

By: Fraser

S.B. No. 457

A BILL TO BE ENTITLED

AN ACT

relating to procedures for providing notice of intent to obtain certain permits issued by the Texas Commission on Environmental Quality.

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

SECTION 1. Section 5.552, Water Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Not later than the 30th day after the date the executive director determines the application to be administratively complete:

(1) the applicant shall publish notice of intent to obtain a permit at least once in the newspaper of largest circulation in the county in which the facility to which the application relates is located or proposed to be located or, if the facility to which the application relates is located or proposed to be located in a municipality, at least once in a newspaper of general circulation in the municipality;

(1-a) the applicant shall mail by certified mail notice of intent to obtain a permit to each person who owns land adjacent to the location or proposed location of the facility; and

(2) the chief clerk of the commission shall mail notice of intent to obtain a permit to:

(A) the state senator and representative who

1 represent the general area in which the facility is located or
2 proposed to be located;

3 (B) the mayor and health authorities of the
4 municipality in which the facility is located or proposed to be
5 located;

6 (C) the county judge and health authorities of
7 the county in which the facility is located or proposed to be
8 located; and

9 (D) the river authority in which the facility is
10 located or proposed to be located if the application is under
11 Chapter 26[~~, Water Code~~].

12 (b-1) Notice under Subsection (b)(1) may not be published on
13 a legal state or national holiday or on a weekend if the weekend is
14 preceded or followed by a legal state or national holiday.

15 (b-2) If in the exercise of reasonable diligence the
16 applicant is unable to determine the name or address of a person who
17 owns land adjacent to the location or proposed location of the
18 facility, the applicant may satisfy the requirements of Subsection
19 (b)(1-a) with respect to that person by filing an affidavit with the
20 commission attesting to that fact. Notice must be mailed under
21 Subsection (b)(1-a) or an affidavit must be filed under this
22 subsection on or before the date notice is published under
23 Subsection (b)(1).

24 SECTION 2. Section 26.028, Water Code, is amended by adding
25 Subsection (i) to read as follows:

26 (i) Notice under Subsection (h)(1) may not be published on a
27 legal state or national holiday or on a weekend if the weekend is

1 preceded or followed by a legal state or national holiday.

2 SECTION 3. Section 361.0665, Health and Safety Code, is
3 amended by adding Subsection (c-1) to read as follows:

4 (c-1) Notice under Subsection (a) or (c) may not be
5 published on a legal state or national holiday or on a weekend if
6 the weekend is preceded or followed by a legal state or national
7 holiday.

8 SECTION 4. Section 382.05199, Health and Safety Code, is
9 amended by adding Subsections (b-1) and (c-1) and amending
10 Subsection (d) to read as follows:

11 (b-1) The notice may not be published on a legal state or
12 national holiday or on a weekend if the weekend is preceded or
13 followed by a legal state or national holiday.

14 (c-1) The applicant shall mail notice by certified mail to
15 each person who owns land adjacent to the proposed location of the
16 plant. If in the exercise of reasonable diligence the applicant is
17 unable to determine the name or address of a person who owns land
18 adjacent to the proposed location of the plant, the applicant may
19 satisfy the requirements of this subsection with respect to that
20 person by filing an affidavit with the commission attesting to that
21 fact. Notice must be mailed or an affidavit must be filed under
22 this subsection on or before the date notice is published under
23 Subsection (b).

24 (d) Notice under Subsection (b) or (c-1) ~~[The notice]~~ must
25 include:

26 (1) a brief description of the proposed location and
27 nature of the proposed plant;

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

4 (3) a description, including a telephone number, of
5 the manner in which the applicant may be contacted for further
6 information;

7 (4) the location and hours of operation of the
8 commission's regional office at which a copy of the application is
9 available for review and copying; and

10 (5) a brief description of the public comment process,
11 including the time and location of the public hearing, and the
12 mailing address and deadline for filing written comments.

13 SECTION 5. Section 382.056, Health and Safety Code, is
14 amended by amending Subsections (a) and (b) and adding Subsection
15 (a-1) to read as follows:

16 (a) Except as provided by Section 382.0518(h), an applicant
17 for a permit or permit amendment under Section 382.0518 or a permit
18 renewal review under Section 382.055 shall publish notice of intent
19 to obtain the permit, permit amendment, or permit review not later
20 than the 30th day after the date the commission determines the
21 application to be administratively complete. The commission by
22 rule shall require an applicant for a federal operating permit
23 under Section 382.054 to publish notice of intent to obtain a
24 permit, permit amendment, or permit review consistent with federal
25 requirements and with the requirements of Subsection (b). The
26 applicant shall publish the notice at least once in a newspaper of
27 general circulation in the municipality in which the facility or

1 federal source is located or is proposed to be located or in the
2 municipality nearest to the location or proposed location of the
3 facility or federal source. If the elementary or middle school
4 nearest to the facility or proposed facility provides a bilingual
5 education program as required by Subchapter B, Chapter 29,
6 Education Code, the applicant shall also publish the notice at
7 least once in an additional publication of general circulation in
8 the municipality or county in which the facility is located or
9 proposed to be located that is published in the language taught in
10 the bilingual education program. This requirement is waived if
11 such a publication does not exist or if the publisher refuses to
12 publish the notice. The commission by rule shall prescribe the form
13 and content of the notice and when notice must be published. Notice
14 may not be published on a legal state or national holiday or on a
15 weekend if the weekend is preceded or followed by a legal state or
16 national holiday. The commission may require publication of
17 additional notice. The commission by rule shall prescribe
18 alternative procedures for publication of the notice in a newspaper
19 if the applicant is a small business stationary source as defined by
20 Section 5.135, Water Code, [~~382.0365~~] and will not have a
21 significant effect on air quality. The alternative procedures must
22 be cost-effective while ensuring adequate notice. Notice required
23 to be published under this section shall only be required to be
24 published in the United States.

25 (a-1) The applicant shall mail by certified mail notice of
26 intent to obtain the permit, permit amendment, or permit review to
27 each person who owns land adjacent to the location or proposed

location of the facility or federal source. If in the exercise of reasonable diligence the applicant is unable to determine the name or address of a person who owns land adjacent to the location or proposed location of the facility or federal source, the applicant may satisfy the requirements of this subsection with respect to that person by filing an affidavit with the commission attesting to that fact. Notice must be mailed or an affidavit must be filed under this subsection on or before the date notice is published under Subsection (a).

(b) Notice under Subsection (a) or (a-1) ~~[The notice]~~ must include:

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

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

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

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

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

1 hearing from the commission;

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

5 (7) the time and location of any public meeting to be
6 held under Subsection (e); and

7 (8) any other information the commission by rule
8 requires.

9 SECTION 6. Section 382.0516, Health and Safety Code, is
10 amended to read as follows:

11 On receiving an application for a construction permit or an
12 amendment to a construction permit, a special permit, or an
13 operating permit for a facility that may emit air contaminants, the
14 commission shall send notice of the application to the state
15 senator, ~~and~~ representative, county judge and county
16 commissioner who represent the area in which the facility is or will
17 be located.

18 SECTION 7. The changes in law made by this Act apply only to
19 an application for a permit, permit amendment, or permit renewal
20 that is filed with the Texas Commission on Environmental Quality on
21 or after September 1, 2005. An application for a permit, permit
22 amendment, or permit renewal that is filed before that date is
23 governed by the law in effect on the date the application is filed,
24 and that law is continued in effect for that purpose.

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