

By: Chisum

H.B. No. 44

A BILL TO BE ENTITLED

AN ACT

relating to efficiency in certain procedures and hearings of the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. NONADJUDICATIVE HEARINGS; NOTICE

SECTION 1.01. Chapter 5, Water Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. NONADJUDICATIVE NOTICE AND HEARING

Sec. 5.851. APPLICABILITY. This subchapter provides procedures for providing public notice, opportunity for public comment, and an opportunity for a nonadjudicative hearing regarding commission actions relating to permits issued under Chapter 26 or 27 or under Chapter 361 or 382, Health and Safety Code.

Sec. 5.852. PRELIMINARY DECISION. (a) The executive director shall conduct a technical review of and issue a preliminary decision on an application for a permit.

(b) The applicant shall make available for review and copying a copy of the application and preliminary decision at a public place in the county in which the facility is located or proposed to be located.

(c) Notice of the preliminary decision must be provided in accordance with Section 5.853.

Sec. 5.853. NOTICE CONTENT; PUBLIC COMMENT PERIOD. (a) The commission by rule shall establish:

1 (1) the form, content, and timing of a notice; and

2 (2) the duration of the public comment period.

3 (b) Notice must be provided as follows:

4 (1) the chief clerk of the commission shall mail
5 notice to:

6 (A) the state senator and representative who
7 represent the general area in which the facility is located or
8 proposed to be located; and

9 (B) any other person designated by commission
10 rule; and

11 (2) the applicant shall publish notice in a newspaper
12 of general circulation in the county in which the facility is
13 located or proposed to be located.

14 (c) The notice must include:

15 (1) the permit application number;

16 (2) the applicant's name and address;

17 (3) the location of the facility and the nature of the
18 proposed activity at the facility;

19 (4) the location at which copies of the application
20 and preliminary decision are available for review and copying;

21 (5) a description of any procedural rights of the
22 public; and

23 (6) a 30-day public comment period, except as
24 otherwise provided by commission rule.

25 Sec. 5.854. NONADJUDICATIVE HEARING. (a) A hearing on an
26 application for issuance, amendment, modification, or renewal of a
27 permit subject to this subchapter must be conducted under this

1 section. Chapter 2001, Government Code, does not apply to a hearing
2 under this subchapter.

3 (b) The executive director shall hold a nonadjudicative
4 hearing for an application if, after the close of the public comment
5 period, there is significant public interest in the application.

6 (c) At the hearing, any person may submit an oral or written
7 statement regarding the application for the permit. The public
8 comment period extends to the close of the hearing.

9 (d) In determining whether to issue the permit and what
10 conditions should be included if a permit is issued, the executive
11 director shall consider all comments received during the public
12 comment period and at the hearing.

13 Sec. 5.855. RESPONSE TO PUBLIC COMMENTS; PREPARATION OF
14 FACT SHEET. (a) If necessary to satisfy a requirement for federal
15 authorization of a state permit program, the executive director, in
16 a manner consistent with commission rule, shall file with the chief
17 clerk of the commission a response to each significant written
18 public comment on the preliminary decision filed during the public
19 comment period.

20 (b) For an application that is not subject to Subsection
21 (a), the executive director shall submit to the chief clerk of the
22 commission a fact sheet that briefly describes the principal facts
23 and significant legal and policy issues related to the application.

24 ARTICLE 2. PUBLIC PARTICIPATION

25 SECTION 2.01. Subchapter D, Chapter 5, Water Code, is
26 amended by adding Sections 5.136 and 5.137 to read as follows:

27 Sec. 5.136. GENERAL PERMITS. (a) The commission may issue

1 a general permit to authorize a regulated activity for a category of
2 entities if the commission finds that:

3 (1) the types of operations of the entities are the
4 same or substantially similar;

5 (2) the activity is more appropriately regulated under
6 a general permit than under an individual permit;

7 (3) the general permit is enforceable;

8 (4) the commission can adequately monitor compliance
9 with the terms of the general permit; and

10 (5) the general permit does not conflict with any
11 requirement to maintain federal program authorization.

12 (b) The commission shall publish notice of a proposed
13 general permit in the Texas Register and in a newspaper of general
14 circulation in the area affected by the activity that is the subject
15 of the proposed general permit. For a statewide general permit, the
16 commission shall designate one or more newspapers of statewide or
17 regional circulation and shall publish notice of the proposed
18 statewide general permit in each designated newspaper in addition
19 to the Texas Register. The notice shall invite written comments and
20 be published not later than the 30th day before the commission
21 issues the general permit.

22 (c) The commission may hold a public meeting to provide an
23 additional opportunity for public comment. The commission shall
24 give notice of a public meeting as provided by Subsection (b) not
25 later than the 30th day before the date of the meeting.

26 (d) If the commission receives public comment relating to
27 issuance of a general permit, the commission may issue the general

1 permit only after responding in writing to the written comments.
2 The commission shall issue a written response to comments on the
3 permit at the same time the commission issues or denies the permit.
4 The commission shall make its response available to the public and
5 shall mail its response to each person who made a comment.

6 (e) A general permit must include the procedures for
7 obtaining authorization under the terms of the general permit.

8 (f) The commission by rule shall establish procedures for
9 the issuance, amendment, renewal, suspension, revocation, or
10 cancellation of a general permit.

11 (g) The commission may impose a reasonable and necessary fee
12 for authorization to use general permits under this section.

13 (h) The issuance, amendment, renewal, suspension,
14 revocation, or cancellation of a general permit or of authorization
15 to use a general permit is not subject to Subchapters C-F, Chapter
16 2001, Government Code.

17 (i) The commission may adopt rules as necessary to implement
18 and administer this section.

19 (j) The commission may delegate to the executive director
20 the authority to issue, amend, renew, suspend, revoke, or cancel a
21 general permit or an authorization to use a general permit.

22 Sec. 5.137. TIME LIMIT FOR ISSUANCE OR DENIAL OF PERMITS.

23 (a) Except as provided by Subsection (b), all permit decisions
24 shall be made within 180 days of the date of the receipt of the
25 permit application or application amendment or the date of the
26 determination of administrative completeness, whichever date is
27 later.

1 (b) This section does not apply to a permit issued under a
2 federally delegated or approved program unless allowed under that
3 program.

4 SECTION 2.02. Section 5.551, Water Code, is amended by
5 amending Subsection (a) and adding Subsections (d) and (e) to read
6 as follows:

7 (a) This subchapter establishes procedures for providing
8 public notice, an opportunity for public comment, and a contested
9 case ~~[an opportunity for public]~~ hearing under ~~[Subchapters C-H,]~~
10 Chapter 2001, Government Code, regarding commission actions
11 relating to a permit issued under Chapter 26 or 27 ~~[of this code]~~ or
12 under Chapter 361, 382, or 401, Health and Safety Code. This
13 subchapter is procedural and does not expand or restrict the types
14 of commission actions for which public notice, an opportunity for
15 public comment, and a contested case ~~[an opportunity for public]~~
16 hearing are provided under Chapter 26 or 27 ~~[of this code]~~ or
17 Chapter 361, 382, or 401, Health and Safety Code.

18 (d) The procedures established by this subchapter apply to
19 permits subject to a contested case hearing and supersede any other
20 procedural requirements in Chapter 26 or 27 and under Chapter 361,
21 382, or 401, Health and Safety Code, relating to public notice,
22 public comment, public meetings, and a request for a contested case
23 hearing.

24 (e) The commission by rule shall provide for additional
25 notice, opportunity for public comment, or opportunity for hearing
26 to the extent necessary to satisfy a requirement for:

27 (1) United States Environmental Protection Agency

1 authorization of a state permit program; or

2 (2) United States Nuclear Regulatory Commission
3 authorization of a state permit program.

4 SECTION 2.03. Subchapter M, Chapter 5, Water Code, is
5 amended by adding Section 5.5515 to read as follows:

6 Sec. 5.5515. NOTICE CONTENT; PUBLIC COMMENT PERIOD. (a)
7 The commission by rule shall establish:

8 (1) the form, content, and timing of notice; and

9 (2) the duration of the public comment period.

10 (b) Notice must be provided as follows:

11 (1) the chief clerk shall mail the notice to:

12 (A) the state senator and representative who
13 represent the general area in which the facility is located or
14 proposed to be located; and

15 (B) any other person designated by commission
16 rule; and

17 (2) the applicant shall publish notice in a newspaper
18 of general circulation in the county in which the facility is
19 located or proposed to be located.

20 (c) The notice must include:

21 (1) the permit application number;

22 (2) the applicant's name and address;

23 (3) the location of the facility and the nature of the
24 proposed activity;

25 (4) the location of a public place in the county in
26 which the facility is located or proposed to be located at which
27 copies of the application and preliminary decision are available

1 for review and copying;

2 (5) a description of the procedural rights and
3 obligations of the public; and

4 (6) a 30-day public comment period, except as
5 otherwise provided by commission rule.

6 SECTION 2.04. The heading to Section 5.553, Water Code, is
7 amended to read as follows:

8 Sec. 5.553. PRELIMINARY DECISION[~~;~~ ~~NOTICE AND PUBLIC~~
9 ~~COMMENT~~].

10 SECTION 2.05. Section 5.553, Water Code, is amended by
11 adding Subsection (a-1) and amending Subsection (e) to read as
12 follows:

13 (a-1) Notice of the preliminary decision must be provided in
14 accordance with Section 5.5515.

15 (e) The applicant shall make a copy of the application and
16 preliminary decision available for review and copying at a public
17 place in the county in which the facility is located or proposed to
18 be located.

19 SECTION 2.06. Section 5.554, Water Code, is amended to read
20 as follows:

21 Sec. 5.554. PUBLIC MEETING. (a) During the public comment
22 period, the executive director may hold one or more public meetings
23 in the county in which the facility is located or proposed to be
24 located. The executive director shall hold a public meeting:

25 (1) on the request of a member of the legislature who
26 represents the general area in which the facility is located or
27 proposed to be located; or

1 (2) if the executive director determines that there is
2 substantial public interest in the proposed activity.

3 (b) The applicant shall publish notice of a public meeting
4 in a newspaper of general circulation in the county in which the
5 facility is located or proposed to be located at least 30 days
6 before the public meeting unless otherwise provided by commission
7 rule.

8 SECTION 2.07. Section 5.555, Water Code, is amended to read
9 as follows:

10 Sec. 5.555. RESPONSE TO PUBLIC COMMENTS; PREPARATION OF
11 FACT SHEET. (a) If necessary to satisfy a requirement for federal
12 authorization of a state permit program, the [The] executive
13 director, in accordance with [procedures provided by] commission
14 rules [rule], shall file with the chief clerk of the commission a
15 response to each significant written [relevant and material] public
16 comment on the preliminary decision filed during the public comment
17 period.

18 (b) For applications that are not subject to Subsection (a),
19 the executive director shall prepare a fact sheet that briefly
20 describes the principal facts and significant legal and policy
21 issues and shall file the fact sheet with the chief clerk of the
22 commission [The chief clerk of the commission shall transmit the
23 executive director's decision, the executive director's response to
24 public comments, and instructions for requesting that the
25 commission reconsider the executive director's decision or hold a
26 contested case hearing to:

27 ~~[(1) the applicant,~~

1 ~~[(2) any person who submitted comments during the~~
2 ~~public comment period; and~~

3 ~~[(3) any person who requested to be on the mailing list~~
4 ~~for the permit action].~~

5 SECTION 2.08. The heading to Section 5.556, Water Code, is
6 amended to read as follows:

7 Sec. 5.556. REQUEST FOR ~~[RECONSIDERATION OR]~~ CONTESTED CASE
8 HEARING.

9 SECTION 2.09. Section 5.556, Water Code, is amended by
10 amending Subsections (a), (b), (c), and (f), and by adding
11 Subsections (d-1)-(d-10) to read as follows:

12 (a) A person may request that the executive director refer
13 an application to the State Office of Administrative Hearings for
14 ~~[commission reconsider the executive director's decision or hold]~~ a
15 contested case hearing. A request must be filed with the chief
16 clerk of the commission during the period provided by commission
17 rule.

18 (b) The executive director ~~[commission]~~ shall act on a
19 request during the period provided by commission rule.

20 (c) The executive director on receiving ~~[commission may not~~
21 ~~grant]~~ a request for a contested case hearing ~~[unless the~~
22 ~~commission determines that the request was filed]~~ by the applicant
23 or by an affected person as defined by Subsections (d-1)-(d-6),
24 shall refer an application to the State Office of Administrative
25 Hearings ~~[Section 5.115]~~.

26 (d-1) For applications under Chapter 382, Health and Safety
27 Code, an affected person is a person who:

1 (1) resides on or owns property within one-half mile
2 of the facility or proposed facility if the application is for a
3 permit or permit amendment to allow emissions below the threshold
4 for major source or major modification, or for a permit renewal; or

5 (2) resides on or owns property within one mile of the
6 facility or proposed facility if the application is for a permit or
7 permit amendment for a major source or major modification.

8 (d-2) For industrial solid waste and hazardous waste
9 applications under Chapter 361, Health and Safety Code, an affected
10 person is a person who resides on or owns property within:

11 (1) one-half mile of the facility or proposed facility
12 if the application is for a major amendment, Class 3 modification,
13 or renewal; or

14 (2) one mile of the facility or proposed facility if
15 the application is for a new permit.

16 (d-3) For municipal solid waste applications under Chapter
17 361, Health and Safety Code, an affected person is a person who
18 resides on or owns property within:

19 (1) one-half mile of the facility or proposed facility
20 if the application is for a major amendment or a modification that
21 requires notice; or

22 (2) one mile of the facility or proposed facility if
23 the application is for a new permit.

24 (d-4) For underground injection well applications under
25 Chapter 27, an affected person is a person who, for a new permit,
26 major amendment, or renewal, resides on, owns property on, or owns
27 mineral rights:

1 (1) underlying the facility; or

2 (2) underlying property adjacent to the facility.

3 (d-5) For water quality applications for a new permit, major
4 amendment, or renewal, under Chapter 26, an affected person is a
5 person who resides on or owns property:

6 (1) within one-half mile downstream of a discharge or
7 proposed discharge;

8 (2) within one mile downstream of a discharge or
9 proposed discharge if the proposed discharge is for one million
10 gallons per day or more; or

11 (3) that is adjacent to the property used by the
12 applicant to dispose of or land apply waste or wastewater, or
13 adjacent to the facility or proposed facility.

14 (d-6) For applications under Chapter 401, Health and Safety
15 Code, an affected person is a person who resides on or owns property
16 in this state within five miles of the facility or proposed
17 facility.

18 (d-7) An affected person must reside on or own the property
19 specified in Subsections (d-1)-(d-6) on the date of the notice of
20 preliminary decision.

21 (d-8) A group composed of individuals with a common interest
22 and that is potentially affected by the application, an association
23 that has one or more members potentially affected by the
24 application, or a governmental entity with authority under state
25 law over issues relating to the permit application may be an
26 affected person. The commission by rule shall establish criteria
27 for determining whether a group, association, or governmental

1 entity is an affected person.

2 (d-9) A person whose hearing request is not referred to the
3 State Office of Administrative Hearings may appeal to the
4 commission as provided by commission rule.

5 (d-10) The commission by rule may establish distance
6 requirements for affected persons other than those listed in this
7 section. The requirements must be based on a consideration of
8 potential effects on human health and the environment.

9 (f) This section does not preclude the executive director
10 from referring any application for a contested case hearing and
11 does not preclude the commission from holding a hearing if it
12 determines that the public interest warrants doing so.

13 SECTION 2.10. Sections 26.028(c), (d), (g), and (h), Water
14 Code, are amended to read as follows:

15 (c) Except as otherwise provided by this section, the
16 commission, on the motion of a commissioner, or on the request of
17 the executive director or any affected person, shall hold a
18 contested case ~~[public]~~ hearing on the application for a permit,
19 permit amendment, or renewal of a permit.

20 (d) Notwithstanding any other provision of this chapter,
21 the commission, at a regular meeting without the necessity of
22 holding a contested case ~~[public]~~ hearing, may approve an
23 application to renew or amend a permit if:

24 (1) the applicant is not applying to:

25 (A) increase significantly the quantity of waste
26 authorized to be discharged; or

27 (B) change materially the pattern or place of

1 discharge;

2 (2) the activities to be authorized by the renewed or
3 amended permit will maintain or improve the quality of waste
4 authorized to be discharged;

5 (3) ~~[for NPDES permits,]~~ notice and the opportunity to
6 comment and request a nonadjudicative hearing under Subchapter S,
7 Chapter 5, has been ~~[public meeting shall be]~~ given, and a
8 nonadjudicative hearing has been held if required under Subchapter
9 S, Chapter 5 ~~[in compliance with NPDES program requirements, and~~
10 ~~the commission shall consider and respond to all timely received~~
11 ~~and significant public comment]; [and]~~

12 (4) the commission determines that an applicant's
13 compliance history for the preceding five years ~~[under the method~~
14 ~~for evaluating compliance history developed by the commission under~~
15 ~~Section 5.754]~~ raises no issues regarding the applicant's ability
16 to comply with a material term of its permit; and

17 (5) for NPDES permits, the commission has considered
18 and responded to each significant public comment that was timely
19 received.

20 (g) An application to renew a permit for a confined animal
21 feeding operation ~~[which was issued between July 1, 1974, and~~
22 ~~December 31, 1977,]~~ may be set for consideration and may be acted on
23 by the commission at a regular meeting without the necessity of
24 holding a contested case ~~[public]~~ hearing if the applicant does not
25 seek to discharge into or adjacent to water in the state and does
26 not seek to change materially the pattern or place of disposal.

27 (h) For the purposes of Subsection (c), the commission may

1 act on the application without holding a contested case [~~public~~]
2 hearing if all of the following conditions are met:

3 (1) not less than 30 days before the date of action on
4 the application by the commission, the applicant has published the
5 commission's notice of the application at least once in a newspaper
6 regularly published or circulated within each county where the
7 proposed facility or discharge is located and in each county
8 affected by the discharge;

9 (2) not less than 30 days before the date of action on
10 the application by the commission, the applicant has served or
11 mailed the commission's notice of the application to persons who in
12 the judgment of the commission may be affected, including the
13 county judges as required by Subsection (b). As part of the [~~his~~]
14 application the applicant shall submit an affidavit which lists the
15 names and addresses of the persons who may be affected by the
16 application and includes the source of the list;

17 (3) within 30 days after the date of the newspaper
18 publication of the commission's notice, neither a commissioner, the
19 executive director, nor an affected person who objects to the
20 application has requested a contested case [~~public~~] hearing.

21 SECTION 2.11. Section 361.0666, Health and Safety Code, is
22 amended by adding Subsection (f) to read as follows:

23 (f) A public meeting is not required for a new municipal
24 solid waste facility that is authorized through registration.

25 SECTION 2.12. Section 361.088(e), Health and Safety Code,
26 is amended to read as follows:

27 (e) This subsection applies to an application for a new

1 permit or permit modification or amendment for post-closure care or
2 corrective action at a solid waste management facility. After
3 complying with Sections 5.5515-5.555 [~~5.552-5.555~~], Water Code,
4 the commission, without providing an opportunity for a contested
5 case hearing, may act on an application described by this
6 subsection if notice and opportunity to request a nonadjudicative
7 hearing under Subchapter S, Chapter 5, Water Code, has been given,
8 to renew a permit for:

9 (1) storage of hazardous waste in containers, tanks,
10 or other closed vessels if the waste:

11 (A) was generated on-site; and

12 (B) does not include waste generated from other
13 waste transported to the site; [~~and~~]

14 (2) processing of hazardous waste if:

15 (A) the waste was generated on-site;

16 (B) the waste does not include waste generated
17 from other waste transported to the site; and

18 (C) the processing does not include thermal
19 processing; and

20 (3) treatment, storage, or disposal of solid waste,
21 including actions relating to post-closure or corrective action, if
22 the renewal application does not include any changes to
23 authorization provided by the existing permit.

24 SECTION 2.13. Section 361.121(c), Health and Safety Code,
25 as amended by H.B. No. 2546, Acts of the 78th Legislature, Regular
26 Session, 2003, is amended to read as follows:

27 (c) The notice and hearing provisions of Subchapter S [~~M~~],

Chapter 5, Water Code, [~~as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999,~~] apply to an application under this section for a permit, a permit amendment, or a permit renewal. In addition, at the time published notice of intent to obtain a permit is required under Section 5.552, Water Code, an applicant for a permit, permit amendment, or permit renewal under this section must notify by registered or certified mail each owner of land located within one-quarter mile of the proposed land application unit who lives on that land of the intent to obtain the permit, amendment, or renewal. Notice to landowners must include the information required by Section 5.552(c), Water Code, and information regarding the anticipated date of the first application of the sludge to the proposed land application unit. An owner of land located within one-quarter mile of the proposed land application unit who lives on that land is an affected person for purposes of Section 5.115, Water Code.

SECTION 2.14. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Sections 361.123 and 361.124 to read as follows:

Sec. 361.123. PERMIT FOR DISPOSAL OF BRUSH, CONSTRUCTION AND DEMOLITION WASTE, AND OTHER NONPUTRESCIBLE WASTES IN ARID-EXEMPT LANDFILLS. This section applies only to a landfill for which an application for an initial permit is filed on or after December 1, 2003, and that is certified as arid-exempt in accordance with commission rule and is designated for the disposal of brush, construction and demolition waste, and other nonputrescible wastes. An application by a landfill for a permit or

1 permit amendment is not subject to a contested case hearing but is
2 subject to notice and opportunity for a nonadjudicative hearing
3 under Subchapter S, Chapter 5, Water Code.

4 Sec. 361.124. PERMIT FOR ANIMAL CREMATORY FACILITY. This
5 section applies only to a facility that stores, processes, or
6 disposes of animal carcasses and that is not eligible for
7 authorization through a permit by rule. An application by a
8 facility for a permit or permit amendment is not subject to a
9 contested case hearing but is subject to the notice and opportunity
10 for a nonadjudicative hearing under Subchapter S, Chapter 5, Water
11 Code.

12 SECTION 2.15. Section 361.534, Health and Safety Code, is
13 amended by amending Subsection (a) and adding Subsection (c) to
14 read as follows:

15 (a) The commission may hold a public meeting on [~~shall set a~~
16 ~~hearing to be held not later than the 30th day after the date that~~
17 ~~the commission receives~~] an application under this subchapter.

18 (c) Notice of the public meeting shall be mailed and
19 published as provided by commission rule.

20 SECTION 2.16. Section 382.0518(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) The commission shall grant within a reasonable time a
23 permit or permit amendment to construct or modify a facility if,
24 from the information available to the commission, including
25 information presented at a contested case [~~any~~] hearing [~~held under~~
26 ~~Section 382.056(k)~~], the commission finds:

27 (1) the proposed facility for which a permit, permit

1 amendment, or a special permit is sought will use at least the best
2 available control technology, considering the technical
3 practicability and economic reasonableness of reducing or
4 eliminating the emissions resulting from the facility; and

5 (2) no indication that the emissions from the facility
6 will contravene the intent of this chapter, including protection of
7 the public's health and physical property.

8 SECTION 2.17. Section 382.05191, Health and Safety Code, is
9 amended by amending Subsection (a) and adding Subsection (e) to
10 read as follows:

11 (a) An applicant for a permit under Section 382.05183,
12 382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice,
13 including notice of the opportunity for nonadjudicative hearing ~~[of~~
14 ~~intent to obtain the permit]~~ in accordance with Subchapter S,
15 Chapter 5, Water Code [Section 382.056]. An applicant for a permit
16 under Section 382.05186(b) shall publish notice, including notice
17 of an opportunity for nonadjudicative hearing under Section
18 382.05197.

19 (e) For an application under Section 382.05183,
20 382.05185(c) or (d), 382.05186, or 382.0519, the executive director
21 shall prepare a fact sheet that briefly describes the principal
22 facts and significant legal and policy issues, as provided by
23 commission rule.

24 SECTION 2.18. Section 382.05197, Health and Safety Code, is
25 amended by amending Subsection (a) and adding Subsection (e) to
26 read as follows:

27 (a) An application ~~[applicant]~~ for a permit under Section

1 382.05194 is subject to notice and opportunity for contested case
2 hearing [~~shall publish notice of intent to obtain the permit in~~
3 ~~accordance with Section 382.056, except that the notice of a~~
4 ~~proposed multiple plant permit for existing facilities shall be~~
5 ~~published in one or more statewide or regional newspapers that~~
6 ~~provide reasonable notice throughout the state. If the multiple~~
7 ~~plant permit for existing facilities will be effective for only~~
8 ~~part of the state, the notice shall be published in a newspaper of~~
9 ~~general circulation in the area to be affected. The commission by~~
10 ~~rule may require that additional notice be given].~~

11 (e) Notwithstanding Section 5.5515(c), Water Code, notice
12 of a proposed multiple plant permit for existing facilities shall
13 be published in one or more statewide or regional newspapers that
14 provide reasonable notice throughout this state. If the multiple
15 plant permit for existing facilities will be effective for only a
16 part of this state, the notice shall be published in a newspaper of
17 general circulation in the area to be affected. The commission by
18 rule may require that additional notice be given.

19 SECTION 2.19. The heading to Section 382.056, Health and
20 Safety Code, is amended to read as follows:

21 Sec. 382.056. NOTICE AND [~~OF INTENT TO OBTAIN PERMIT OR~~
22 ~~PERMIT REVIEW,~~] HEARING.

23 SECTION 2.20. Section 382.056, Health and Safety Code, as
24 amended by H.B. No. 555 and H.B. No. 1287, Acts of the 78th
25 Legislature, Regular Session, 2003, is amended by amending
26 Subsections (a), (o), (q), and (r) and adding Subsections (a-1)
27 through (a-3) to read as follows:

1 (a) An ~~[Except as provided by Section 382.0518(h), an]~~
2 applicant for a permit or permit amendment under Section 382.0518
3 or a permit renewal review under Section 382.055 shall publish
4 notice of a preliminary decision on ~~[intent to obtain]~~ the permit,
5 permit amendment, or permit review and provide an opportunity for
6 contested case hearing as provided by Subchapter M, Chapter 5,
7 Water Code ~~[not later than the 30th day after the date the~~
8 ~~commission determines the application to be administratively~~
9 ~~complete. The commission by rule shall require an applicant for a~~
10 ~~federal operating permit under Section 382.054 to publish notice of~~
11 ~~intent to obtain a permit, permit amendment, or permit review~~
12 ~~consistent with federal requirements and with the requirements of~~
13 ~~Subsection (b). The applicant shall publish the notice at least~~
14 ~~once in a newspaper of general circulation in the municipality in~~
15 ~~which the facility or federal source is located or is proposed to be~~
16 ~~located or in the municipality nearest to the location or proposed~~
17 ~~location of the facility or federal source. If the elementary or~~
18 ~~middle school nearest to the facility or proposed facility provides~~
19 ~~a bilingual education program as required by Subchapter B, Chapter~~
20 ~~29, Education Code, the applicant shall also publish the notice at~~
21 ~~least once in an additional publication of general circulation in~~
22 ~~the municipality or county in which the facility is located or~~
23 ~~proposed to be located that is published in the language taught in~~
24 ~~the bilingual education program. This requirement is waived if~~
25 ~~such a publication does not exist or if the publisher refuses to~~
26 ~~publish the notice]~~. The commission by rule shall prescribe the
27 form and content of the notice and when notice must be published.

1 The commission may require publication of additional notice. The
2 commission by rule shall prescribe alternative procedures for
3 publication of the notice in a newspaper if the applicant is a small
4 business stationary source as defined by Section 5.135, Water Code,
5 ~~[382.0365]~~ and will not have a significant effect on air quality.
6 The alternative procedures must be cost-effective while ensuring
7 adequate notice~~[. Notice required to be published under this~~
8 ~~section shall only be required to be published in the United~~
9 ~~States].~~

10 (a-1) An amendment, modification, or renewal that would not
11 result in an increase in allowable emissions and would not result in
12 the emission of an air contaminant not previously emitted is
13 subject to notice, but the commission may not hold a contested case
14 hearing on the amendment, modification, or renewal as provided by
15 this section except as provided by Subsection (o).

16 (a-2) An application for a permit amendment under this
17 section is not subject to notice or contested case hearing if the
18 total emissions increase from all facilities authorized under the
19 amended permit will meet the de minimus criteria established by
20 commission rule and the emissions will not change in character. An
21 application for a permit amendment for a facility affected by a rule
22 adopted under Section 382.020 is not subject to notice or contested
23 case hearing if the total emissions increase from all facilities
24 authorized under the permit amendment is not significant and will
25 not change in character. A finding under this subsection that a
26 total emissions increase is not significant must be made in the same
27 manner as a finding made under Section 382.05196.

1 (a-3) The following types of applications for a permit,
2 permit amendment, or permit renewal are not subject to the
3 opportunity for a contested case hearing and are subject to notice
4 and opportunity for a nonadjudicative hearing under Subchapter S,
5 Chapter 5, Water Code:

- 6 (1) concrete batch plants;
7 (2) rock crushing facilities;
8 (3) concrete crushing facilities;
9 (4) hot mix asphalt plants;
10 (5) cotton gins;
11 (6) grain handling facilities; and
12 (7) animal crematory facilities.

13 (o) Notwithstanding other provisions of this chapter, an
14 application for ~~[the commission may hold a hearing on]~~ a permit
15 amendment, modification, or renewal is subject to the opportunity
16 for a contested case hearing if it ~~[if the commission determines~~
17 ~~that the application]~~ involves a facility for which the applicant's
18 compliance history is unacceptable to the commission based on
19 violations constituting a recurring pattern of conduct that
20 demonstrates a consistent disregard for the regulatory process,
21 including a failure to make a timely and substantial attempt to
22 correct the violations ~~[in the lowest classification under Sections~~
23 ~~5.753 and 5.754, Water Code, and rules adopted and procedures~~
24 ~~developed under those sections]~~.

25 (q) The commission ~~[department]~~ shall establish rules to
26 ensure that a permit applicant complies with the notice requirement
27 under Subchapter M, Chapter 5, Water Code ~~[Subsection (a)]~~.

(r) An application is not subject to notice and opportunity for a contested case hearing if the application involves [This section does not apply to]:

(1) the relocation or change of location of a portable facility to a site where an authorized [a] portable facility has been located at the proposed site at any time during the previous two years;

(2) a portable facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or

(3) a facility described by Section 382.065(c), unless that facility is in a county with a population of 2.4 million or more or in a county adjacent to such a county.

SECTION 2.21. The heading to Section 382.0561, Health and Safety Code, is amended to read as follows:

Sec. 382.0561. FEDERAL OPERATING PERMIT: NOTICE AND HEARING.

SECTION 2.22. Section 382.0561(f), Health and Safety Code, is amended to read as follows:

(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with commission rules and include:

(1) a description of the location or proposed location of the facility or federal source;

(2) a description of the manner in which the commission may be contacted for further information, including a telephone number;

1 (3) a statement that a person who may be affected by
2 emissions of air contaminants from the facility, proposed facility,
3 or federal source, is entitled to request a nonadjudicative hearing
4 from the commission; and

5 (4) any other information the commission by rule
6 requires [~~Section 382.056~~].

7 SECTION 2.23. The following laws are repealed:

8 (1) Section 5.552, Water Code;

9 (2) Sections 5.553(b), (c), and (d), Water Code;

10 (3) Sections 5.556(d) and (e), Water Code; and

11 (4) Section 5.557, Water Code.

12 SECTION 2.24. Sections 361.0791, 361.080(b), 361.081(c),
13 361.082(d), and 361.088(d), Health and Safety Code, are repealed.

14 SECTION 2.25. Sections 361.534(b), 382.0518(h) and (i),
15 382.05191(b) and (c), 382.05197(b) and (c), 382.056(b)-(n) and (p),
16 and 382.058, Health and Safety Code, are repealed.

17 ARTICLE 3. COMPLIANCE HISTORY

18 SECTION 3.01. Subchapter Q, Chapter 5, Water Code, is
19 repealed.

20 SECTION 3.02. Section 361.0215(c), Health and Safety Code,
21 is repealed.

22 SECTION 3.03. Section 27.051(h), Water Code, as added by
23 Chapter 965, Acts of the 77th Legislature, Regular Session, 2001,
24 is repealed.

25 SECTION 3.04. Section 26.0281, Water Code, is amended to
26 read as follows:

27 Sec. 26.0281. CONSIDERATION OF PAST PERFORMANCE AND

COMPLIANCE [~~HISTORY~~]. In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider any adjudicated decision or [the] compliance proceeding addressing past performance and compliance [history] of the applicant and its operator with the laws of this state governing waste discharge, waste treatment, or waste disposal facilities and with the terms of any permit or order issued by the commission [~~under the method for evaluating compliance history developed by the commission under Section 5.754~~]. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this section, "environmental management system" has the meaning assigned by Section 5.127.

SECTION 3.05. Section 26.040(h), Water Code, is amended to read as follows:

(h) Notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations [~~is in the lowest classification under Sections 5.753~~]

1 ~~and 5.754 and rules adopted and procedures developed under those~~
2 ~~sections~~]. A hearing under this subsection is not subject to
3 Chapter 2001, Government Code.

4 SECTION 3.06. Section 27.051(d), Water Code, and Section
5 27.051(e), Water Code, as amended by Chapter 965, Acts of the 77th
6 Legislature, Regular Session, 2001, are amended to read as follows:

7 (d) The commission, in determining if the use or
8 installation of an injection well is in the public interest under
9 Subsection (a)(1), shall consider, but shall not be limited to the
10 consideration of:

11 (1) compliance history of the applicant and related
12 entities ~~[under the method for evaluating compliance history~~
13 ~~developed by the commission under Section 5.754 and]~~ in accordance
14 with the provisions of Subsection (e);

15 (2) whether there is a practical, economic, and
16 feasible alternative to an injection well reasonably available; and

17 (3) if the injection well will be used for the disposal
18 of hazardous waste, whether the applicant will maintain sufficient
19 public liability insurance for bodily injury and property damage to
20 third parties that is caused by sudden and non-sudden accidents or
21 will otherwise demonstrate financial responsibility in a manner
22 adopted by the commission in lieu of public liability insurance. A
23 liability insurance policy which satisfies the policy limits
24 required by the hazardous waste management regulations of the
25 commission for the applicant's proposed pre-injection facilities
26 shall be deemed "sufficient" under this subdivision if the policy:

27 (A) covers the injection well; and

(B) is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

(e) The ~~[Consistent with Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, the]~~ commission shall establish a procedure by rule for its preparation of compliance summaries relating to the history of compliance and noncompliance by the applicant with the rules adopted or orders or permits issued by the commission under this chapter for any injection well for which a permit has been issued under this chapter ~~[for preparing summaries of the applicant's compliance history].~~

The compliance summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well for the disposal of hazardous waste with the rules adopted or orders or permits issued by the commission under this chapter may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. ~~[In accordance with this subsection and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, evidence of the compliance history of an applicant for an injection well may be offered at a hearing on the application and may be admitted into evidence, subject to the rules of evidence.]~~ All evidence admitted, including compliance

1 history, shall be considered by the commission in determining
2 whether to issue, amend, extend or renew a permit.

3 SECTION 3.07. Sections 361.084(a) and (c), Health and
4 Safety Code, are amended to read as follows:

5 (a) The commission by rule shall establish a procedure to
6 prepare compliance summaries relating to the applicant's solid
7 waste management activities [~~in accordance with the method for~~
8 ~~evaluating compliance history developed by the commission under~~
9 ~~Section 5.754, Water Code~~]. A compliance summary shall include as
10 evidence of compliance information regarding the applicant's
11 implementation of an environmental management system at the
12 facility for which the authorization is sought. In this subsection,
13 "environmental management system" has the meaning assigned by
14 Section 5.127, Water Code.

15 (c) Evidence of compliance or noncompliance by an applicant
16 for a solid waste management facility permit with agency rules,
17 permits, other orders, or evidence of a final determination of
18 noncompliance with federal statutes or statutes of any state in the
19 preceding five years concerning solid waste management may be:

20 (1) offered by a party at a hearing concerning the
21 application; and

22 (2) admitted into evidence subject to applicable rules
23 of evidence.

24 SECTION 3.08. Section 361.088(f), Health and Safety Code,
25 is amended to read as follows:

26 (f) Notwithstanding Subsection (e), if the commission
27 determines that an applicant's compliance history for the preceding

1 five years [~~under the method for evaluating compliance history~~
2 ~~developed by the commission under Section 5.754, Water Code,~~]
3 raises an issue regarding the applicant's ability to comply with a
4 material term of its permit, the commission shall provide an
5 opportunity to request a contested case hearing.

6 SECTION 3.09. Sections 361.089(a), (e), and (f), Health and
7 Safety Code, are amended to read as follows:

8 (a) The commission may, for good cause, deny or amend a
9 permit it issues or has authority to issue for reasons pertaining to
10 public health, air or water pollution, or land use, or for a
11 violation of this chapter or other applicable laws or rules
12 controlling the management of solid waste [~~having a compliance~~
13 ~~history that is in the lowest classification under Sections 5.753~~
14 ~~and 5.754, Water Code, and rules adopted and procedures developed~~
15 ~~under those sections~~].

16 (e) The commission may deny an original or renewal permit if
17 it is found, after notice and hearing, that:

18 (1) the applicant or permit holder has a record of
19 environmental violations in the preceding five years at the
20 permitted site [~~compliance history that is in the lowest~~
21 ~~classification under Sections 5.753 and 5.754, Water Code, and~~
22 ~~rules adopted and procedures developed under those sections~~];

23 (2) the permit holder or applicant made a false or
24 misleading statement in connection with an original or renewal
25 application, either in the formal application or in any other
26 written instrument relating to the application submitted to the
27 commission, its officers, or its employees;

1 (3) the permit holder or applicant is indebted to the
2 state for fees, payment of penalties, or taxes imposed by this title
3 or by a rule of the commission; ~~or~~

4 (4) the permit holder or applicant is unable to ensure
5 that the management of the hazardous waste management facility
6 conforms or will conform to this title and the rules of the
7 commission; or

8 (5) the applicant has a record of environmental
9 violations in the preceding five years at any site owned, operated,
10 or controlled by the applicant.

11 (f) Before denying a permit under this section, the
12 commission must find:

13 (1) that a violation or violations are significant and
14 that the permit holder or applicant has not made a substantial
15 attempt to correct the violations ~~[the applicant or permit holder~~
16 ~~has a compliance history that is in the lowest classification under~~
17 ~~Sections 5.753 and 5.754, Water Code, and rules adopted and~~
18 ~~procedures developed under those sections]~~; or

19 (2) that the permit holder or applicant is indebted to
20 the state for fees, payment of penalties, or taxes imposed by this
21 title or by a rule of the commission.

22 SECTION 3.10. Section 382.0518(c), Health and Safety Code,
23 is amended to read as follows:

24 (c) In considering the issuance, amendment, or renewal of a
25 permit, the commission may consider any adjudicated decision or
26 compliance proceeding within the five years before the date on
27 which the application was filed that addressed the applicant's past

1 performance and compliance with the laws of this state, another
 2 state, or the United States governing air contaminants or with the
 3 terms of any permit or order issued by the commission [~~the~~
 4 ~~applicant's compliance history in accordance with the method for~~
 5 ~~evaluating compliance history developed by the commission under~~
 6 ~~Section 5.754, Water Code~~]. In considering an applicant's
 7 compliance history under this subsection, the commission shall
 8 consider as evidence of compliance information regarding the
 9 applicant's implementation of an environmental management system
 10 at the facility for which the permit, permit amendment, or permit
 11 renewal is sought. In this subsection, "environmental management
 12 system" has the meaning assigned by Section 5.127, Water Code.

13 SECTION 3.11. Section 382.055(d), Health and Safety Code,
 14 is amended to read as follows:

15 (d) In determining whether and under which conditions a
 16 preconstruction permit should be renewed, the commission shall
 17 consider, at a minimum:

18 (1) whether the [~~performance of the owner or operator~~
 19 ~~of the~~] facility is or has been in substantial compliance with this
 20 chapter and the terms of the existing permit [~~according to the~~
 21 ~~method developed by the commission under Section 5.754, Water~~
 22 ~~Code~~]; and

23 (2) the condition and effectiveness of existing
 24 emission control equipment and practices.

25 SECTION 3.12. Section 401.110(a), Health and Safety Code,
 26 as amended by H.B. No. 253, Acts of the 78th Legislature, Regular
 27 Session, 2003, is amended to read as follows:

1 (a) In making a determination whether to grant, deny, amend,
2 renew, revoke, suspend, or restrict a license or registration, the
3 commission may consider an applicant's or license holder's
4 technical competence, financial qualifications, and the
5 applicant's or license holder's record in areas involving radiation
6 ~~[compliance history under the method for evaluation of compliance~~
7 ~~history developed by the commission under Section 5.754, Water~~
8 ~~Code]~~.

9 SECTION 3.13. Section 401.112(a), Health and Safety Code,
10 as amended by H.B. No. 253, Acts of the 78th Legislature, Regular
11 Session, 2003, is amended to read as follows:

12 (a) The department or commission, within its jurisdiction,
13 in making a licensing decision on a specific license application to
14 process or dispose of low-level radioactive waste from other
15 persons, shall consider:

16 (1) site suitability, geological, hydrological, and
17 meteorological factors, and natural hazards;

18 (2) compatibility with present uses of land near the
19 site;

20 (3) socioeconomic effects on surrounding communities
21 of operation of the licensed activity and of associated
22 transportation of low-level radioactive waste;

23 (4) the need for and alternatives to the proposed
24 activity, including an alternative siting analysis prepared by the
25 applicant;

26 (5) the applicant's qualifications, including
27 financial and technical qualifications and past operating

1 practices [~~and compliance history under the method for evaluation~~
2 ~~of compliance history developed by the commission under Section~~
3 ~~5.754, Water Code, for an application to the commission or the~~
4 ~~requirements of Section 401.110(b) for an application to the~~
5 ~~department]~~;

6 (6) background monitoring plans for the proposed site;

7 (7) suitability of facilities associated with the
8 proposed activities;

9 (8) chemical, radiological, and biological
10 characteristics of the low-level radioactive waste and waste
11 classification under Section 401.053;

12 (9) adequate insurance of the applicant to cover
13 potential injury to any property or person, including potential
14 injury from risks relating to transportation;

15 (10) training programs for the applicant's employees;

16 (11) a monitoring, record-keeping, and reporting
17 program;

18 (12) spill detection and cleanup plans for the
19 licensed site and related to associated transportation of low-level
20 radioactive waste;

21 (13) decommissioning and postclosure care plans;

22 (14) security plans;

23 (15) worker monitoring and protection plans;

24 (16) emergency plans; and

25 (17) a monitoring program for applicants that includes
26 prelicense and postlicense monitoring of background radioactive
27 and chemical characteristics of the soils, groundwater, and

1 vegetation.

2 ARTICLE 4. REGULATORY FLEXIBILITY AND REGULATORY STRUCTURE

3 SECTION 4.01. Subchapter D, Chapter 5, Water Code, is
4 amended by adding Sections 5.138 and 5.139 to read as follows:

5 Sec. 5.138. REGULATORY FLEXIBILITY. (a) The commission by
6 order may exempt an applicant from a requirement of a statute or
7 commission rule regarding the control or abatement of pollution if
8 the applicant proposes to control or abate pollution by an
9 alternative method or by applying an alternative standard that is:

10 (1) as protective of the environment and the public
11 health as the method or standard prescribed by the statute or
12 commission rule that would otherwise apply; and

13 (2) not inconsistent with federal law.

14 (b) The commission may not exempt an applicant under this
15 section unless the applicant can demonstrate to the commission that
16 the applicant's proposed project will result in a level of
17 protection of environmental quality that is equal to or greater
18 than the level of protection afforded by existing standards.

19 (c) The commission by rule shall specify the procedure for
20 obtaining an exemption under this section.

21 (d) The commission's order must describe the alternative
22 method or standard and must condition the exemption on compliance
23 with the method or standard as the order prescribes.

24 (e) The commission by rule may establish a reasonable fee
25 for applying for an exemption under this section.

26 (f) The violation of an order issued under this section is
27 punishable as if it were a violation of the statute or rule from

1 which the order grants an exemption.

2 (g) The commission may not exempt an applicant from a
3 requirement of a statute or regulation regarding the storing,
4 handling, processing, or disposing of low-level radioactive
5 materials.

6 (h) In implementing the program of regulatory flexibility
7 authorized by this section, the commission shall:

8 (1) endorse alternative methods that will comply with
9 legal requirements and impose the least onerous restrictions on
10 business, including economic benefit; and

11 (2) work to achieve consistent and predictable results
12 for the regulated community and shorter waits for permit issuance.

13 Sec. 5.139. STRATEGICALLY DIRECTED REGULATORY STRUCTURE.

14 (a) The commission may develop a strategically directed regulatory
15 structure that is designed to use innovative programs to provide
16 enhanced environmental benefit and reward compliance performance.

17 (b) The strategically directed regulatory structure may
18 offer incentives based on a person's compliance performance and any
19 voluntary measures undertaken by the person to improve
20 environmental quality.

21 (c) An innovative program offered as part of a strategically
22 directed regulatory structure must:

23 (1) provide incentives to a person in return for
24 benefits to the environment that exceed benefits that would result
25 from compliance with applicable legal requirements under the
26 commission's jurisdiction; and

27 (2) be consistent with other law and any requirement

1 necessary to maintain federal program authorization.

2 ARTICLE 5. TRANSITION PROVISIONS AND EFFECTIVE DATE

3 SECTION 5.01. (a) The changes in law made by Articles 1 and
4 2 of this Act apply only to an application for a permit filed with
5 the Texas Commission on Environmental Quality on or after December
6 1, 2003. An application for a permit that is filed before December
7 1, 2003, is governed by the law in effect on the date the
8 application is filed, and that law is continued in effect for that
9 purpose.

10 (b) The changes in law made by Article 3 of this Act apply
11 only to an action taken by the Texas Commission on Environmental
12 Quality on or after December 1, 2003.

13 SECTION 5.02. This Act takes effect December 1, 2003.