

By: Bonnen

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 5.555(a), Water Code, is amended to read
6 as follows:

7 (a) The executive director, in accordance with procedures
8 provided by commission rule, shall file with the chief clerk of the
9 commission a response to each relevant and material public comment
10 on the preliminary decision filed in writing during the public
11 comment period.

12 SECTION 2. Sections 5.556(a), (c), and (d), Water Code, are
13 amended to read as follows:

14 (a) A person may request that the commission reconsider the
15 executive director's decision or hold a contested case hearing. A
16 request for reconsideration of the executive director's decision
17 must be filed with the commission after publication of the
18 preliminary decision during the period provided by commission rule.
19 A request for a contested case hearing must be filed with the
20 commission after transmittal of the executive director's response
21 to public comments during the period provided by commission rule.

22 (c) The commission may not grant a request for a contested
23 case hearing unless the commission determines that the request was
24 filed by an affected person as defined by Section 5.115 who

1 submitted written comments during the public comment period.

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

5 (1) the issue involves a disputed question of fact;

6 (2) the person requesting the hearing has made a prima
7 facie showing based on competent evidence that there is a
8 reasonable basis for the factual dispute;

9 (3) the issue is discrete and not a broad or
10 generalized objection;

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

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

15 SECTION 3. Sections 382.056(b), (g), (h), (i), (l), (m),
16 and (n), Health and Safety Code, are amended to read as follows:

17 (b) The notice must include:

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

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

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

25 (4) a description, including a telephone number, of
26 the manner in which the applicant may be contacted for further
27 information;

1 (5) a description of the applicable procedural rights
2 and obligations of the public, printed in a font style or size that
3 clearly provides emphasis and distinguishes it from the remainder
4 of the notice [~~, that includes a statement that a person who may be~~
5 ~~affected by emissions of air contaminants from the facility,~~
6 ~~proposed facility, or federal source is entitled to request a~~
7 ~~hearing from the commission]~~;

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

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

15 (8) [~~(7)~~] the time and location of any public meeting
16 to be held under Subsection (e); and

17 (9) [~~(8)~~] any other information the commission by rule
18 requires.

19 (g) If, in response to the notice published under Subsection
20 (a) for a permit or permit amendment under Section 382.0518 or a
21 permit renewal review under Section 382.055, a person files a
22 request [~~requests~~] during the period provided by commission rule
23 that the commission initiate the public participation process [~~hold~~
24 ~~a public hearing~~] and the request is not withdrawn before the date
25 the preliminary decision is issued, the applicant shall publish
26 notice of the preliminary decision in a newspaper, and the
27 commission shall seek public comment on the preliminary decision in

1 accordance with [~~. The commission shall consider the request for~~
2 ~~public hearing under~~] the procedures provided by Subsections
3 (i)-(n). However, the [~~The~~] commission may not seek further public
4 comment or hold a public hearing [~~under the procedures provided by~~
5 ~~Subsections (i)-(n)~~] in response to a request for initiation of the
6 [~~a~~] public participation process [~~hearing~~] on an amendment,
7 modification, or renewal that would not result in an increase in
8 allowable emissions and would not result in the emission of an air
9 contaminant not previously emitted.

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

17 (i) The commission by rule shall establish the form and
18 content of the notice of preliminary decision under Subsection (g),
19 the manner of publication, and the duration of the public comment
20 period. The notice must include:

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

23 (2) a summary of the preliminary decision;

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

27 (4) a description of the manner in which comments

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

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

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

12 (m) The chief clerk of the commission shall transmit the
13 executive director's decision, the executive director's response to
14 public comments, and instructions for requesting that the
15 commission reconsider the executive director's decision or hold a
16 contested case hearing to:

17 (1) the applicant;

18 (2) any person who submitted comments during the
19 public comment period;

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

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

25 (n) Except as provided by Section 382.0561, the commission
26 shall consider a request that the commission reconsider the
27 executive director's decision or hold a contested case [~~public~~]

1 hearing in accordance with the procedures provided by Sections
2 5.556 and 5.557, Water Code.

3 SECTION 4. Section 2003.047, Government Code, is amended by
4 adding Subsection (p) to read as follows:

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

13 SECTION 5. (a) This Act takes effect September 1, 2003.

14 (b) The changes in law made by this Act apply only to an
15 application for a permit, permit amendment, or permit renewal that
16 is filed with the Texas Commission on Environmental Quality on or
17 after September 1, 2003. A permit, permit amendment, or permit
18 renewal that is filed before that date is governed by the law in
19 effect on the date it was filed, and that law is continued in effect
20 for that purpose.