

1 told you, there's a rule, which is under tab 7 of my
2 binder, that says, "Any local floodplain development
3 permit that is required should be filed with the
4 application," although the rule doesn't specify a
5 consequence for failing to file it at that time.

6 130 had not secured a floodplain
7 development permit from Caldwell County when it filed its
8 application; and, thus, of course, it didn't attach one.

9 Prior to the contested case hearing, TCEQ's
10 executive director issued a draft permit, which is done
11 on virtually every case that's contested, and a draft
12 permit is a recommendation from the executive director of
13 what the permit ought to be specifically.

14 In this case, the draft permit recommends
15 that a special provision be included in that permit to
16 resolve this matter, and the recommended special
17 provision would require 130 to submit a local floodplain
18 development permit to the TCEQ before it commenced
19 construction of the landfill.

20 The -- that recommendation and the delayed
21 floodplain development permit were addressed in the
22 contested case hearing, and the ALJs wrote in their
23 proposal for decision that the evidence shows that
24 addressing these types of deficiencies through the use of
25 special provisions in the permit is a common practice of

1 the TCEQ. Although not strictly in compliance with the
2 TCEQ's rules, this seems, to the ALJs, a reasonable
3 accommodation that will not cause any harm or threat to
4 the environment, given that construction cannot begin
5 until 130 obtains the required permit.

6 The ALJs agreed with the EPD that use of
7 special provisions adequately solves the issue.

8 THE COURT: So I want to jump in here,
9 because as I understand at least part of their argument,
10 it's, hey, setting aside the ALJ's reasoning for why it
11 was okay, part of the policy behind requiring this
12 permitting to take place simultaneously, or prior to its
13 submission of a permit and authorization, is to inform
14 the public or anybody else who might oppose this
15 authorization, right? And this is an important component
16 of the case that they may build to -- either to better
17 understand what's at stake in this permit, or if they
18 know they don't like it, give them an understanding to
19 oppose it, right?

20 And if they don't get this -- if this
21 floodplain development authorization isn't obtained until
22 long after the permit has been signed off on, and you're
23 just waiting for the bulldozers to pull onto the site,
24 well, at that point, any chance of public -- the public
25 weighing in has long since passed.