

By: Estes

S.B. No. 1628

A BILL TO BE ENTITLED

AN ACT

relating to the replacement of contested case hearings for certain environmental permits with a petition for administrative review.

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

ARTICLE 1. PETITION TO ADMINISTRATIVELY REVIEW CERTAIN

ENVIRONMENTAL PERMITS

SECTION 1.01. The heading to Section 2003.047, Government Code, is amended to read as follows:

Sec. 2003.047. ~~[HEARINGS—FOR]~~ TEXAS COMMISSION ON ENVIRONMENTAL QUALITY: GENERAL PROVISIONS.

SECTION 1.02. Sections 2003.047(a), (b), and (d), Government Code, are amended to read as follows:

(a) In this section, Section 2003.0475, and Section 2003.0478, "commission" means the Texas Commission on Environmental Quality.

(b) The office shall perform contested case hearings for the commission and administrative review of commission decisions regarding permits subject to Subchapter M, Chapter 5, Water Code ~~[the Texas Commission on Environmental Quality].~~

~~[(b) The office shall conduct hearings relating to contested cases before the commission, other than a hearing conducted by one or more commissioners.]~~ The commission by rule may delegate to the office the responsibility to hear any other matter before the commission if consistent with the responsibilities of

1 the office.

2 (d) To be eligible to preside at a hearing on behalf of the  
3 commission or conduct an administrative review under Section  
4 2003.0478, an administrative law judge, regardless of temporary or  
5 permanent status, must be licensed to practice law in this state and  
6 have the expertise necessary to conduct hearings or administrative  
7 review regarding technical or other specialized subjects that may  
8 come before the commission.

9 SECTION 1.03. Sections 2003.047(e), (f), (g), (h), (i),  
10 (j), (k), (l), (m), (n), and (o), Government Code, are redesignated  
11 as Section 2003.0475, Government Code, and amended to read as  
12 follows:

13 Sec. 2003.0475. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:  
14 HEARINGS. (a) The office shall conduct hearings relating to  
15 contested cases before the commission, other than a hearing  
16 conducted by one or more commissioners.

17 (b) [~~(c)~~] In referring a matter for hearing, the commission  
18 shall provide to the administrative law judge a list of disputed  
19 issues. The commission shall specify the date by which the  
20 administrative law judge is expected to complete the proceeding and  
21 provide a proposal for decision to the commission. The  
22 administrative law judge may extend the proceeding if the  
23 administrative law judge determines that failure to grant an  
24 extension would deprive a party of due process or another  
25 constitutional right. The administrative law judge shall establish  
26 a docket control order designed to complete the proceeding by the  
27 date specified by the commission.

1        (c) [~~(f)~~] Except as otherwise provided by this subsection,  
2 the scope of the hearing is limited to the issues referred by the  
3 commission. On the request of a party, the administrative law judge  
4 may consider an issue that was not referred by the commission if the  
5 administrative law judge determines that:

- 6            (1) the issue is material;  
7            (2) the issue is supported by evidence; and  
8            (3) there are good reasons for the failure to supply  
9 available information regarding the issue during the public comment  
10 period.

11        (d) [~~(g)~~] The scope of permissible discovery is limited to:

- 12            (1) any matter reasonably calculated to lead to the  
13 discovery of admissible evidence regarding any issue referred to  
14 the administrative law judge by the commission or that the  
15 administrative law judge has agreed to consider; and

- 16            (2) the production of documents:  
17                    (A) reviewed or relied on in preparing  
18 application materials [~~or selecting the site of the proposed~~  
19 ~~facility~~]; or

- 20                    (B) relating to the ownership of the [~~applicant~~  
21 ~~or the~~] owner or operator of the facility [~~or proposed facility~~].

22        (e) [~~(h)~~] The commission by rule shall:

- 23            (1) provide for subpoenas and commissions for  
24 depositions; and

- 25            (2) require that discovery be conducted in accordance  
26 with the Texas Rules of Civil Procedure, except that the commission  
27 by rule shall determine the level of discovery under Rule 190, Texas

Rules of Civil Procedure, appropriate for each type of case considered by the commission, taking into account the nature and complexity of the case.

(f) [~~(i)~~] The office and the commission jointly shall adopt rules providing for certification to the commission of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law. The rules must address, at a minimum, the issues that are appropriate for certification and the procedure to be used in certifying the issue. Each agency shall publish the jointly adopted rules.

(g) [~~(j)~~] An administrative law judge hearing a case on behalf of the commission, on the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, may impose appropriate sanctions as provided by Subsection (h) [~~(k)~~] against a party or its representative for:

(1) filing a motion or pleading that is groundless and brought:

(A) in bad faith;  
(B) for the purpose of harassment; or  
(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery; or

(3) failure to obey an order of the administrative law

1 judge or the commission.

2 (h) [~~(k)~~] A sanction imposed under Subsection (g) [~~(j)~~] may  
3 include, as appropriate and justified, issuance of an order:

4 (1) disallowing further discovery of any kind or of a  
5 particular kind by the offending party;

6 (2) charging all or any part of the expenses of  
7 discovery against the offending party or its representatives;

8 (3) holding that designated facts be considered  
9 admitted for purposes of the proceeding;

10 (4) refusing to allow the offending party to support  
11 or oppose a designated claim or defense or prohibiting the party  
12 from introducing designated matters in evidence;

13 (5) disallowing in whole or in part requests for  
14 relief by the offending party and excluding evidence in support of  
15 those requests; and

16 (6) striking pleadings or testimony, or both, in whole  
17 or in part.

18 (i) [~~(1)~~] After hearing evidence and receiving legal  
19 argument, an administrative law judge shall make findings of fact,  
20 conclusions of law, and any ultimate findings required by statute,  
21 all of which shall be separately stated. The administrative law  
22 judge shall make a proposal for decision to the commission and shall  
23 serve the proposal for decision on all parties. An opportunity  
24 shall be given to each party to file exceptions to the proposal for  
25 decision and briefs related to the issues addressed in the proposal  
26 for decision. The commission shall consider and act on the proposal  
27 for decision.

1        (j) ~~The [(m) Except as provided in Section 361.0832, Health~~  
 2 ~~and Safety Code, the]~~ commission shall consider the proposal for  
 3 decision prepared by the administrative law judge, the exceptions  
 4 of the parties, and the briefs and argument of the parties. The  
 5 commission may amend the proposal for decision, including any  
 6 finding of fact, but any such amendment thereto and order shall be  
 7 based solely on the record made before the administrative law  
 8 judge. Any such amendment by the commission shall be accompanied by  
 9 an explanation of the basis of the amendment. The commission may  
 10 also refer the matter back to the administrative law judge to  
 11 reconsider any findings and conclusions set forth in the proposal  
 12 for decision or take additional evidence or to make additional  
 13 findings of fact or conclusions of law. The commission shall serve  
 14 a copy of the commission's order, including its finding of facts and  
 15 conclusions of law, on each party.

16        (k) ~~[(n)]~~ The provisions of Chapter 2001 shall apply to  
 17 contested case hearings for the commission to the extent not  
 18 inconsistent with this section.

19        (l) ~~[(o)]~~ An administrative law judge hearing a case on  
 20 behalf of the commission may not, without the agreement of all  
 21 parties, issue an order referring the case to an alternative  
 22 dispute resolution procedure if the commission has already  
 23 conducted an unsuccessful alternative dispute resolution  
 24 procedure. If the commission has not already conducted an  
 25 alternative dispute resolution procedure, the administrative law  
 26 judge shall consider the commission's recommendation in  
 27 determining whether to issue an order referring the case to the

1 procedure.

2 SECTION 1.04. Subchapter C, Chapter 2003, Government Code,  
3 is amended by adding Section 2003.0478 to read as follows:

4 Sec. 2003.0478. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:  
5 ADMINISTRATIVE REVIEW OF EXECUTIVE DIRECTOR PRELIMINARY DECISION  
6 ON PERMIT APPLICATION. (a) In this section:

7 (1) "Applicant" means the person who submitted the  
8 permit application on which a preliminary decision by the executive  
9 director recommending issuance of the permit has been challenged by  
10 a petition.

11 (2) "Executive director" means the executive director  
12 of the commission.

13 (3) "Permit application" means an application for an  
14 environmental permit that:

15 (A) is subject to Subchapter M, Chapter 5, Water  
16 Code; and

17 (B) has been challenged by a petition.

18 (4) "Petition" means a petition for administrative  
19 review of a decision by the executive director to recommend  
20 issuance of a permit that is submitted under Section 5.5565, Water  
21 Code.

22 (5) "Petitioner" means the person who submitted a  
23 petition.

24 (b) On receipt of a petition and related materials from the  
25 commission, the administrative law judge considering the petition  
26 shall set a briefing schedule according to rules adopted under this  
27 section. The administrative law judge may request oral argument on

1 a matter covered in the petition.

2 (c) The filing with the office of the application, the draft  
3 permit prepared by the executive director, the preliminary decision  
4 issued by the executive director, and other sufficient supporting  
5 documentation in the administrative record of the permit  
6 application establishes a presumption that:

7 (1) the draft permit meets all state and federal legal  
8 and technical requirements; and

9 (2) a permit, if issued consistent with the draft  
10 permit, would protect human health and safety, the environment, and  
11 physical property.

12 (d) The administrative law judge considering a petition  
13 under this section may consider only:

14 (1) the materials forwarded to the office under  
15 Section 5.5565, Water Code;

16 (2) the petition;

17 (3) a response brief filed by the applicant;

18 (4) a response brief filed by the executive director;

19 and

20 (5) an amicus brief that the administrative law judge  
21 has consented to accept under Subsection (e).

22 (e) An interested person may seek leave from the  
23 administrative law judge to submit an amicus brief for  
24 consideration in conjunction with the petition. An amicus brief  
25 approved by the administrative law judge must be submitted not  
26 later than the 15th day after the date the executive director  
27 submits a response brief. The submission of an amicus brief may not



extend the period of consideration of the petition beyond the 120-day limit described by Subsection (h).

(f) After consideration of the items described by Subsection (d) and any oral argument, and within the time described by Subsection (h), the administrative law judge shall transmit a decision on the petition to the executive director, the petitioner, and the applicant. The judge may:

(1) order the commission to issue the permit consistent with the draft permit;

(2) order the commission to deny the permit application; or

(3) remand the issue to the commission for further action.

(g) An administrative law judge may find that the permit should not be issued consistent with the draft permit only if the petitioner has:

(1) demonstrated that the petitioner is an affected person under the standard described by Section 5.115, Water Code, and rules adopted under that section;

(2) identified a specific issue raised in a comment submitted by the petitioner during the public comment period for the permit application;

(3) demonstrated that the executive director's decision on the issue described by Subdivision (2) is based on a clearly erroneous finding of fact or conclusion of law; and

(4) rebutted the presumption created under Subsection (c) by presenting evidence that demonstrates that the issue

1 described by Subdivision (2) violates a specifically applicable  
2 state or federal requirement.

3 (h) The office shall adopt rules concerning filing briefs,  
4 hearing oral arguments, and issuing a decision on a petition. The  
5 rules adopted under this section:

6 (1) must require the administrative law judge who  
7 considers the petition to transmit a decision on the petition to the  
8 commission not later than the 120th day after the date the office  
9 receives the petition from the commission;

10 (2) may allow for varying deadlines for the filing of  
11 briefs and the hearing of oral argument based on the type of permit  
12 application; and

13 (3) may not create a deadline for the filing of a  
14 document or the hearing of oral argument that exceeds a deadline set  
15 for a similar action under federal law.

16 SECTION 1.05. The heading to Section 5.115, Water Code, is  
17 amended to read as follows:

18 Sec. 5.115. PERSONS AFFECTED IN ADMINISTRATIVE REVIEW OF  
19 COMMISSION DECISIONS AND COMMISSION HEARINGS; NOTICE OF  
20 APPLICATION.

21 SECTION 1.06. Sections 5.115(a), (a-1), and (b), Water  
22 Code, are amended to read as follows:

23 (a) For the purpose of an administrative hearing held by or  
24 for the commission involving a contested case for a water rights  
25 permit application or an administrative review of a decision on a  
26 permit application that is subject to Subchapter M, "affected  
27 person," or "person affected," or "person who may be affected"

means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest.

(a-1) The commission shall adopt rules specifying factors which must be considered in determining whether a person is an affected person ~~[in any contested case arising under the air, waste, or water programs within the commission's jurisdiction]~~ and whether a group or ~~[an affected]~~ association is an affected person ~~[entitled to standing in contested case hearings]~~. For an administrative review of a decision on a permit application that is subject to Subchapter M, ~~[a matter referred under Section 5.556,~~ the commission:

~~[(1) may consider:~~

~~[(A) the merits of the underlying application, including whether the application meets the requirements for permit issuance,~~

~~[(B) the likely impact of regulated activity on the health, safety, and use of the property of the hearing requestor,~~

~~[(C) the administrative record, including the permit application and any supporting documentation,~~

~~[(D) the analysis and opinions of the executive director, and~~

~~[(E) any other expert reports, affidavits, opinions, or data submitted on or before any applicable deadline to~~

~~the commission by the executive director, the applicant, or a hearing requestor, and~~

~~[(2) may not find that:~~

~~[(A)]~~ a group or association is an affected person only if ~~[unless]~~ the group or association identifies, by name and physical address in a comment made during the public comment period ~~[timely request for a contested case hearing]~~, a member of the group or association who would be an affected person in the person's own right~~;~~ ~~or~~

~~[(B) a hearing requestor is an affected person unless the hearing requestor timely submitted comments on the permit application].~~

(b) At the time an application for a permit or license under this code is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license. A state agency that receives notice under this subsection may submit comments to the commission in response to the notice ~~[but may not contest the issuance of a permit or license by the commission]~~. For the purposes of this subsection, "state agency" does not include a river authority.

SECTION 1.07. Sections [5.551](#)(a) and (b), Water Code, are amended to read as follows:

(a) This subchapter establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for administrative review ~~[public hearing]~~ under Section 2003.0478 ~~[Subchapters C-H, Chapter [2001](#)]~~, Government

Code, regarding commission actions relating to a permit issued under Chapter 26 or 27 of this code or Chapter 361 or 382, Health and Safety Code. This subchapter is procedural and does not expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for administrative review [~~public hearing~~] are provided under Chapter 26 or 27 of this code or Chapter 361 or 382, Health and Safety Code.

(b) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for administrative review [~~hearing~~] to the extent necessary to satisfy a requirement for United States Environmental Protection Agency authorization of a state permit program.

SECTION 1.08. Section 5.552(d), Water Code, is amended to read as follows:

(d) In addition to providing notice under Subsection (b)(1), the applicant shall comply with any applicable public notice requirements under Chapters 26 and 27 of this code, Chapters [~~Chapter~~] 361 and 382, Health and Safety Code, and rules adopted under those chapters.

SECTION 1.09. Sections 5.553(a) and (d), Water Code, are amended to read as follows:

(a) The executive director shall conduct a technical review of and issue a preliminary decision on the application and a draft permit if the executive director determines that a permit should be issued.

(d) In addition to providing notice under this section, the applicant shall comply with any applicable public notice

requirements under Chapters 26 and 27 of this code, Chapter 361 or 382, Health and Safety Code, and rules adopted under those chapters.

SECTION 1.10. Section 5.555(b), Water Code, is amended to read as follows:

(b) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or petitioning for administrative review of the executive director's decision ~~[hold a contested case hearing]~~ to:

(1) the applicant;

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

(3) any person who requested to be on the mailing list for the permit action.

SECTION 1.11. Section 5.5553, Water Code, is amended to read as follows:

Sec. 5.5553. NOTICE OF DRAFT PERMIT. ~~[(a) This section applies only to a permit application that is eligible to be referred for a contested case hearing under Section 5.556 or 5.557.]~~

~~[(b)]~~ Notwithstanding any other law, not later than the 30th day before the date the commission issues a draft permit in connection with a permit application, the executive director shall provide written notice to the state senator and state representative of the area in which the facility that is the subject of the permit is located.

SECTION 1.12. The heading to Section 5.556, Water Code, is amended to read as follows:

Sec. 5.556. REQUEST FOR RECONSIDERATION [~~OR CONTESTED CASE HEARING~~].

SECTION 1.13. Section 5.556(a), Water Code, is amended to read as follows:

(a) A person may request that the commission reconsider the executive director's decision [~~or hold a contested case hearing~~]. A request must be filed with the commission during the period provided by commission rule.

SECTION 1.14. Subchapter M, Chapter 5, Water Code, is amended by adding Section 5.5565 to read as follows:

Sec. 5.5565. PETITION FOR ADMINISTRATIVE REVIEW. (a) Not later than the 30th day after the date the executive director issues a preliminary decision on an application and draft permit under Section 5.553 recommending issuance of the permit, an affected person may file a request with the commission for an administrative review of the decision. On receipt of a petition to administratively review a decision, the commission shall:

(1) forward the application, the draft permit prepared by the executive director, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application to the State Office of Administrative Hearings; and

(2) notify the applicant in writing that a petition for administrative review has been filed.

(b) The executive director shall file a response to the

1 petition within the period allowed by a rule adopted by the State  
2 Office of Administrative Hearings under Section 2003.0478,  
3 Government Code.

4 (c) Not later than the 30th day after the date the executive  
5 director files a response under Subsection (b), the executive  
6 director may withdraw the preliminary decision and draft permit and  
7 prepare a new preliminary decision and draft permit.

8 (d) On receipt of a decision of an administrative law judge  
9 regarding an administrative review of a decision under Section  
10 2003.0478, Government Code, the commission shall:

11 (1) issue or deny the permit consistent with the  
12 decision; or

13 (2) take further action as specified by the decision,  
14 if the administrative law judge remands the issue.

15 (e) A commission order implementing a decision by an  
16 administrative law judge to deny a permit is a final act of the  
17 commission that is subject to judicial review under Subchapter I.

18 SECTION 1.15. Section 5.558(c), Water Code, is amended to  
19 read as follows:

20 (c) The permit processes authorized by this section are not  
21 subject to the requirements relating to a contested case hearing or  
22 an administrative review under Section 5.5565 [under this chapter,  
23 Chapter 382, Health and Safety Code, or Subchapters C-G, Chapter  
24 2001, Government Code].

25 ARTICLE 2. CONFORMING AMENDMENTS

26 SECTION 2.01. Section 2003.0421(c), Government Code, is  
27 amended to read as follows:



1 (c) This section applies to any contested case hearing  
2 conducted by the office, except hearings conducted on behalf of the  
3 Texas Commission on Environmental Quality or the Public Utility  
4 Commission of Texas which are governed by Sections 2003.0475  
5 [~~2003.047~~] and 2003.049.

6 SECTION 2.02. Sections 361.063(b) and (f), Health and  
7 Safety Code, are amended to read as follows:

8 (b) The agreement shall be made through participation in a  
9 local review committee process that includes a good faith effort to  
10 identify issues of concern, describe them to the applicant, and  
11 attempt to resolve those issues [~~before the hearing on the permit~~  
12 ~~application begins~~]. A person is not required to be a local review  
13 committee member to participate in a local review committee  
14 process.

15 (f) The commission, as appropriate, may award to a person,  
16 other than the applicant, who has participated in the local review  
17 committee process under this section concerning an application for  
18 a hazardous waste management facility all or a part of the person's  
19 reasonable costs for technical studies and reports and expert  
20 witnesses associated with the presentation of evidence [~~at the~~  
21 ~~public hearing~~] concerning issues that are raised by the person in  
22 the local review committee process [~~and that are unresolved at the~~  
23 ~~beginning of the hearing on the permit application~~]. The total  
24 amount of awards granted to all persons under this subsection  
25 concerning an application may not exceed \$25,000. In determining  
26 the appropriateness of the award, the commission shall consider  
27 whether:

1           (1) the evidence or analysis provided by the studies,  
2 reports, and witnesses is significant to the evaluation of the  
3 application;

4           (2) the evidence or analysis would otherwise not have  
5 been provided [~~in the proceeding~~]; and

6           (3) the local review committee was established in  
7 accordance with commission rules.

8       SECTION 2.03. Section 361.0665(b), Health and Safety Code,  
9 is amended to read as follows:

10       (b) Notice must include:

11           (1) a description of the location or proposed location  
12 of the facility;

13           (2) a statement that a person who may be affected by  
14 the facility or proposed facility is entitled to petition for  
15 administrative review of a preliminary decision on the permit  
16 application [~~request a hearing from the commission~~];

17           (3) the manner in which the commission may be  
18 contacted for further information; and

19           (4) any other information that the commission by rule  
20 requires.

21       SECTION 2.04. Section 361.068(b), Health and Safety Code,  
22 is amended to read as follows:

23       (b) Once a determination that an application is  
24 administratively and technically complete has been made [~~and the~~  
25 ~~permit application has become the subject of a contested case under~~  
26 ~~Section 2001.003, Government Code~~]:

27           (1) the commission may not revoke the determination

1 that an application is administratively or technically complete;

2 (2) the commission may request additional information  
3 from the applicant only if the information is necessary to clarify,  
4 modify, or supplement previously submitted material [~~provided that~~  
5 ~~all parties may engage in discovery against all other parties, as~~  
6 ~~provided by applicable law~~]; and

7 (3) a request for additional information does not  
8 render the application incomplete.

9 SECTION 2.05. Section 361.069, Health and Safety Code, is  
10 amended to read as follows:

11 Sec. 361.069. DETERMINATION OF LAND USE COMPATIBILITY. The  
12 commission in its discretion may, in processing a permit  
13 application, make a separate determination on the question of land  
14 use compatibility, and, if the site location is acceptable, may at  
15 another time consider other technical matters concerning the  
16 application. [~~A public hearing may be held for each determination~~  
17 ~~in accordance with Section 361.088.~~] In making a determination on  
18 the question of land use compatibility, the commission shall not  
19 consider the position of a state or federal agency unless the  
20 position is fully supported by credible evidence from that agency  
21 [~~during the public hearing~~].

22 SECTION 2.06. The heading to Section 361.079, Health and  
23 Safety Code, is amended to read as follows:

24 Sec. 361.079. NOTICE CONCERNING RECEIPT OF PERMIT  
25 APPLICATION[~~, HEARING PROCEDURES~~].

26 SECTION 2.07. Section 361.079(a), Health and Safety Code,  
27 is amended to read as follows:

1           (a) Except as provided by Section [~~Sections 361.080(b) and~~  
2 361.081(c)], the commission by rule shall establish procedures for  
3 public notice [~~and a public hearing~~] under Section [~~361.080 or~~  
4 361.081].

5           SECTION 2.08. The heading to Section 361.081, Health and  
6 Safety Code, is amended to read as follows:

7           Sec. 361.081. NOTICE [~~OF HEARING~~] CONCERNING APPLICATION  
8 FOR A SOLID WASTE FACILITY.

9           SECTION 2.09. Sections 361.081(a) and (b), Health and  
10 Safety Code, are amended to read as follows:

11          (a) The commission shall require the applicant to mail  
12 notice to each residential or business address located within  
13 one-half mile of a new solid waste management facility and to each  
14 owner of real property located within one-half mile of a new solid  
15 waste management facility listed in the real property appraisal  
16 records of the appraisal district in which the solid waste  
17 management facility is sought to be permitted as of the date the  
18 commission determines the permit application is administratively  
19 complete. The notice must be sent by mail [~~and must be deposited~~  
20 ~~with the United States postal service not more than 45 days or less~~  
21 ~~than 30 days before the date of the hearing~~].

22          (b) [~~The applicant must certify to the commission that the~~  
23 ~~mailings were deposited as required by Subsection (a). Acceptance~~  
24 ~~of the certification creates a rebuttable presumption that the~~  
25 ~~applicant has complied with this section.~~] Substantial compliance  
26 with the notice requirements of Subsection (a) is sufficient for  
27 the commission to exercise jurisdiction over an application for a

1 solid waste facility.

2 SECTION 2.10. The heading to Section 361.082, Health and  
3 Safety Code, is amended to read as follows:

4 Sec. 361.082. APPLICATION FOR HAZARDOUS WASTE PERMIT;  
5 NOTICE [~~AND HEARING~~].

6 SECTION 2.11. Sections 361.082(c), (d), and (g), Health and  
7 Safety Code, are amended to read as follows:

8 (c) The commission by rule shall establish procedures for  
9 public notice [~~and public hearing~~]. At a minimum, the rules shall  
10 include the public notice requirements set forth in Section  
11 361.081.

12 (d) The [~~In addition to the hearing held under this section,~~  
13 ~~the~~] commission may hold a public meeting and the applicant shall  
14 give notice as provided by Section 361.0791.

15 (g) On petition for administrative review of a preliminary  
16 decision on the permit application [~~request under Section 361.082~~]  
17 by a person affected [~~for a hearing on the permit application~~], the  
18 applicant for a permit for a new hazardous waste management  
19 facility shall furnish a bond or other financial assurance  
20 authorized by the commission to guarantee payment of the costs of a  
21 person affected who provides information to the commission on the  
22 question of the issuance of the permit and who is entitled to those  
23 costs under an order made as provided by Section 361.0833. For  
24 applications involving commercial hazardous waste management  
25 facilities, the bond or other financial assurance must be in the  
26 amount of \$100,000. For applications that do not involve commercial  
27 hazardous waste management facilities, the bond or other financial

1 assurance must be in the amount of \$20,000.

2 SECTION 2.12. Sections 361.0833(b), (d), (e), and (f),  
3 Health and Safety Code, are amended to read as follows:

4 (b) Information for which an award of costs under Subsection  
5 (a) may be made includes:

6 (1) technical studies of the area in which the new  
7 hazardous waste facility is proposed to be located; and

8 (2) ~~[expert testimony given at a hearing on the permit~~  
9 ~~application; and~~

10 ~~[(3)]~~ surveys of land use and potential use in the  
11 hazardous waste facility area.

12 (d) The total costs awarded to all persons affected under  
13 Subsection (a) may not exceed \$100,000 for a new commercial  
14 hazardous waste management facility or \$20,000 for a new  
15 noncommercial hazardous waste management facility. ~~[The total~~  
16 ~~costs awarded to all persons affected under Subsection (c) may not~~  
17 ~~exceed \$150,000 for a new commercial hazardous waste management~~  
18 ~~facility or \$30,000 for a new noncommercial hazardous waste~~  
19 ~~management facility.]~~

20 (e) In determining the appropriateness of an award under  
21 Subsection (a) ~~[or (c)]~~, the commission shall consider:

22 (1) whether the information provided is material to  
23 the commission's determination to deny the permit or to require the  
24 applicant to make significant changes in the facility's design or  
25 operation; and

26 (2) whether the information would otherwise not have  
27 been presented to the commission while the commission is

1 considering its decision.

2 (f) If the applicant fails or refuses to pay the amount of  
3 costs ordered not later than the 30th day after the date of entry of  
4 the final order granting payment of costs, the commission shall  
5 order the applicant's bond or other financial assurance forfeited  
6 in the amount of the costs ordered reimbursed under Subsection (a)  
7 ~~[or (c)]~~ up to and including the full amount of the bond or other  
8 financial assurance. The commission shall forward the forfeited  
9 amount to the person affected.

10 SECTION 2.13. Section 361.084(b), Health and Safety Code,  
11 is amended to read as follows:

12 (b) The compliance summaries shall be made available to the  
13 applicant and any interested person after the commission has  
14 completed its technical review of the permit application ~~[and~~  
15 ~~before the issuance of the public notice concerning an opportunity~~  
16 ~~for a hearing on the permit application]~~.

17 SECTION 2.14. Section 361.085(a), Health and Safety Code,  
18 is amended to read as follows:

19 (a) Before a permit may be issued, amended, transferred,  
20 extended, or renewed for a hazardous waste management facility, the  
21 commission shall require as a part of each application information  
22 it deems necessary to demonstrate that an applicant has sufficient  
23 financial resources to operate the facility in a safe manner and in  
24 compliance with the permit and all applicable rules, including how  
25 an applicant intends to obtain financing for construction of the  
26 facility, and to close the facility in accordance with applicable  
27 rules. That information may include balance sheets, financial

1 statements, and disclosure of relevant information regarding  
2 investors and stockholders, or information required by [Title] 40  
3 C.F.R. [~~Code of Federal Regulations~~] Part 264, Subpart H. If the  
4 information would be considered confidential under applicable law,  
5 the commission shall protect the information accordingly. [~~During~~  
6 ~~hearings on contested applications, the commission may allow~~  
7 ~~disclosure of confidential information only under an appropriate~~  
8 ~~protective order.~~]

9 SECTION 2.15. The heading to Section 361.088, Health and  
10 Safety Code, is amended to read as follows:

11 Sec. 361.088. PERMIT ISSUANCE, AMENDMENT, EXTENSION AND  
12 RENEWAL; NOTICE [~~AND HEARING~~].

13 SECTION 2.16. Section 361.088(d), Health and Safety Code,  
14 is amended to read as follows:

15 (d) The [~~In addition to providing an opportunity for a~~  
16 ~~hearing held under this section, the~~] commission shall hold a  
17 public meeting and give notice as provided by Section 361.0791.

18 SECTION 2.17. Section 361.0885(a), Health and Safety Code,  
19 is amended to read as follows:

20 (a) A [~~After providing an opportunity for a hearing to an~~  
21 ~~applicant, the~~] state agency shall deny an application for the  
22 issuance, amendment, renewal, or transfer of a permit within its  
23 jurisdiction and may not issue, amend, renew, or transfer the  
24 permit if the state agency determines that a former employee:

25 (1) participated personally and substantially as a  
26 former employee in the state agency's review, evaluation, or  
27 processing of that application before leaving employment with the



1 state agency; and

2 (2) after leaving employment with the state agency,  
3 provided assistance on the same application for the issuance,  
4 amendment, renewal, or transfer of a permit, including assistance  
5 with preparation or presentation of the application or legal  
6 representation of the applicant.

7 SECTION 2.18. The heading to Section 361.089, Health and  
8 Safety Code, is amended to read as follows:

9 Sec. 361.089. PERMIT DENIAL OR AMENDMENT; NOTICE [~~AND~~  
10 ~~HEARING~~].

11 SECTION 2.19. Sections 361.089(b), (c), and (e), Health and  
12 Safety Code, are amended to read as follows:

13 (b) Except as provided by Section 361.110, the commission  
14 shall notify each governmental entity listed under Section 361.067  
15 [~~and provide an opportunity for a hearing to the permit holder or~~  
16 ~~applicant and persons affected. The commission may also hold a~~  
17 ~~hearing on its own motion~~].

18 (c) The commission by rule shall establish procedures for  
19 public notice [~~and any public hearing~~] under this section.

20 (e) The commission may deny an original or renewal permit if  
21 it is found[~~, after notice and hearing,~~] that:

22 (1) the applicant or permit holder has a compliance  
23 history that is classified as unsatisfactory according to  
24 commission standards under Sections 5.753 and 5.754, Water Code,  
25 and rules adopted and procedures developed under those sections;

26 (2) the permit holder or applicant made a false or  
27 misleading statement in connection with an original or renewal

1 application, either in the formal application or in any other  
2 written instrument relating to the application submitted to the  
3 commission, its officers, or its employees;

4 (3) the permit holder or applicant is indebted to the  
5 state for fees, payment of penalties, or taxes imposed by this title  
6 or by a rule of the commission; or

7 (4) the permit holder or applicant is unable to ensure  
8 that the management of the hazardous waste management facility  
9 conforms or will conform to this title and the rules of the  
10 commission.

11 SECTION 2.20. Section 361.112(i), Health and Safety Code,  
12 is amended to read as follows:

13 (i) The notice ~~[and hearing]~~ procedures provided by this  
14 subchapter apply to a permit issued, amended, extended, or renewed  
15 under this section.

16 SECTION 2.21. The heading to Section 361.120, Health and  
17 Safety Code, is amended to read as follows:

18 Sec. 361.120. NOTICE ~~[OF HEARING AND]~~ REQUIREMENTS FOR  
19 REOPENING OF CLOSED OR INACTIVE LANDFILLS.

20 SECTION 2.22. Section 361.120(c), Health and Safety Code,  
21 is amended to read as follows:

22 (c) Except as provided in Subsection ~~[Subsections]~~ (d) ~~[and~~  
23 ~~(e)]~~, the reopening of any such facility shall be considered a major  
24 amendment as such is defined by commission rules and shall subject  
25 the permittee to all of the procedural and substantive obligations  
26 imposed by the rules applicable to major amendments.

27 SECTION 2.23. Section 361.121(c), Health and Safety Code,

1 is amended to read as follows:

2 (c) The notice and administrative review ~~[hearing]~~  
3 provisions of Subchapter M, Chapter 5, Water Code, ~~[as added by~~  
4 ~~Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999,]~~  
5 apply to an application under this section for a permit, a permit  
6 amendment, or a permit renewal. In addition, at the time published  
7 notice of intent to obtain a permit is required under Section 5.552,  
8 Water Code, an applicant for a permit, permit amendment, or permit  
9 renewal under this section must notify by registered or certified  
10 mail each owner of land located within one-quarter mile of the  
11 proposed land application unit who lives on that land of the intent  
12 to obtain the permit, amendment, or renewal. Notice to landowners  
13 must include the information required by Section 5.552(c), Water  
14 Code, and information regarding the anticipated date of the first  
15 application of the sludge to the proposed land application unit. An  
16 owner of land located within one-quarter mile of the proposed land  
17 application unit who lives on that land is an affected person for  
18 purposes of Section 5.115, Water Code.

19 SECTION 2.24. The heading to Section 361.184, Health and  
20 Safety Code, is amended to read as follows:

21 Sec. 361.184. REGISTRY LISTING PROCEDURE: NOTICES AND  
22 MEETING ~~[HEARING]~~.

23 SECTION 2.25. Section 361.186(c), Health and Safety Code,  
24 is amended to read as follows:

25 (c) If, within 30 days after the date of the notice, the  
26 executive director determines that the proposed substantial change  
27 in use will interfere significantly with a proposed or ongoing

remedial investigation/feasibility study or similar study approved by the executive director or expose the public health and safety or the environment to a significantly increased threat of harm, the executive director shall notify the owner or operator of the determination. After the determination is made and notification given, the owner or operator may not proceed with the proposed substantial change in use. The owner or operator may request that the commission reconsider the executive director's determination ~~[a hearing before the commission on whether the determination should be modified or set aside]~~ by submitting a request under Section 5.556, Water Code, not later than the 30th day after the receipt of the executive director's determination. ~~[If a hearing is requested, the commission shall initiate the hearing not later than the 45th day after the receipt of the request. The hearing shall be conducted in accordance with Chapter 2001, Government Code.]~~ The executive director's determination becomes unappealable on the 31st day after issuance if reconsideration by the commission ~~[a hearing]~~ is not requested.

SECTION 2.26. Section 382.05102(d), Health and Safety Code, is amended to read as follows:

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under ~~[this chapter, Chapter 5, Water Code, or]~~ Subchapters C-G, Chapter 2001, Government Code.

SECTION 2.27. Section 382.05155(c), Health and Safety Code, is amended to read as follows:

(c) The expediting of an application under this section does

1 not affect [~~a contested case hearing or~~] applicable federal, state,  
2 and regulatory requirements, including the notice and [~~7~~]  
3 opportunity for [~~a public hearing, and~~] submission of public  
4 comment required under this chapter.

5 SECTION 2.28. Section 382.0517, Health and Safety Code, is  
6 amended to read as follows:

7 Sec. 382.0517. DETERMINATION OF ADMINISTRATIVE COMPLETION  
8 OF APPLICATION. The commission shall determine when an application  
9 filed under Section 382.054 or Section 382.0518 is administratively  
10 complete. On determination, the commission by mail shall notify  
11 the applicant and any interested party who has requested  
12 notification. If the number of interested parties who have  
13 requested notification makes it impracticable for the commission to  
14 notify those parties by mail, the commission shall notify those  
15 parties by publishing the notice at least once in a newspaper of  
16 general circulation in the municipality in which the facility is  
17 located or is proposed to be located or in the municipality nearest  
18 to the location or proposed location of the facility [~~publication~~  
19 ~~using the method prescribed by Section 382.031(a)~~].

20 SECTION 2.29. Section 382.0518(b), Health and Safety Code,  
21 is amended to read as follows:

22 (b) The commission shall grant within a reasonable time a  
23 permit or permit amendment to construct or modify a facility if,  
24 from the information available to the commission, including  
25 information presented at any public meeting [~~hearing~~] held under  
26 Section 382.056(k), the commission finds:

27 (1) the proposed facility for which a permit, permit

1 amendment, or a special permit is sought will use at least the best  
2 available control technology, considering the technical  
3 practicability and economic reasonableness of reducing or  
4 eliminating the emissions resulting from the facility; and

5 (2) no indication that the emissions from the facility  
6 will contravene the intent of this chapter, including protection of  
7 the public's health and physical property.

8 SECTION 2.30. Section 382.05181(h), Health and Safety Code,  
9 is amended to read as follows:

10 (h) A permit application under this chapter for a facility  
11 affected by Section 382.0518(g) is subject to the notice [~~and~~  
12 ~~hearing~~] requirements as provided by Section 382.05191.

13 SECTION 2.31. Section 382.05185(h), Health and Safety Code,  
14 is amended to read as follows:

15 (h) A permit application under this section is subject to  
16 notice [~~and hearing~~] requirements as provided by Section 382.05191.

17 SECTION 2.32. Section 382.05186(g), Health and Safety Code,  
18 is amended to read as follows:

19 (g) A permit application under this section is subject to  
20 notice [~~and hearing~~] requirements as provided by Section 382.05191.

21 SECTION 2.33. Section 382.0519(b), Health and Safety Code,  
22 is amended to read as follows:

23 (b) The commission shall grant within a reasonable time a  
24 permit under this section if, from the information available to the  
25 commission, including information presented at any public meeting  
26 [~~hearing~~] or through written comment:

27 (1) the commission finds that the facility will use an

1 air pollution control method at least as beneficial as that  
2 described in Section 382.003(9)(E)(ii), considering the age and  
3 remaining useful life of the facility, except as provided by  
4 Subdivision (2); or

5 (2) for a facility located in a near-nonattainment or  
6 nonattainment area for a national ambient air quality standard, the  
7 commission finds that the facility will use the more stringent of:

8 (A) a control method at least as beneficial as  
9 that described in Section 382.003(9)(E)(ii), considering the age  
10 and remaining useful life of the facility; or

11 (B) a control technology that the commission  
12 finds is demonstrated to be generally achievable for facilities in  
13 that area of the same type that are permitted under this section,  
14 considering the age and remaining useful life of the facility.

15 SECTION 2.34. The heading to Section 382.05191, Health and  
16 Safety Code, is amended to read as follows:

17 Sec. 382.05191. EMISSIONS REDUCTION PERMITS: NOTICE [~~AND~~  
18 ~~HEARING~~].

19 SECTION 2.35. Section 382.05191(c), Health and Safety Code,  
20 is amended to read as follows:

21 (c) The commission shall provide an opportunity for [~~a~~  
22 ~~public hearing and~~] the submission of public comment and send  
23 notice of a decision on an application for a permit under Section  
24 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 in the same  
25 manner as provided by Sections 382.0561 and 382.0562.

26 SECTION 2.36. The heading to Section 382.05197, Health and  
27 Safety Code, is amended to read as follows:

1           Sec. 382.05197. MULTIPLE PLANT PERMIT: NOTICE [~~AND~~  
2 ~~HEARING~~].

3           SECTION 2.37. Section 382.05197(c), Health and Safety Code,  
4 is amended to read as follows:

5           (c) The commission shall provide an opportunity for [~~a~~  
6 ~~public hearing and~~] the submission of public comment and send  
7 notice of a decision on an application for a permit under Section  
8 382.05194 in the same manner as provided by Sections 382.0561 and  
9 382.0562.

10          SECTION 2.38. Section 382.055(g), Health and Safety Code,  
11 is amended to read as follows:

12          (g) If the applicant meets the commission's requirements in  
13 accordance with the schedule, the commission shall renew the  
14 permit. If the applicant does not meet those requirements in  
15 accordance with the schedule, the applicant must show [~~in a~~  
16 ~~contested case proceeding~~] why the permit should not expire  
17 immediately. The applicant's permit is effective until:

18               (1) the final date specified by the commission's  
19 report to the applicant;

20               (2) the existing permit is renewed; or

21               (3) the date specified by a commission order issued  
22 [~~following a contested case proceeding held~~] under this section.

23          SECTION 2.39. The heading to Section 382.056, Health and  
24 Safety Code, is amended to read as follows:

25          Sec. 382.056. NOTICE OF INTENT TO OBTAIN PERMIT OR PERMIT  
26 REVIEW[~~, HEARING~~].

27          SECTION 2.40. Sections 382.056(b), (h), (m), (n), and (p),



1 Health and Safety Code, are amended to read as follows:

2 (b) The notice must include:

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

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

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

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

13 (5) a description of the procedural rights and  
14 obligations of the public, printed in a font style or size that  
15 clearly provides emphasis and distinguishes it from the remainder  
16 of the notice, that includes a statement that a person who may be  
17 affected by emissions of air contaminants from the facility,  
18 proposed facility, or federal source is entitled to request a  
19 hearing from the commission or petition for review of a commission  
20 decision, as applicable;

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

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

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

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

(m) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for, as applicable, requesting reconsideration of or petitioning for administrative review of [~~that the commission reconsider~~] the executive director's decision, or requesting [~~hold~~] a contested case hearing to:

(1) the applicant;

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

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

(4) any person who timely filed a request for a public hearing in response to the notice published under Subsection (a).

(n) Except as provided by Section 382.0561, the commission shall consider a request to [~~that the commission~~] reconsider or a petition to review the executive director's decision [~~or hold a public hearing~~] in accordance with the procedures provided by Sections 5.556 and 5.5565 [~~5.557~~], Water Code.

(p) The commission by rule shall provide for additional notice or [~~7~~] opportunity for public comment, administrative review, or [~~opportunity for~~] public hearing to the extent necessary

1 to satisfy a requirement to obtain or maintain delegation or  
2 approval of a federal program.

3 SECTION 2.41. The heading to Section 382.058, Health and  
4 Safety Code, is amended to read as follows:

5 Sec. 382.058. NOTICE OF ~~[AND HEARING ON]~~ CONSTRUCTION OF  
6 CONCRETE PLANT UNDER PERMIT BY RULE, STANDARD PERMIT, OR EXEMPTION.

7 SECTION 2.42. Sections 382.058(a), (c), and (d), Health and  
8 Safety Code, are amended to read as follows:

9 (a) A person may not begin construction on any concrete  
10 plant that performs wet batching, dry batching, or central mixing  
11 under a standard permit under Section 382.05195 or a permit by rule  
12 adopted by the commission under Section 382.05196 unless the person  
13 has complied with the notice ~~[and opportunity for hearing]~~  
14 provisions under Section 382.056.

15 (c) For purposes of this section, only those persons  
16 actually residing in a permanent residence within 440 yards of the  
17 proposed plant may be an affected person ~~[request a hearing under~~  
18 ~~Section 382.056 as a person who may be affected]~~.

19 (d) If the commission considers air dispersion modeling  
20 information in the course of adopting an exemption under Section  
21 382.057 for a concrete plant that performs wet batching, dry  
22 batching, or central mixing, the commission may not require that a  
23 person who qualifies for the exemption conduct air dispersion  
24 modeling before beginning construction of a concrete plant~~[, and~~  
25 ~~evidence regarding air dispersion modeling may not be submitted at~~  
26 ~~a hearing under Section 382.056]~~.

27 SECTION 2.43. The heading to Section 382.059, Health and

1 Safety Code, is amended to read as follows:

2 Sec. 382.059. [~~HEARING AND~~] DECISION ON PERMIT AMENDMENT  
3 APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES.

4 SECTION 2.44. Section 382.059(b), Health and Safety Code,  
5 is amended to read as follows:

6 (b) The commission shall provide an opportunity for [~~a~~  
7 ~~public hearing and~~] the submission of public comment on the  
8 application in the manner provided by Section 382.0561.

9 SECTION 2.45. Section 26.029(b), Water Code, is amended to  
10 read as follows:

11 (b) The [~~After a public hearing, notice of which shall be~~  
12 ~~given to the permittee, the~~] commission may require the permittee,  
13 from time to time, for good cause, in conformance with applicable  
14 laws, to conform to new or additional conditions.

15 SECTION 2.46. Section 27.021(b), Water Code, is amended to  
16 read as follows:

17 (b) The commission by rule shall provide for public notice  
18 and comment on an application for a permit authorized by this  
19 section. [~~Notwithstanding Section 27.018, an application for a~~  
20 ~~permit authorized by this section is not subject to the hearing~~  
21 ~~requirements of Chapter 2001, Government Code.~~]

22 SECTION 2.47. Section 27.023(c), Water Code, is amended to  
23 read as follows:

24 (c) If a well described by Subsection (a) is included in an  
25 area permit issued by the commission:

- 26 (1) the registration status of the well ceases; and  
27 (2) the well is subject to all rules applicable to the

1 area permit, including notice [~~and hearing~~] requirements.

2 SECTION 2.48. Section 27.051(e), Water Code, as amended by  
3 Chapters 347 (S.B. 324), 965 (H.B. 2912), and 1161 (H.B. 2997), Acts  
4 of the 77th Legislature, Regular Session, 2001, is reenacted and  
5 amended to read as follows:

6 (e) Consistent with Sections 5.753 and 5.754 and rules  
7 adopted and procedures developed under those sections, the  
8 commission shall establish a procedure for the preparation of  
9 comprehensive summaries of the applicant's compliance history,  
10 including the compliance history of any corporation or business  
11 entity managed, owned, or otherwise closely related to the  
12 applicant. A compliance summary must include as evidence of  
13 compliance information regarding the applicant's implementation of  
14 an environmental management system at the facility for which an  
15 authorization is sought. The summaries shall be made available to  
16 the applicant and any interested person after the commission has  
17 completed its technical review of the permit application and prior  
18 to the promulgation of the public notice relating to the issuance of  
19 the permit. [~~Evidence of compliance or noncompliance by an~~  
20 ~~applicant for an injection well permit with environmental statutes~~  
21 ~~and the rules adopted or orders or permits issued by the commission~~  
22 ~~may be offered by any party at a hearing on the applicant's~~  
23 ~~application and admitted into evidence subject to applicable rules~~  
24 ~~of evidence. In accordance with this subsection and Sections 5.753~~  
25 ~~and 5.754 and rules adopted and procedures developed under those~~  
26 ~~sections, evidence of the compliance history of an applicant for an~~  
27 ~~injection well may be offered at a hearing on the application and~~

1 ~~may be admitted into evidence, subject to the rules of evidence.~~  
 2 ~~Evidence of the compliance history of an applicant for an injection~~  
 3 ~~well permit may be offered by the executive director at a hearing on~~  
 4 ~~the application and admitted into evidence subject to the rules of~~  
 5 ~~evidence.]~~ All evidence submitted ~~[admitted]~~, including  
 6 compliance history, shall be considered by the commission in  
 7 determining whether to issue, amend, extend, or renew a permit. If  
 8 the commission concludes that the applicant's compliance history is  
 9 unacceptable, the commission shall deny the permit. In this  
 10 subsection, "environmental management system" has the meaning  
 11 assigned by Section 5.127.

12 SECTION 2.49. Sections 27.0513(a), (c), and (d), Water  
 13 Code, are amended to read as follows:

14 (a) The commission may issue a permit pursuant to Section  
 15 27.011 that authorizes the construction and operation of two or  
 16 more similar injection wells within a specified area for mining of  
 17 uranium. ~~[An application for a new permit issued pursuant to~~  
 18 ~~Section 27.011, a major amendment of such a permit, or a renewal of~~  
 19 ~~such a permit for mining of uranium is subject to the public notice~~  
 20 ~~requirements and opportunity for contested case hearing provided~~  
 21 ~~under Section 27.018.]~~ A new, amended, or renewed permit must  
 22 incorporate a table of pre-mining low and high values representing  
 23 the range of groundwater quality within the permit boundary and  
 24 area of review, as provided by commission rule, for each water  
 25 quality parameter used to measure groundwater restoration in a  
 26 commission-required restoration table. The values in the permit  
 27 range table must be established from pre-mining baseline wells and

all available wells within the area of review, including those in the existing or proposed permit boundary and any existing or proposed production areas. Wells used for that purpose are limited to those that have documented completion depths and screened intervals that correspond to a uranium production zone aquifer identified within the permit boundary.

(c) The commission may issue a holder of a permit issued pursuant to Section 27.011 for mining of uranium an authorization that allows the permit holder to conduct mining and restoration activities in production zones within the boundary established in the permit. The commission by rule shall establish application requirements, technical requirements, including the methods for determining restoration table values, and procedural requirements for any authorization. If a restoration table value for a proposed or amended authorization exceeds the range listed in the permit range table such that it falls above the upper limit of the range, the value within the permit range table must be used or a major amendment to the permit range table must be obtained~~[, subject to an opportunity for a contested case hearing or the hearing requirements of Chapter 2001, Government Code]~~.

(d) Notwithstanding Sections 5.551, 5.556, and 27.011, ~~and 27.018,~~ an application for an authorization is an uncontested matter not subject to a contested case hearing or the hearing requirements of Chapter 2001, Government Code, if:

(1) the authorization is for a production zone located within the boundary of a permit that incorporates a range table of groundwater quality restoration values used to measure groundwater

1 restoration by the commission;

2 (2) the application includes groundwater quality  
3 restoration values falling at or below the upper limit of the range  
4 established in Subdivision (1); and

5 (3) the authorization is for a production zone located  
6 within the boundary of a permit that incorporates groundwater  
7 baseline characteristics of the wells for the application required  
8 by commission rule.

9 ARTICLE 3. REPEALER

10 SECTION 3.01. Sections 2003.047(e-1), (e-2), (e-3), (e-4),  
11 (e-5), (i-1), (i-2), and (i-3), Government Code, are repealed.

12 SECTION 3.02. The following sections of the Health and  
13 Safety Code are repealed:

- 14 (1) Section 361.068(c);
- 15 (2) Sections 361.079(b) and (c);
- 16 (3) Section 361.080;
- 17 (4) Section 361.082(b);
- 18 (5) Section 361.083;
- 19 (6) Section 361.0831;
- 20 (7) Section 361.0832;
- 21 (8) Section 361.0833(c);
- 22 (9) Section 361.084(c);
- 23 (10) Section 361.085(b);
- 24 (11) Sections 361.088(c), (e), and (f);
- 25 (12) Section 361.089(d);
- 26 (13) Section 361.120(e);
- 27 (14) Sections 382.0291(d) and (e);



- (15) Section 382.031;
- (16) Sections 382.056(g), (i), and (o);
- (17) Section 382.0566(c);
- (18) Section 382.059(d); and
- (19) Section 382.0591(c).

SECTION 3.03. The following sections of the Water Code are repealed:

- (1) Section 5.228(d);
- (2) Sections 5.556(c), (d), (e), and (f);
- (3) Section 5.557;
- (4) Sections 26.028(c), (d), (e), (f), (g), and (h);
- (5) Section 26.0283(c);
- (6) Section 27.015(b);
- (7) Section 27.018; and
- (8) Sections 27.0513(e), (f), and (g).

#### ARTICLE 4. TRANSITION; EFFECTIVE DATE

SECTION 4.01. (a) Not later than January 1, 2018:

(1) the State Office of Administrative Hearings shall adopt rules to implement Section 2003.0478, Government Code, as added by this Act; and

(2) the Texas Commission on Environmental Quality shall adopt rules to implement Section 5.5565, Water Code, as added by this Act.

(b) The changes in law made by this Act apply only to an application for a permit, license, registration, or other authorization that is filed with the Texas Commission on Environmental Quality on or before the effective date of rules

1 adopted under Subsection (a). An application for a permit,  
2 license, registration, or other authorization that is filed before  
3 the effective date of rules adopted under Subsection (a) is  
4 governed by the law in effect on the date of filing, and that law is  
5 continued in effect for that purpose.

6 SECTION 4.02. This Act takes effect September 1, 2017.