Mr. Lawrence P. Alwin
State Auditor
State Auditor's Office
206 East 9th Street
Austin, Texas 78701

Dear Mr. Alwin:

We appreciate the opportunity to offer these comments regarding your report. Principally, we wish to emphasize that only a very small number of permits are denied by the TNRCC. Of 4,443 permit applications acted on during the period under review, only 18 or less than one-half of one percent were denied. This includes two agricultural wastewater discharge permits (dairies) and 16 air permits. Total numbers for the period under review are as follows:

Total permits	-	4,443	
Permits approved	-	4,276	96.25%
Permits withdrawn	-	149	3.35%
Permits withdrawn	-	18	.40%

DENIALS

The two agricultural waste discharge permit applications denied were both for proposed large dairies in Erath county. Both proposed sites had recharge features which made them unacceptable for dairy operations due to the potential for groundwater contamination. Erath county has the state's largest concentration of permitted dairies with over 250.

Of the 16 air permit application denials, 13 were denied for failure to respond to technical requirements, requests for additional information or failure to complete their application. Three others were denied due to the refusal of the applicant to meet best available control technology (BACT) requirements as mandated by law.

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WITHDRAWALS

As with the number of denials, the number of withdrawals are also very small. Virtually every one of the 149 withdrawals were initiated voluntarily by the companies involved. This is to say that they recognized an overwhelming deficiency or had a change a plans.

It is important to note that agency staff spends considerable time meeting with applicants regarding deficient applications to discuss deficiencies and to provide as much direction and assistance as possible. Some of the more prevalent reasons for withdrawals include:

* **New Laws:** New laws such as SB 1099 have led to a number of withdrawals by applicants. In particular, the law's provision which prohibits the placement of a hazardous waste disposal facility within 1/2 mile of homes, schools and other community facilities has resulted in several withdrawals. LaFarge withdrew an application seeking to burn hazardous waste in a cement kiln after losing a court effort to declare SB 1099's 1/2 mile rule unconstitutional.

The new federal Subtitle D rules relating to the construction and operation of landfills have led to permit application withdrawals due to the additional requirements imposed by federal law.

* **Changing Markets:** Applications are withdrawn due to changing market conditions. For instance Chemical Waste Management withdrew an application for a commercial hazardous waste landfill because the company's re-analysis indicated insufficient market to support the operation.

* **Technical Problems:** Numerous applications are withdrawn due to technical problems which the applicant cannot address. As indicated, TNRCC staff work diligently with applicants to assist in every reasonable manner. Some applicants simply do not retain sufficient expertise to complete their projects.

In some cases (four industrial & hazardous waste permit applications during the timeframe under study), applications have been returned to the applicant due to incompleteness. This is tantamount to dismissal and only occurs after sufficient opportunity has been allowed for applicants to correct deficiencies in their applications. Moreover, this kind of dismissal does not prevent an applicant from re-submitting an application after it has been corrected.

As an example, one company submitted an application to build a commercial hazardous waste injection well near Odessa. Their application was ultimately returned because the company failed to submit information required by regulations necessary to ensure the safety of tank systems. This is a fairly typical example.

PERMIT APPLICATION ASSISTANCE

With regard to permit application assistance, the agency has taken a number of steps to simplify the permitting process, eliminate red tape and speed up the approval process:

- * Permitting programs have reduced the time required to produce a draft permit by 50% or more across the board;
- * Uncontested permits are signed by the Executive Director or other appropriate staff authority rather than requiring Commission approval;
- * New rules that limit hearings to approximately one year (compared to a multi-year average in the past) have been issued;
- * A special permitting unit has been developed to "fast-track" major permit applications;
- * Application forms have been significantly simplified so that they better delineate what is needed; and
- * Oversight of permit processing has been increased to ensure consistency and fairness.

IMPROVING RELATIONS WITH APPLICANTS AND PROTESTANTS

The TNRCC has taken numerous steps to improve communications and relations with our customers:

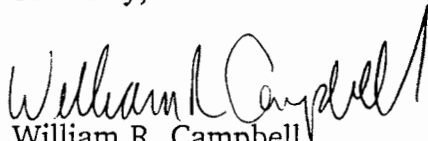
- * A Small Business Assistance Unit and site assistance program has been established to provide top to bottom consultation on pollution handling and reduction;
- * Task Force 21 and other advisory groups of business, local government and environmental representatives were formed to provide input on proposed rules and programs of the agency;

Mr. Lawrence P. Alwin
Page 4
September 13, 1994

- * Companies, local government officials, community groups and environmentalists have been afforded unprecedented access to the Commissioners and agency management team;
- * Significant improvements in the handling of incoming telephone calls, requests for information (such as permit status) and other customer needs have been implemented;
- * A Public Meetings Unit has been established to ensure that public meetings are conducted in a customer friendly manner and that citizens receive the information they seek; and
- * A series of special meetings with customer groups have been held to learn customers' concerns and suggestions.

Thank you for this opportunity for input. Please let us know if we can provide you with any additional information.

Sincerely,


William R. Campbell
Acting Executive Director

Copies of this report have been distributed to the following:

Legislative Audit Committee

Honorable James E. "Pete" Laney, Speaker of the House, Chair
Honorable Bob Bullock, Lieutenant Governor, Vice Chair
Senator John Montford, Chair, Senate Finance Committee
Senator Kenneth Armbrister, Chair, Senate State Affairs Committee
Representative Robert Junell, Chair, House Appropriations Committee
Representative Tom Craddick, Chair, House Ways and Means Committee

Governor of Texas

Honorable Ann W. Richards

Legislative Budget Board

Sunset Advisory Commission

Chief Executive Officers and Board Members/Commissioners of the following agencies:

Texas Department of Commerce

Texas Alcoholic Beverage Commission

Railroad Commission

Texas Natural Resource Conservation Commission