

By: Bonnen, Homer, Chisum

H.B. No. 2877

Substitute the following for H.B. No. 2877:

By: Smith of Harris

C.S.H.B. No. 2877

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the permitting procedures of the Texas Commission on  
3 Environmental Quality.

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

5 SECTION 1. Section 5.554, Water Code, is amended to read as  
6 follows:

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

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

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

16 (b) The commission shall extend the public comment period  
17 automatically until the close of the public meetings. The  
18 commission may not extend the period during which requests for  
19 initiation of the public participation process or requests for  
20 reconsideration may be filed.

21 SECTION 2. Section 5.555(a), Water Code, is amended to read  
22 as follows:

23 (a) The executive director, in accordance with procedures  
24 provided by commission rule, shall file with the chief clerk of the

1 commission a response to each relevant and material public comment  
2 on the preliminary decision filed in writing during the public  
3 comment period.

4 SECTION 3. Section 5.556, Water Code, is amended by  
5 amending Subsections (a), (c), and (d) and adding Subsection (g) to  
6 read as follows:

7 (a) A person may request that the commission reconsider the  
8 executive director's decision or hold a contested case hearing. A  
9 request for reconsideration of the executive director's decision  
10 must be filed with the commission after publication of the  
11 preliminary decision during the period provided by commission rule.  
12 A request for a contested case hearing must be filed with the  
13 commission after transmittal of the executive director's response  
14 to public comments during the period provided by commission rule.

15 (c) The commission may not grant a request for a contested  
16 case hearing unless the commission determines that the request was  
17 filed by an affected person as defined by Section 5.115 who  
18 submitted written comments during the public comment period.

19 (d) The commission may not refer an issue to the State  
20 Office of Administrative Hearings for a hearing unless the  
21 commission determines that [~~the issue~~]:

22 (1) the issue involves a disputed question of fact;  
23 (2) the hearing request provides substantial  
24 information establishing a reasonable basis for the factual dispute  
25 and describes how the executive director's response to comments  
26 failed to resolve the dispute;

27 (3) the issue is discrete and not a broad or

1 generalized objection;

2 (4) the issue was raised during the public comment  
3 period by the person requesting the hearing; and

4 (5) the issue [~~(3)~~] is relevant and material to the  
5 decision on the application.

6 (g) Public notice is not required for a contested case  
7 hearing the commission grants under this section.

8 SECTION 4. Section 382.056, Health and Safety Code, is  
9 amended by amending Subsections (b), (g), (h), (i), (l), (m), and  
10 (n) and adding Subsections (s) and (t) to read as follows:

11 (b) The notice must include:

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

14 (2) the location at which a copy of the application is  
15 available for review and copying as provided by Subsection (d);

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

19 (4) a description, including a telephone number, of  
20 the manner in which the applicant may be contacted for further  
21 information;

22 (5) a description of the applicable procedural rights  
23 and obligations of the public, printed in a font style or size that  
24 clearly provides emphasis and distinguishes it from the remainder  
25 of the notice [~~, that includes a statement that a person who may be~~  
26 ~~affected by emissions of air contaminants from the facility,~~  
27 ~~proposed facility, or federal source is entitled to request a~~

1 ~~hearing from the commission];~~

2 (6) a statement that a person who may be affected by  
3 emissions of air contaminants from the facility, proposed facility,  
4 or federal source is entitled to request initiation of the public  
5 participation process;

6 (7) a description of the procedure by which a person  
7 may be placed on a mailing list in order to receive additional  
8 information about the application;

9 (8) ~~[(7)]~~ the time and location of any public meeting  
10 to be held under Subsection (e); and

11 (9) ~~[(8)]~~ any other information the commission by rule  
12 requires.

13 (g) If, in response to the notice published under Subsection  
14 (a) for a permit or permit amendment under Section 382.0518 or a  
15 permit renewal review under Section 382.055, a person files a  
16 request ~~[requests]~~ during the period provided by commission rule  
17 that the commission initiate the public participation process ~~[hold~~  
18 ~~a public hearing]~~ and the request is not withdrawn before the date  
19 the preliminary decision is issued, the applicant shall publish  
20 notice of the preliminary decision in a newspaper, and the  
21 commission shall seek public comment on the preliminary decision in  
22 accordance with ~~[. The commission shall consider the request for~~  
23 ~~public hearing under]~~ the procedures provided by Subsections  
24 (i)-(n). However, the ~~[The]~~ commission may not seek further public  
25 comment or hold a public hearing ~~[under the procedures provided by~~  
26 ~~Subsections (i)-(n)]~~ in response to a request for initiation of the  
27 ~~[a]~~ public participation process ~~[hearing]~~ on an amendment,

1 modification, or renewal that would not result in an increase in  
2 allowable emissions and would not result in the emission of an air  
3 contaminant not previously emitted.

4 (h) If, in response to the notice published under Subsection  
5 (a) for a permit under Section 382.054, a person requests during the  
6 public comment period provided by commission rule that the  
7 commission initiate the ~~[hold-a]~~ public participation process  
8 ~~[hearing]~~, the commission shall consider the request under the  
9 procedures provided by Section 382.0561 and not under the  
10 procedures provided by Subsections (i)-(n).

11 (i) The commission by rule shall establish the form and  
12 content of the notice of preliminary decision under Subsection (g),  
13 the manner of publication, and the duration of the public comment  
14 period. The notice must include:

15 (1) the information required by Subsections  
16 ~~[Subsection]~~ (b)(1)-(5) and (7)-(9);

17 (2) a summary of the preliminary decision;

18 (3) the location at which a copy of the preliminary  
19 decision is available for review and copying as provided by  
20 Subsection (j);

21 (4) a description of the manner in which comments  
22 regarding the preliminary decision may be submitted that includes a  
23 statement that a person who may be affected by emissions of air  
24 contaminants from the facility, proposed facility, or federal  
25 source is entitled to request a hearing from the commission; and

26 (5) any other information the commission by rule  
27 requires.

1           (1) The executive director, in accordance with procedures  
2 adopted by the commission by rule, shall file with the chief clerk  
3 of the commission a response to each relevant and material public  
4 comment on the preliminary decision filed in writing during the  
5 public comment period.

6           (m) The chief clerk of the commission shall transmit the  
7 executive director's decision, the executive director's response to  
8 public comments, and instructions for requesting that the  
9 commission reconsider the executive director's decision or hold a  
10 contested case hearing to:

11                   (1) the applicant;

12                   (2) any person who submitted comments during the  
13 public comment period;

14                   (3) any person who requested to be on the mailing list  
15 for the permit action; and

16                   (4) any person who timely filed a request for  
17 initiation of the [a] public participation process [hearing] in  
18 response to the notice published under Subsection (a).

19           (n) Except as provided by Section 382.0561, the commission  
20 shall consider a request that the commission reconsider the  
21 executive director's decision or hold a contested case [public]  
22 hearing in accordance with the procedures provided by Sections  
23 5.556 and 5.557, Water Code.

24           (s) If a request to initiate the public participation  
25 process is not filed during the period prescribed by commission  
26 rule for a permit or permit amendment under Section 382.0518 or for  
27 a permit renewal review under Section 382.055, the commission shall

1 conduct a public hearing held in response to a later public notice  
2 required solely by federal program requirements in accordance with  
3 Section 382.0561 and not under Chapter 2001, Government Code.

4 (t) The commission shall extend the public comment period  
5 automatically until the close of the public meetings held under  
6 Subsection (k). The commission may not extend the period during  
7 which requests for initiation of the public participation process  
8 or requests for reconsideration may be filed.

9 SECTION 5. Section 2003.047, Government Code, is amended by  
10 adding Subsections (p) and (q) to read as follows:

11 (p) In designating parties to a hearing on a permit  
12 application, the administrative law judge may name as parties only  
13 the executive director, the office of public interest counsel, the  
14 permit applicant, and other persons whose hearing requests have  
15 been granted by the commission and whose issues have been referred  
16 by the commission for a contested case hearing. The executive  
17 director may participate in a contested case hearing only to the  
18 extent described in Section 5.228, Water Code.

19 (q) An administrative law judge may make a summary  
20 disposition of the issues referred by the commission as provided by  
21 commission rules.

22 SECTION 6. (a) This Act takes effect September 1, 2003.

23 (b) The changes in law made by this Act apply only to an  
24 application for a permit, permit amendment, or permit renewal that  
25 is filed with the Texas Commission on Environmental Quality on or  
26 after September 1, 2003. A permit, permit amendment, or permit  
27 renewal that is filed before that date is governed by the law in

1 effect on the date it was filed, and that law is continued in effect  
2 for that purpose.