By:  Thompson of Brazoria H.B. No. 4486

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of solid waste facilities; imposing a fee.

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

SECTION 1.  Section 361.061, Health and Safety Code, is amended to read as follows:

Sec. 361.061.  PERMITS; SOLID WASTE FACILITY. (a) Except as provided by Section 361.090 with respect to certain industrial solid waste, the commission may require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of solid waste under this chapter.

(b)  The commission may not approve or allow special conditions for the approval of an application for a permit or an amendment to a permit issued under this chapter unless the applicant has satisfied all the requirements of this chapter and rules adopted under this chapter and other requirements of state and local law, including requirements relating to authorizations from local governments and requirements relating to siting in a floodplain.

SECTION 2.  Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0675 to read as follows:

Sec. 361.0675.  APPLICATION FEE FOR PERMIT FOR MUNICIPAL SOLID WASTE FACILITY. The commission shall charge an applicant for a permit for a municipal solid waste facility an application fee of $2,000.

SECTION 3.  Section 361.088, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

(h)  Before a permit for a proposed municipal solid waste management facility is issued, amended, extended, or renewed, the commission shall inspect the facility or site used or proposed to be used to store, process, or dispose of municipal solid waste to confirm information included in the permit application. The commission by rule shall prescribe the kinds of information in a permit application that require confirmation under this subsection.

SECTION 4.  Section 7.003, Water Code, is amended by adding Subsection (d) to read as follows:

(d)  This subsection applies to an enforcement action for which a decision or order of the commission has become final as provided by Section 2001.144, Government Code, and that involves a violation of Chapter 361, Health and Safety Code, by or at a municipal solid waste facility. On the request of a state senator or state representative, the commission quarterly shall conduct in the county in which the facility that is the subject of the enforcement action is located a public informational meeting regarding the status of the enforcement action. A representative of the facility that is the subject of the enforcement action must attend a meeting held under this subsection and must make a reasonable effort to respond to questions relevant to the enforcement action at the meeting. The commission shall post notice of the meeting on the commission's Internet website and publish the notice once a week for two consecutive weeks before the meeting in one or more newspapers having general circulation in the county in which the meeting will be held. The notice must state the time, location, and subject matter of the meeting. The owner of the facility that is the subject of the enforcement action must reimburse the commission for the cost of publishing notice under this section.

SECTION 5.  Section 7.053, Water Code, is amended to read as follows:

Sec. 7.053.  FACTORS TO BE CONSIDERED IN DETERMINATION OF PENALTY AMOUNT. In determining the amount of an administrative penalty, the commission shall consider:

(1)  the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on:

(A)  the impairment of existing water rights;

(B)  [~~or~~] the hazard or potential hazard created to the health or safety of the public; or

(C)  whether the prohibited act created or is a public nuisance;

(2)  the impact of the violation on:

(A)  air quality in the region;

(B)  a receiving stream or underground water reservoir;

(C)  instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or

(D)  affected persons;

(3)  with respect to the alleged violator:

(A)  the history and extent of previous violations;

(B)  the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C)  the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D)  economic benefit gained through the violation; and

(E)  the amount necessary to deter future

violations; and

(4)  any other matters that justice may require.

SECTION 6.  Section 2003.047, Government Code, is amended by adding Subsections (d-1) and (l-1) to read as follows:

(d-1)  For the purposes of Subsection (d), to be eligible to preside at a hearing related to a permit for a municipal solid waste facility, an administrative law judge must have experience with solid waste engineering or management.

(l-1)  For a hearing related to a permit for a municipal solid waste facility, the administrative law judge shall:

(1)  present the findings of fact, conclusions of law, and any ultimate findings under Subsection (l) at an open meeting of the commission; and

(2)  answer questions related to the findings and conclusions asked by the commissioners.

SECTION 7.  Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0661 to read as follows:

Sec. 361.0661.  REVIEW OF PERMIT APPLICATION FOR MUNICIPAL SOLID WASTE FACILITY; NOTICE OF DEFICIENCY. (a) The commission shall review each application for a permit for a municipal solid waste facility promptly.

(b)  If after review of an application described by Subsection (a), the commission finds that necessary information is omitted from the application, that the application contains incorrect information that is material to the application, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency and order the information to be provided to the commission not later than the 60th day after the date the notice is issued. If the information is not provided to the commission on or before that date, the commission shall dismiss the application.

(c)  The commission may issue a notice of deficiency for an application described by Subsection (a) only for the reasons specified by Subsection (b). For purposes of determining whether an application contains incorrect information that is material to the application, the commission may not consider administrative or clerical errors, including typographical errors.

(d)  To the extent of a conflict between this section and Section 361.066 or a rule adopted under that section, this section controls.

(e)  The commission may adopt rules as necessary to implement this section.

SECTION 8.  As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality shall adopt or modify any rules necessary to implement the changes in law made by this Act.

SECTION 9.  This Act takes effect September 1, 2019.