

By: Powell

S.B. No. 2387

A BILL TO BE ENTITLED

AN ACT

relating to the regulatory analysis of rules proposed by the Texas Commission on Environmental Quality.

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

SECTION 1. Section 2001.0225(a), Government Code, is amended to read as follows:

(a) This section applies only to a major environmental rule adopted by a state agency other than the Texas Commission on Environmental Quality, the result of which is to:

(1) exceed a standard set by federal law, unless the rule is specifically required by state law;

(2) exceed an express requirement of state law, unless the rule is specifically required by federal law;

(3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or

(4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

SECTION 2. Section 382.051961(b), Health and Safety Code, is amended to read as follows:

(b) The commission may not adopt a new permit by rule or a new standard permit or amend an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless the commission:

(1) conducts a regulatory analysis as provided by Section 5.1032, Water [~~2001.0225, Government~~] Code;

(2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(3) establishes any required emissions limits or other emissions-related requirements based on:

(A) the evaluation of credible air quality monitoring data; and

(B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

SECTION 3. Subchapter D, Chapter 5, Water Code, is amended by adding Section 5.1032 to read as follows:

Sec. 5.1032. ADOPTION OF ENVIRONMENTAL RULES. (a) In this section:

(1) "Cost" means a reasonably identifiable,

1 significant, and direct or indirect negative economic effect.

2 (2) "Environmental benefit" means a reasonably
3 identifiable, significant, and direct effect, including a
4 quantifiable environmental, health, or economic effect, that is
5 expected to result from regulation of the pollutant or pollutants
6 targeted by an environmental rule. The term does not include
7 incidental co-benefits expected to result from the implementation
8 of an environmental rule, including the reduction of pollutants
9 already regulated by separate environmental rules.

10 (3) "Environmental rule" means a rule the specific
11 intent of which is to protect the environment or reduce risks to
12 human health from environmental exposure.

13 (4) "Small business" means a business that employs not
14 more than 250 individuals.

15 (b) Before adopting an environmental rule, the commission
16 shall conduct a regulatory analysis that:

17 (1) identifies the problem the rule is intended to
18 address;

19 (2) determines whether a new rule is necessary to
20 address the problem; and

21 (3) considers the benefits and costs of the proposed
22 rule in relationship to state agencies, local governments, the
23 public, the regulated community, and the environment.

24 (c) When giving notice of an environmental rule, the
25 commission shall incorporate into the fiscal note required by
26 Section 2001.024, Government Code, a draft impact analysis
27 describing the anticipated effects of the proposed rule. The draft

impact analysis, at a minimum, must:

(1) identify the problem the rule is intended to address;

(2) identify the environmental benefits that the agency expects to result from implementation of and compliance with the rule, including the projected level of reduction of pollutants or contaminants in air, water, and soil media;

(3) identify and describe the costs that the agency expects that state agencies, local governments, the public, and the affected regulated entities, other than small businesses, will incur from implementation of and compliance with the rule; and

(4) identify and describe in a separate economic impact analysis the costs that the agency expects that small businesses will incur from implementation of and compliance with the rule.

(d) In identifying the environmental benefits of an environmental rule under Subsection (c)(2), the commission shall include the modeled improvement for the criteria pollutant design value expected from implementation of the rule, if the rule will be included in the state implementation plan under the federal Clean Air Act (42 U.S.C. 7401 et seq.).

(e) After considering public comments submitted under Section 2001.029, Government Code, and determining that a proposed environmental rule should be adopted, the commission shall prepare a final regulatory analysis that complies with Section 2001.033, Government Code.

(f) A person who submitted a comment in accordance with

1 Section 2001.029, Government Code, may challenge the validity of an
2 environmental rule that is not proposed and adopted in strict
3 compliance with the procedural requirements of this section by
4 filing an action for declaratory judgment as provided by Section
5 2001.038, Government Code, not later than the 30th day after the
6 effective date of the rule. If the court determines that an
7 environmental rule was not proposed and adopted in strict
8 compliance with the procedural requirements of this section, the
9 rule is invalid.

10 SECTION 4. The change in law made by this Act applies only
11 to an environmental rule proposed by the Texas Commission on
12 Environmental Quality for which notice is given under Sections
13 2001.023 and 2001.024, Government Code, on or after December 1,
14 2019.

15 SECTION 5. This Act takes effect September 1, 2019.