

1-1 By: Armbrister S.B. No. 1263
1-2 (In the Senate - Filed March 12, 2003; March 19, 2003, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 25, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 1; April 25, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1263 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to certain permitting procedures of the Texas Commission
1-11 on Environmental Quality.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 5.555, Water Code, is
1-14 amended to read as follows:

1-15 (a) The executive director, in accordance with procedures
1-16 provided by commission rule, shall file with the chief clerk of the
1-17 commission a response to each relevant and material public comment
1-18 on the preliminary decision filed in writing during the public
1-19 comment period.

1-20 SECTION 2. Section 5.556, Water Code, is amended by
1-21 amending Subsections (a), (c), and (d) and adding Subsection (g) to
1-22 read as follows:

1-23 (a) A person may request that the commission reconsider the
1-24 executive director's decision or hold a contested case hearing. A
1-25 request for reconsideration of the executive director's decision or
1-26 for a contested case hearing must be filed with the commission after
1-27 transmittal of the executive director's response to public comments
1-28 and during the period provided by commission rule.

1-29 (c) The commission may not grant a request for a contested
1-30 case hearing unless the commission determines that the request was
1-31 filed by an affected person, as defined by Section 5.115, who
1-32 submitted written comments during the public comment period or by a
1-33 local government with authority under state law over the issues
1-34 contemplated by the application upon a showing of good cause for not
1-35 having submitted written comments during the comment period.

1-36 (d) The commission may not refer an issue to the State
1-37 Office of Administrative Hearings for a hearing unless the
1-38 commission determines that ~~[the issue]~~:

1-39 (1) the issue involves a disputed question of fact;

1-40 (2) the hearing request is based on information in the
1-41 record establishing a reasonable basis for the factual dispute and
1-42 describes how the executive director's response to comments failed
1-43 to resolve the dispute;

1-44 (3) the issue is a specific, identifiable, technical
1-45 dispute regarding the application or draft permit rather than an
1-46 expression of generalized public health or environmental concerns
1-47 or objections;

1-48 (4) the issue was raised during the public comment
1-49 period by the person requesting the hearing; and

1-50 (5) the issue ~~[(3)]~~ is relevant and material to the
1-51 decision on the application.

1-52 (g) Notwithstanding other law, public notice of a contested
1-53 case hearing that the commission grants under this section is not
1-54 required. Notice of a hearing shall be provided to the applicant,
1-55 the office of public interest counsel, the executive director, and
1-56 the person whose hearing requests have been granted.

1-57 SECTION 3. Subchapter C, Chapter 382, Health and Safety
1-58 Code, is amended by adding Section 382.0531 to read as follows:

1-59 Sec. 382.0531. PERMITS FOR CERTAIN ROCK CRUSHERS. (a) The
1-60 commission may not issue a permit, permit amendment, or other
1-61 authorization for a rock-crushing facility associated with
1-62 blasting operations if:

1-63 (1) the facility or the blasting operations associated

2-1 with the facility are or will be located over an aquifer that is:
2-2 (A) made, wholly or partly, of water-bearing
2-3 limestone or dolomite; and

2-4 (B) the primary source of drinking water for a
2-5 municipality; and

2-6 (2) the facility is or will be located in a county:
2-7 (A) that is adjacent to a county with a
2-8 population of 500,000 or more; and

2-9 (B) in which is located a portion of a body of
2-10 water into which a discharge of pollutants is prohibited by the
2-11 commission under 30 T.A.C. Chapter 311.

2-12 (b) The commission shall prohibit a currently permitted
2-13 rock-crushing facility from being associated with blasting
2-14 operations if:

2-15 (1) the facility or the blasting operations associated
2-16 with the facility are or will be located over an aquifer that is:

2-17 (A) made, wholly or partly, of water-bearing
2-18 limestone or dolomite; and

2-19 (B) the primary source of drinking water for a
2-20 municipality; and

2-21 (2) the facility is or will be located in a county:
2-22 (A) that is adjacent to a county with a
2-23 population of 500,000 or more; and

2-24 (B) in which is located a portion of a body of
2-25 water into which a discharge of pollutants is prohibited by the
2-26 commission under 30 T.A.C. Chapter 311; and

2-27 (3) blasting operations have not taken place on the
2-28 tract for 10 or more years before April 10, 2003.

2-29 SECTION 4. Section 382.056, Health and Safety Code, is
2-30 amended by amending Subsections (b), (g), (h), (i), (l), (m), and
2-31 (n) and adding Subsections (s) and (t) to read as follows:

2-32 (b) The notice must include:
2-33 (1) a description of the location or proposed location
2-34 of the facility or federal source;

2-35 (2) the location at which a copy of the application is
2-36 available for review and copying as provided by Subsection (d);

2-37 (3) a description, including a telephone number, of
2-38 the manner in which the commission may be contacted for further
2-39 information;

2-40 (4) a description, including a telephone number, of
2-41 the manner in which the applicant may be contacted for further
2-42 information;

2-43 (5) a description of the applicable procedural rights
2-44 and obligations of the public, printed in a font style or size that
2-45 clearly provides emphasis and distinguishes it from the remainder
2-46 of the notice~~[, that includes a statement that a person who may be~~
2-47 ~~affected by emissions of air contaminants from the facility,~~
2-48 ~~proposed facility, or federal source is entitled to request a~~
2-49 ~~hearing from the commission];~~

2-50 (6) a statement that a person who may be affected by
2-51 emissions of air contaminants from the facility, proposed facility,
2-52 or federal source is entitled to file a notice of contest;

2-53 (7) a description of the procedure by which a person
2-54 may be placed on a mailing list in order to receive additional
2-55 information about the application;

2-56 (8) ~~[(7)]~~ the time and location of any public meeting
2-57 to be held under Subsection (e); and
2-58 (9) ~~[(8)]~~ any other information the commission by rule
2-59 requires.

2-60 (g) If, in response to the notice published under Subsection
2-61 (a) for a permit or permit amendment under Section 382.0518 or a
2-62 permit renewal review under Section 382.055, a person files a
2-63 notice of contest ~~[requests]~~ during the period provided by
2-64 commission rule ~~[that the commission hold a public hearing]~~ and the
2-65 notice of contest ~~[request]~~ is not withdrawn before the date the
2-66 preliminary decision is issued, the applicant shall publish notice
2-67 of the preliminary decision in a newspaper, and the commission
2-68 shall seek public comment on the preliminary decision in accordance
2-69 with ~~[. The commission shall consider the request for public~~

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

3-9 (h) The commission shall consider any hearing request
 3-10 regarding [~~If, in response to the notice published under Subsection~~
 3-11 ~~(a) for~~] a permit under Section 382.054 [~~, a person requests during~~
 3-12 ~~the public comment period provided by commission rule that the~~
 3-13 ~~commission hold a public hearing, the commission shall consider the~~
 3-14 ~~request~~] under the procedures provided by Section 382.0561 and not
 3-15 under the procedures provided by Subsections (i)-(n).

3-16 (i) The commission by rule shall establish the form and
 3-17 content of the notice of preliminary decision under Subsection (g),
 3-18 the manner of publication, and the duration of the public comment
 3-19 period. The notice must include:

3-20 (1) the information required by Subsections
 3-21 [~~Subsection~~] (b)(1)-(5) and (7)-(9);

3-22 (2) a summary of the preliminary decision;

3-23 (3) the location at which a copy of the preliminary
 3-24 decision is available for review and copying as provided by
 3-25 Subsection (j);

3-26 (4) a description of the manner in which comments
 3-27 regarding the preliminary decision may be submitted; and

3-28 (5) any other information the commission by rule
 3-29 requires.

3-30 (1) The executive director, in accordance with procedures
 3-31 adopted by the commission by rule, shall file with the chief clerk
 3-32 of the commission a response to each relevant and material public
 3-33 comment on the preliminary decision filed in writing during the
 3-34 public comment period.

3-35 (m) The chief clerk of the commission shall transmit the
 3-36 executive director's decision, the executive director's response to
 3-37 public comments, and instructions for requesting that the
 3-38 commission reconsider the executive director's decision or hold a
 3-39 contested case hearing to:

3-40 (1) the applicant;

3-41 (2) any person who submitted comments during the
 3-42 public comment period;

3-43 (3) any person who requested to be on the mailing list
 3-44 for the permit action; and

3-45 (4) any person who timely filed a notice of contest
 3-46 [~~request for a public hearing~~] in response to the notice published
 3-47 under Subsection (a).

3-48 (n) Except as provided by Section 382.0561, the commission
 3-49 shall consider a request that the commission reconsider the
 3-50 executive director's decision or hold a contested case [~~public~~]
 3-51 hearing in accordance with the procedures provided by Sections
 3-52 5.556 and 5.557, Water Code.

3-53 (s) If a notice of contest is not filed or is withdrawn under
 3-54 Subsection (g), any public hearing requested in response to a later
 3-55 public notice required solely by federal program requirements, if
 3-56 granted, shall be conducted in accordance with Section 382.0561 and
 3-57 not under Chapter 2001, Government Code.

3-58 (t) The commission shall extend the public comment period
 3-59 automatically until the close of the public meetings held under
 3-60 Subsection (k). The commission may not extend the period during
 3-61 which a notice of contest or request for reconsideration may be
 3-62 filed.

3-63 SECTION 5. Section 2003.047, Government Code, is amended by
 3-64 adding Subsections (p) and (q) to read as follows:

3-65 (p) In designating parties to a hearing on a permit
 3-66 application, the administrative law judge may name as parties only
 3-67 the executive director of the commission, the office of public
 3-68 interest counsel, the permit applicant, and other persons whose
 3-69 hearing requests have been granted by the commission and whose

4-1 issues have been referred by the commission for a contested case
4-2 hearing. The executive director may participate in a contested
4-3 case hearing only to the extent described in Section 5.228, Water
4-4 Code.

4-5 (g) An administrative law judge may grant a motion for a
4-6 summary disposition on any or all of the issues referred for hearing
4-7 and issue a proposal for decision that resolves the contested case
4-8 without an evidentiary hearing or with a limited evidentiary
4-9 hearing as provided by commission rules.

4-10 SECTION 6. (a) This Act takes effect September 1, 2003.

4-11 (b) The changes in law made by this Act apply only to an
4-12 application for a permit, permit amendment, or permit renewal that
4-13 is filed with the Texas Commission on Environmental Quality on or
4-14 after September 1, 2003. A permit, permit amendment, or permit
4-15 renewal that is filed before that date is governed by the law in
4-16 effect on the date of filing, and that law is continued in effect
4-17 for that purpose.

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