

By: Ritter

H.B. No. 3234

A BILL TO BE ENTITLED

AN ACT

relating to the procedure for action by the Texas Commission on Environmental Quality on an application for a water right.

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

SECTION 1. Subchapter D, Chapter 11, Water Code, is amended by adding Section 11.1281 to read as follows:

Sec. 11.1281. TIME FOR PROCESSING APPLICATIONS FOR PERMITS AND PERMIT AMENDMENTS FOR WATER RIGHTS. (a) In this section:

(1) "Administratively complete" means the application includes the information required under Sections 11.124, 11.125, and 11.128 of this code and commission rules. If the application includes an agricultural use, the application must also include the information required by Sections 11.126 and 11.127 of this code. Submission of applicable water conservation and drought contingency plans under Sections 11.1271, 11.1272, and 11.1273 is also required, but the adequacy of these plans is not to be evaluated until the technical review of the application.

(2) "Technical review" means the application review process performed after the executive director has determined the application is administratively complete, in which technical material is analyzed and reviewed in order to prepare a draft permit and draft notice based on the technical information associated with the application.

(b) Within 30 working days of receipt of an application for

1 a permit or permit amendment by the executive director, the
2 executive director shall review the application and provide to the
3 applicant:

4 (1) written notice that the application is
5 administratively complete; or

6 (2) a written request for information detailing all
7 information that must be provided for the application to be
8 administratively complete.

9 (c) The applicant has 30 days to submit a response to a
10 request for information. Upon receipt of a timely response, within
11 30 working days the executive director shall review the response
12 and provide the applicant:

13 (1) written notice that the application is
14 administratively complete; or

15 (2) a written request for information detailing all
16 information that must be provided for the application to be deemed
17 administratively complete.

18 (d) For good cause, an applicant may request additional time
19 to respond to a request for information and the Commission shall
20 grant such request. The time periods specified in subsection (e)
21 for determining the application to be administratively complete
22 shall be abated for the additional period of time authorized by the
23 Commission.

24 (e) If an application has not been deemed administratively
25 complete within 180 days of receipt of an application by the
26 executive director, the executive director shall return the
27 application, return all fees, and provide the applicant with a list

1 of all deficiencies with the application. The applicant is entitled
2 to appeal the return of the application and dispute the application
3 deficiencies in a hearing before the commission. The commission
4 will review the application, rule on the issues presented at the
5 hearing, and issue an order:

6 (1) returning the application, unless the applicant,
7 within 30 days, or within an additional time period requested by the
8 applicant and granted by the commission, provides the additional
9 information the commission has determined is required to make the
10 application administratively complete; or

11 (2) declaring that the application is
12 administratively complete with a time schedule for conducting the
13 technical review of the application.

14 (f) After an application is determined by the executive
15 director to be administratively complete, the executive director
16 shall commence a technical review of the application as necessary
17 and appropriate. The technical review will continue for a period of
18 time not to exceed 180 days.

19 (g) During any time within the 180 day technical review
20 period, if the executive director determines that additional
21 technical information is required from the applicant, the executive
22 director shall provide to the applicant a written request for such
23 additional technical information.

24 (h) The applicant has 30 days to submit a response to a
25 request for technical information. Within 60 days following an
26 applicant's timely response, the executive director shall review
27 the response and provide the applicant:

1 (1) the draft permit, draft notice, and technical
2 memoranda associated with the application and written notice that
3 the technical review is complete; or

4 (2) written notice that the response to request for
5 technical information was not adequate.

6 (i) (1) For good cause, an applicant may request additional
7 time to respond to a request for technical information and the
8 Commission shall grant such request. The time periods specified
9 herein for the technical review of the application shall be abated
10 for the additional period of time authorized by the Commission.

11 (2) For good cause, the executive director may, with
12 notice to the applicant, extend the time to complete the technical
13 review for 30 days. The executive director may not extend the time
14 to complete the technical review more than three times. The time
15 period specified herein for the commission's technical review of
16 the application shall be abated for the additional period of time.

17 (j) At the conclusion of the technical review period, the
18 executive director shall provide the applicant with the draft
19 permit, draft notice, and technical memoranda associated with the
20 application and written notice that the technical review is
21 complete.

22 (k) If a response to a request for technical information is
23 deemed not adequate by the executive director, the applicant and
24 the executive director will have 180 days to collaborate in good
25 faith efforts to resolve the inadequacy. If the executive director
26 determines that the application is still inadequate at the end of
27 this time period, the executive director shall return the

1 application, return all fees, and provide the applicant with a list
2 of all deficiencies with the application. The applicant is entitled
3 to appeal the return of the application and dispute the application
4 deficiencies in a hearing before the commission. The commission
5 will review the application, rule on the issues presented at the
6 hearing, and issue an order:

7 (1) returning the application, unless the applicant,
8 within 30 days, or within an additional time period requested by the
9 applicant and granted by the commission, provides the additional
10 information the commission has determined is required to complete
11 the technical review; or

12 (2) requiring the executive director to prepare the
13 draft permit, draft notice, and technical memoranda associated with
14 the application and written notice that the technical review is
15 complete.

16 (1) Not later than 14 days after receipt of the draft
17 permit, draft notice, and technical memoranda associated with the
18 application, the applicant shall provide to the executive director:

19 (1) the applicant's comments to the draft permit,
20 draft notice, and technical memoranda associated with the
21 application; or

22 (2) a statement that indicates that the applicant has
23 no comments.

24 (m) For good cause, an applicant may request additional time
25 to provide comments to the draft permit, draft notice, and
26 technical memoranda, and the Commission shall grant such request.

27 The time periods specified herein for processing the application

1 shall be abated for the additional period of time authorized by the
2 Commission.

3 (n) The executive director shall file the draft permit,
4 draft notice, and technical memoranda with the chief clerk of the
5 commission:

6 (1) after 14 days if the applicant submits comments,
7 during which time the executive director and the applicant shall
8 collaborate to address the comments; or

9 (2) immediately upon receipt of a statement by the
10 applicant that there are no comments to the draft permit, draft
11 notice, and technical memoranda associated with the application.

12 (o) Notwithstanding the provisions within subsections (a)
13 through (n) of this section, if the executive director is in receipt
14 of an application for which it makes a written determination that
15 published and mailed notice is not required, the executive director
16 shall grant or deny the application within a total time period not
17 to exceed 300 days following the receipt of the application. The 300
18 day time period shall not include additional time requested by the
19 applicant for responding to requests for information.

20 SECTION 2. Section 11.133, Water Code, is amended to read as
21 follows:

22 Sec. 11.133. HEARING. (a) At the time and place stated in
23 the notice, the commission shall hold a hearing on the application.
24 Any person may appear at the hearing in person or by attorney or may
25 enter his appearance in writing. Any person who appears may present
26 objection to the issuance of the permit. The commission may receive
27 evidence, orally or by affidavit, in support of or in opposition to

1 the issuance of the permit, and it may hear arguments.

2 (b) If the commission determines that a public hearing must
3 be held pursuant to Section 11.132, it shall:

4 (1) limit the number and scope of issues to be referred
5 to the State Office of Administrative Hearings for a hearing; and

6 (2) consistent with the nature and number of issues to
7 be considered at the hearing, specify the maximum expected duration
8 of the hearing.

9 (c) The commission may not refer an issue to the State
10 Office of Administrative Hearings for a hearing unless the
11 commission determines that the issue:

12 (1) involves a disputed question of fact; and

13 (2) is relevant and material to the decision on the
14 application.

15 (d) Once an application has been declared administratively
16 complete by the commission pursuant to Section 11.129 of this
17 Chapter and has become the subject of a hearing:

18 (1) the commission may not revoke the determination
19 that an application is administratively or technically complete;

20 (2) the commission may request additional information
21 from the applicant only if the information is necessary to clarify,
22 modify, or supplement previously submitted material; and

23 (3) a request for additional information does not
24 render the application incomplete.

25 (e) In a hearing on an application pursuant to this Chapter
26 that is referred to the State Office of Administrative Hearings, an
27 administrative law judge may not grant party status to a person

1 that:

2 (1) was denied party status by the commission prior to
3 referral; or

4 (2) failed to timely seek party status at the
5 commission.

6 (f) This provisions of this section shall supersede any
7 conflicting provisions of law currently in effect.

8 SECTION 3. The change in law made by this Act applies only
9 to an application for a permit filed with the Texas Commission on
10 Environmental Quality on or after the effective date of this Act. An
11 application filed before the effective date of this Act is governed
12 by the law in effect on the date the application was filed, and the
13 prior law is continued in effect for that purpose.

14 SECTION 4. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2013.