

By: Rodriguez

H.B. No. 1299

A BILL TO BE ENTITLED

AN ACT

relating to the delegation of authority to the executive director or staff of the Texas Commission on Environmental Quality and to the appeal of actions of the executive director or staff.

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

SECTION 1. Sections 5.122 and 5.222, Water Code, are amended to read as follows:

Sec. 5.122. DELEGATION OF UNCONTESTED MATTERS TO EXECUTIVE DIRECTOR; APPEAL OF EXECUTIVE DIRECTOR'S ACTIONS. (a) The commission by rule or order filed with the chief clerk of the commission may delegate to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration, or other authorization or approval if:

(1) all required notice of the application or request for the authorization or approval has been given; and

~~(2) [the holder of or applicant for the authorization or approval agrees in writing to the action to be taken by the executive director, and~~

~~[(3)]~~ the application or request:

(A) is subject to Chapter 2001, Government Code,
and:

(i) a hearing has not been requested by an

1 affected person; or

2 (ii) a hearing request made by an affected
3 person has been withdrawn and the affected person has agreed in
4 writing to the action to be taken by the executive director
5 [uncontested and does not require an evidentiary hearing]; or

6 (B) is not subject to Chapter 2001, Government
7 Code, and:

8 (i) an objection has not been filed by an
9 affected person; or

10 (ii) an objection filed by an affected
11 person has been withdrawn and the affected person has [become
12 uncontested because all parties have] agreed in writing to the
13 action to be taken by the executive director.

14 (b) A person affected by an action the executive director
15 takes on a matter delegated under this section or other law or on a
16 matter with regard to which another law authorizes the executive
17 director to take action may appeal the executive director's action
18 to the commission unless the action is a decision:

19 (1) regarding a federal operating permit under
20 Subchapter C, Chapter 382, Health and Safety Code; or

21 (2) specified as final and appealable to a court by the
22 commission rule that delegates the decision to the executive
23 director.

24 (c) A person affected by a decision of the executive
25 director on a matter delegated under this section that regards a
26 federal operating permit under Subchapter C, Chapter 382, Health
27 and Safety Code, may:

1 (1) petition the administrator of the United States
2 Environmental Protection Agency in accordance with rules adopted
3 under Section 382.0563, Health and Safety Code; or

4 (2) file a petition for judicial review under Section
5 382.032, Health and Safety Code.

6 (d) To appeal an action of the executive director to the
7 commission under Subsection (b), a person must file with the
8 commission a motion to overturn the executive director's action not
9 later than the 20th day after the date the action was taken. The
10 person must provide notice of the motion to:

11 (1) the executive director; and

12 (2) the applicant, if any.

13 (e) The effect of the executive director's action is stayed
14 until the commission's decision on the motion is final.

15 (f) Except as provided by Subsection (g), the commission's
16 decision on a motion to overturn the executive director's action is
17 final on the earlier of:

18 (1) the date the commission rules on the motion; or

19 (2) the 45th day after the date the motion is filed.

20 (g) The commission may extend the period under Subsection
21 (f)(2) one or more times as needed to allow more time for
22 consideration of the motion. If the commission extends the period
23 for consideration:

24 (1) the commission shall specify the date by which the
25 commission will rule on the motion; and

26 (2) the commission's decision is final on the date the
27 commission rules on the motion.

1 (h) The commission must provide notice that the commission
2 has extended the period for consideration of the motion to:

3 (1) the person who filed the motion;
4 (2) the executive director;
5 (3) any affected person; and
6 (4) any person who has requested to be on a mailing
7 list for the matter under consideration.

8 (i) If the commission does not rule on the motion or extend
9 the period for consideration of the motion before the period has
10 expired, the motion is considered denied.

11 (j) If a motion is filed to overturn the executive
12 director's action, the period in which an affected person must file
13 for judicial review under Section 5.351 or another law authorizing
14 the appeal of a commission decision begins to run on the date the
15 commission's decision is final under this section. [The
16 commission's authority under this section is cumulative of the
17 commission's authority to delegate its powers, duties, or rights
18 under any other law.]

19 Sec. 5.222. DELEGATION OF EXECUTIVE DIRECTOR'S AUTHORITY OR
20 DUTY. (a) The executive director may delegate to the executive
21 director's staff any authority or duty assigned to the executive
22 director unless the statute or [7] rule[7, ~~or order~~] assigning or
23 delegating the authority or duty specifies otherwise.

24 (b) An action taken by the executive director's staff under
25 this section is subject to appeal to the commission in the manner
26 provided by Section 5.122 for the appeal of an action of the
27 executive director.

1 SECTION 2. The change in law made by this Act applies to an
2 action taken by the executive director of the Texas Commission on
3 Environmental Quality or the executive director's staff on or after
4 the effective date of this Act. An action taken before the
5 effective date of this Act is governed by the law in effect at the
6 time the action was taken, and the former law is continued in effect
7 for that purpose.

8 SECTION 3. This Act takes effect September 1, 2005.