

By: Schwertner, et al.

S.B. No. 1397

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Commission on Environmental Quality.

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

SECTION 1. Section 382.05101, Health and Safety Code, is amended to read as follows:

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. The commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which the following types of permits are not required:

(1) a permit under Section 382.0518 or 382.0519;

(2) ~~[a]~~ a standard permit under Section 382.05195, ~~[or 382.05198],~~ or 382.051985; or

(3) ~~[a]~~ a permit by rule under Section 382.05196 ~~[is not required]~~.

SECTION 2. Section 382.0511(c), Health and Safety Code, is amended to read as follows:

(c) The commission may authorize changes in a federal source to proceed before the owner or operator obtains a federal operating permit or revisions to a federal operating permit if:

(1) the changes are de minimis under Section 382.05101; or

(2) the owner or operator:

1 (A) has obtained a preconstruction permit or  
2 permit amendment required by Section 382.0518; or

3 (B) is operating under:

4 (i) a standard permit under Section  
5 382.05195, ~~[or]~~ 382.05198, or 382.051985;

6 (ii) a permit by rule under Section  
7 382.05196; or

8 (iii) an exemption allowed under Section  
9 382.057.

10 SECTION 3. Subchapter C, Chapter 382, Health and Safety  
11 Code, is amended by adding Section 382.051985 to read as follows:

12 Sec. 382.051985. STANDARD PERMIT FOR CERTAIN TEMPORARY  
13 CONCRETE PLANTS. (a) The commission shall issue a standard permit  
14 for a temporary concrete plant that performs wet batching, dry  
15 batching, or central mixing to support a public works project. A  
16 plant operating under the permit:

17 (1) may not support a project that is not related to  
18 the public works project;

19 (2) must be located in or contiguous to the  
20 right-of-way of the public works project; and

21 (3) must meet the requirements of Section 382.05198.

22 (b) A permit issued under this section:

23 (1) may not have an initial term that exceeds one year;

24 (2) may be renewed for an additional term not to exceed  
25 one year;

26 (3) may be renewed for a second additional term not to  
27 exceed one year only on a finding of good cause by the commission;

1 and

2 (4) may not be renewed a third time.

3 SECTION 4. Sections 382.05199(a), (b), and (h), Health and  
4 Safety Code, are amended to read as follows:

5 (a) A person may not begin construction of a permanent  
6 concrete plant that performs wet batching, dry batching, or central  
7 mixing under a standard permit issued under Section 382.05198 or a  
8 temporary concrete plant that performs wet batching, dry batching,  
9 or central mixing under a standard permit issued under Section  
10 382.051985 unless the commission authorizes the person to use the  
11 permit as provided by this section. The notice and hearing  
12 requirements of Subsections (b)-(g) apply only to an applicant for  
13 authorization to use a standard permit issued under Section  
14 382.05198 or 382.051985. An applicant for a permit for a concrete  
15 plant that does not meet the requirements of a standard permit  
16 issued under Section 382.05198 or 382.051985 must comply with:

17 (1) Section 382.058 to obtain authorization to use a  
18 standard permit issued under Section 382.05195 or a permit by rule  
19 adopted under Section 382.05196; or

20 (2) Section 382.056 to obtain a permit issued under  
21 Section 382.0518.

22 (b) An applicant for an authorization to use a standard  
23 permit under Section 382.05198 or 382.051985 must publish notice  
24 under this section not later than the earlier of:

25 (1) the 30th day after the date the applicant receives  
26 written notice from the executive director that the application is  
27 technically complete; or

1           (2) the 75th day after the date the executive director  
2 receives the application.

3           (h) Not later than the 35th day after the date the public  
4 hearing is held, the executive director shall approve or deny the  
5 application for authorization to use the standard permit. The  
6 executive director shall base the decision on whether the  
7 application meets the requirements of Section [382.05198](#) or  
8 [382.051985](#). The executive director shall consider all comments  
9 received during the public comment period and at the public hearing  
10 in determining whether to approve the application. If the  
11 executive director denies the application, the executive director  
12 shall state the reasons for the denial and any modifications to the  
13 application that are necessary for the proposed plant to qualify  
14 for the authorization.

15           SECTION 5. Section [382.056](#), Health and Safety Code, is  
16 amended by amending Subsection (b) and adding Subsection (k-2) to  
17 read as follows:

18           (b) The notice must include:

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

21           (2) ~~[the location at which a copy of the application is~~  
22 ~~available for review and copying as provided by Subsection (d)],~~

23           ~~[(3)]~~ a description, including a telephone number, of  
24 the manner in which the commission may be contacted for further  
25 information;

26           (3) ~~[(4)]~~ a description, including a telephone  
27 number, of the manner in which the applicant may be contacted for

1 further information;

2           (4) [~~(5)~~] a description of the procedural rights and  
3 obligations of the public, printed in a font style or size that  
4 clearly provides emphasis and distinguishes it from the remainder  
5 of the notice, that includes a statement that a person who may be  
6 affected by emissions of air contaminants from the facility,  
7 proposed facility, or federal source is entitled to request a  
8 hearing from the commission;

9           (5) [~~(6)~~] a description of the procedure by which a  
10 person may be placed on a mailing list in order to receive  
11 additional information about the application;

12           (6) [~~(7)~~] the time and location of any public meeting  
13 to be held under Subsection (e); and

14           (7) [~~(8)~~] any other information the commission by rule  
15 requires.

16           (k-2) Notwithstanding any other law, if the commission  
17 holds a public meeting for a permit application under this  
18 subchapter the commission shall hold open the public comment period  
19 for the permit application for at least 36 hours after the end of  
20 the meeting.

21           SECTION 6. Section 5.014, Water Code, is amended to read as  
22 follows:

23           Sec. 5.014. SUNSET PROVISION. The Texas Commission on  
24 Environmental Quality is subject to Chapter 325, Government Code  
25 (Texas Sunset Act). Unless continued in existence as provided by  
26 that chapter, the commission is abolished [~~and this chapter~~  
27 ~~expires~~] September 1, 2035 [~~2023~~].

1 SECTION 7. Section 5.0535, Water Code, is amended by  
2 amending Subsection (b) and adding Subsection (d) to read as  
3 follows:

4 (b) The training program must provide the person with  
5 information regarding:

6 (1) the law governing [~~legislation that created the~~  
7 commission operations];

8 (2) the programs, functions, rules, and budget of  
9 [~~operated by~~] the commission;

10 (3) the scope of and limitations on the rulemaking  
11 authority of the commission [~~the role and functions of the~~  
12 ~~commission~~];

13 (4) [~~the rules of the commission, with an emphasis on~~  
14 ~~the rules that relate to disciplinary and investigatory authority,~~

15 [~~(5) the current budget for the commission,~~

16 [~~(6)~~] the results of the most recent formal audit  
17 [~~significant internal and external audits~~] of the commission;

18 (5) [~~(7)~~] the requirements of:

19 (A) laws relating to [~~the~~] open meetings, [~~law,~~  
20 ~~Chapter 551, Government Code,~~

21 [~~(B) the~~] public information, [~~law, Chapter 552,~~  
22 ~~Government Code,~~

23 [~~(C) the~~] administrative procedure, and  
24 disclosing conflicts-of-interest [~~law, Chapter 2001, Government~~  
25 ~~Code, and~~

26 [~~(D) other laws relating to public officials,~~  
27 ~~including conflict-of-interest laws~~]; and

1           (B) other laws applicable to members of a state  
2 policy-making body in performing their duties; and

3           (6) [~~8~~] any applicable ethics policies adopted by  
4 the commission or the Texas Ethics Commission.

5           (d) The executive director of the commission shall create a  
6 training manual that includes the information required by  
7 Subsection (b). The executive director shall distribute a copy of  
8 the training manual annually to each member of the commission. Each  
9 member of the commission shall sign and submit to the executive  
10 director a statement acknowledging that the member received and has  
11 reviewed the training manual.

12           SECTION 8. Section 5.113, Water Code, is amended to read as  
13 follows:

14           Sec. 5.113. COMMISSION AND STAFF RESPONSIBILITY POLICY.  
15 The commission shall develop and implement policies that clearly  
16 separate the policy-making [~~the respective~~] responsibilities of  
17 the commission and the management responsibilities of the executive  
18 director and the staff of the commission.

19           SECTION 9. The heading to Section 5.129, Water Code, is  
20 amended to read as follows:

21           Sec. 5.129. SUMMARY OF AND INFORMATION PROVIDED BY [~~FOR~~]  
22 PUBLIC NOTICES.

23           SECTION 10. Section 5.129, Water Code, is amended by  
24 amending Subsection (a) and adding Subsection (a-1) to read as  
25 follows:

26           (a) The commission by rule shall provide for each public  
27 notice issued or published by the commission or by a person under

1 the jurisdiction of the commission as required by law or by  
2 commission rule to include:

3 (1) at the beginning of the notice a succinct  
4 statement of the subject of the notice; and

5 (2) to the extent applicable, the name of the permit  
6 applicant, the type of permit applied for, and the address of each  
7 proposed or existing site subject to the proposed permit.

8 (a-1) Rules adopted under this section [~~The rules~~] must  
9 provide that a summary statement must be designed to inform the  
10 reader of the subject matter of the notice without having to read  
11 the entire text of the notice.

12 SECTION 11. Subchapter E, Chapter 5, Water Code, is amended  
13 by adding Section 5.1734 to read as follows:

14 Sec. 5.1734. ELECTRONIC POSTING OF PERMIT APPLICATIONS.

15 (a) The commission shall post on its website at the time a permit  
16 application becomes administratively complete:

17 (1) the permit application and any associated  
18 materials; and

19 (2) for a permit application under Subchapter D,  
20 Chapter 11, any map accompanying the permit application.

21 (b) Notwithstanding any other law, the commission shall  
22 require each applicant for a permit, permit amendment, or permit  
23 renewal that requires notice be published to include in the notice  
24 the address of the website where the public can access information  
25 about the permit as described by Subsection (a).

26 (c) In implementing this section, the commission shall  
27 consider and accommodate residents of each area affected by a



1 proposed permit, permit amendment, or permit renewal who may need  
2 assistance accessing the application and associated materials  
3 because of a lack of access to Internet services, particularly when  
4 there is a heightened interest in or response to public notice or  
5 comment.

6 (d) Notice posted under this section shall be in lieu of a  
7 requirement that a physical copy of the permit be made available in  
8 a public place.

9 SECTION 12. Section 5.552(c), Water Code, is amended to  
10 read as follows:

11 (c) The commission by rule shall establish the form and  
12 content of the notice. The notice must include:

13 (1) the location and nature of the proposed activity;

14 (2) ~~[the location at which a copy of the application is~~  
15 ~~available for review and copying as provided by Subsection (e)],~~

16 ~~[(3)]~~ a description, including a telephone number, of  
17 the manner in which a person may contact the commission for further  
18 information;

19 (3) ~~[(4)]~~ a description, including a telephone  
20 number, of the manner in which a person may contact the applicant  
21 for further information;

22 (4) ~~[(5)]~~ a description of the procedural rights and  
23 obligations of the public, printed in a font style or size that  
24 clearly provides emphasis and distinguishes it from the remainder  
25 of the notice;

26 (5) ~~[(6)]~~ a description of the procedure by which a  
27 person may be placed on a mailing list in order to receive

1 additional information about the application;

2 (6) [~~(7)~~] the time and location of any public meeting  
3 to be held under Subsection (f); and

4 (7) [~~(8)~~] any other information the commission by rule  
5 requires.

6 SECTION 13. Chapter 5, Water Code, is amended by adding  
7 Subchapter M-1 to read as follows:

8 SUBCHAPTER M-1. PERMITTING PROCEDURES GENERALLY

9 Sec. 5.581. APPLICABILITY. This subchapter applies to  
10 programs and permits arising under the air, waste, or water  
11 programs within the commission's jurisdiction.

12 Sec. 5.582. MEANS OF PUBLICATION OF NOTICE. (a)  
13 Notwithstanding any other law, the commission may publish notice of  
14 a permit application by electronic means instead of by printed  
15 means.

16 (b) If the commission publishes notice of a permit  
17 application by electronic means, the commission shall post the  
18 notice on the commission's website and may provide additional  
19 electronic notice through other means, including direct e-mail.

20 (c) The commission shall consider and accommodate residents  
21 of each area affected by a proposed permit, permit amendment, or  
22 permit renewal who may need assistance accessing notice published  
23 by electronic means because of a lack of access to Internet  
24 services, particularly when there is a heightened interest in or  
25 response to public notice or comment.

26 (d) This section does not authorize the commission to use an  
27 electronic means of notice instead of newspaper publication or

1 another form of notice if an applicable federal law requires a  
2 particular form of notice.

3 Sec. 5.583. VIRTUAL PUBLIC MEETING. (a) Notwithstanding  
4 any other law, the commission may hold a public meeting virtually  
5 through the Internet provided that members of the general public  
6 are able to participate in the meeting.

7 (b) The commission shall consider and accommodate members  
8 of the public who may need assistance participating in a virtually  
9 held public meeting because of a lack of access to Internet  
10 services, particularly when there is a heightened interest in or  
11 response to public notice or comment.

12 (c) This section does not authorize the commission to hold a  
13 public meeting virtually instead of an in-person public meeting if  
14 an applicable federal law requires an in-person public meeting.

15 Sec. 5.584. TEMPORARY AND INDEFINITE PERMIT REPORTING. (a)  
16 In this section, "permit" means a permit, approval, registration,  
17 or other form of authorization required by law for a person to  
18 engage in an action.

19 (b) This section does not apply to a person who holds a  
20 temporary permit or permit with an indefinite term that has a  
21 regular reporting requirement.

22 (c) A person who holds a temporary permit or permit with an  
23 indefinite term shall report to the commission annually whether the  
24 activity subject to the permit is ongoing.

25 SECTION 14. Section 5.754, Water Code, is amended by  
26 amending Subsection (c) and adding Subsection (c-1) to read as  
27 follows:

1 (c) In classifying a person's compliance history, the  
2 commission shall:

3 (1) determine whether a violation of an applicable  
4 legal requirement is of major, moderate, or minor significance;

5 (2) establish criteria for classifying a repeat  
6 violator, including:

7 (A) setting the number of major, moderate, and  
8 minor violations needed to be classified as a repeat violator; and

9 (B) giving consideration to the size and  
10 complexity of the site at which the violations occurred, and  
11 limiting consideration to violations of the same nature and the  
12 same environmental media that occurred in the preceding five years;  
13 and

14 (3) consider:

15 (A) the significance of the violation and whether  
16 the person is a repeat violator;

17 (B) the size and complexity of the site,  
18 including whether the site is subject to Title V of the federal  
19 Clean Air Act (42 U.S.C. Section 7661 et seq.); and

20 (C) the potential for a violation at the site  
21 that is attributable to the nature and complexity of the site.

22 (c-1) The commission may review, suspend, or reclassify a  
23 person's compliance history at any time if the commission  
24 determines that exigent circumstances exist.

25 SECTION 15. Sections 7.052(b-1) and (c), Water Code, are  
26 amended to read as follows:

27 (b-1) The amount of the penalty assessed against a

1 manufacturer that does not label its computer equipment or covered  
2 television equipment or adopt and implement a recovery plan as  
3 required by Section 361.955, 361.975, or 361.978, Health and Safety  
4 Code, as applicable, may not exceed \$10,000 for the second  
5 violation or \$40,000 [~~\$25,000~~] for each subsequent violation. A  
6 penalty under this subsection is in addition to any other penalty  
7 that may be assessed for a violation of Subchapter Y or Z, Chapter  
8 361, Health and Safety Code.

9 (c) The amount of the penalty for all other violations  
10 within the jurisdiction of the commission to enforce may not exceed  
11 \$40,000 [~~\$25,000~~] a day for each violation.

12 SECTION 16. Subchapter C, Chapter 7, Water Code, is amended  
13 by adding Section 7.0675 to read as follows:

14 Sec. 7.0675. ENFORCEMENT DIVERSION PROGRAM FOR SMALL  
15 BUSINESSES AND LOCAL GOVERNMENTS. (a) In this section, "small  
16 business" has the meaning assigned by Section 5.135.

17 (b) The commission shall establish an enforcement diversion  
18 program for small businesses and local governments. The program  
19 must include:

20 (1) resources developed for the small business  
21 compliance assistance program under Section 5.135;

22 (2) compliance assistance training; and

23 (3) on-site technical assistance and training  
24 performed by commission staff.

25 (c) Before the commission initiates an enforcement action  
26 for a violation committed by a small business or local government,  
27 the commission may enroll the business or government into the

1 enforcement diversion program.

2 (d) The commission may not initiate against a small business  
3 or local government an enforcement action for a violation that  
4 prompted enrollment in the enforcement diversion program after the  
5 business or government has successfully completed the program.

6 (e) A small business or local government is not eligible to  
7 enroll in the enforcement diversion program if the small business  
8 or local government:

9 (1) committed a violation that:

10 (A) resulted in an imminent threat to public  
11 health; or

12 (B) was a major violation, as classified under  
13 Section 5.754; or

14 (2) was enrolled in the program in the two years  
15 preceding the date of the violation.

16 SECTION 17. Subchapter B, Chapter 11, Water Code, is  
17 amended by adding Section 11.02363 to read as follows:

18 Sec. 11.02363. PERIODIC REVIEW OF ENVIRONMENTAL FLOW  
19 RECOMMENDATIONS; STATEWIDE WORK PLAN. (a) Periodically, the  
20 advisory group shall review the environmental flow standards for  
21 each river basin and bay system adopted by the commission under  
22 Section 11.1471. In conducting a review of the environmental flow  
23 standards, the advisory group shall:

24 (1) work with the science advisory committee and the  
25 pertinent basin and bay area stakeholder committees and basin and  
26 bay expert science teams in a manner similar to that provided by  
27 Section 11.02362;

1           (2) take into consideration the work plans developed  
2 under Section 11.02362(p);

3           (3) analyze previous environmental flow regime  
4 recommendations and standards;

5           (4) prescribe future monitoring, studies, and  
6 activities needed to better understand the environmental flow; and

7           (5) validate or refine:

8                   (A) the environmental flow recommendations;

9                   (B) the environmental flow standards adopted by  
10 the commission; and

11                   (C) strategies to achieve the environmental flow  
12 standards.

13           (b) The advisory group shall develop a biennial statewide  
14 work plan to prioritize and schedule the review of environmental  
15 flow standards under Subsection (a). The work plan must establish:

16                   (1) the methodology used to prioritize the review of  
17 the environmental flow standards of each river basin and bay  
18 system; and

19                   (2) a timeline for the review of the environmental  
20 flow standards of each river basin and bay system.

21           (c) The advisory group shall submit to the commission:

22                   (1) any review conducted under Subsection (a),  
23 including recommendations to the commission for use in adopting  
24 rules under Section 11.1471; and

25                   (2) the biennial work plan developed under Subsection  
26 (b).

27           SECTION 18. Section 11.1471, Water Code, is amended by

1 amending Subsection (f) and adding Subsection (g) to read as  
2 follows:

3 (f) An environmental flow standard or environmental flow  
4 set-aside adopted under Subsection (a) may be altered by the  
5 commission in a rulemaking process undertaken in accordance with a  
6 schedule established by the commission. The commission shall  
7 consider the review of environmental flows by the advisory group  
8 under Section 11.02363(a) when altering an environmental flow. In  
9 establishing a schedule, the commission shall consider the work  
10 plan developed by the advisory group under Section 11.02363(b) and  
11 the applicable work plan approved by the advisory group under  
12 Section 11.02362(p). The commission's schedule may not provide for  
13 the rulemaking process to occur more frequently than once every 10  
14 years unless the work plans provide [~~plan provides~~] for a periodic  
15 review under Sections 11.02363(a) and [~~Section~~] 11.02362(p) to  
16 occur more frequently than once every 10 years. In that event, the  
17 commission may provide for the rulemaking process to be undertaken  
18 in conjunction with the periodic review if the commission  
19 determines that schedule to be appropriate. A rulemaking process  
20 undertaken under this subsection must provide for the participation  
21 of stakeholders having interests in the particular river basin and  
22 bay system for which the process is undertaken.

23 (g) The commission shall submit a biennial report to the  
24 advisory group on the implementation and effectiveness of  
25 environmental flow standards. The report must include:

26 (1) a description of progress made over the previous  
27 biennium in implementing environmental flow standards, including



1 the status of any efforts to set aside unappropriated water for  
2 environmental flow protection;

3 (2) input provided by the board and the Parks and  
4 Wildlife Department on their:

5 (A) activities related to environmental flow  
6 standards; and

7 (B) recommendations for the work plan developed  
8 under Section 11.02363(b); and

9 (3) recommendations for the work plan developed under  
10 Section 11.02363(b).

11 SECTION 19. Section 49.011(b), Water Code, is amended to  
12 read as follows:

13 (b) The commission by rule shall establish a procedure for  
14 public notice and hearing of applications. The rules must require  
15 an applicant to publish the notice issued by the commission under  
16 Subsection (a) once a week for two consecutive weeks in a newspaper  
17 regularly published or circulated in the county where the district  
18 is proposed to be located not later than the 30th day before the  
19 date on which the commission may act on the application. The  
20 commission shall provide the notice to each state representative  
21 and state senator who represents an area inside the proposed  
22 district's boundaries.

23 SECTION 20. The following provisions are repealed:

24 (1) Section 382.056(d), Health and Safety Code;

25 (2) Section 5.552(e), Water Code;

26 (3) Section 11.0236(m), Water Code;

27 (4) Section 11.02361(g), Water Code; and

1           (5) Section 11.02362(s), Water Code.

2           SECTION 21. (a) Except as provided by Subsection (b) of  
3 this section, Section 5.0535, Water Code, as amended by this Act,  
4 applies to a member of the Texas Commission on Environmental  
5 Quality appointed before, on, or after the effective date of this  
6 Act.

7           (b) A member of the Texas Commission on Environmental  
8 Quality who, before the effective date of this Act, completed the  
9 training program required by Section 5.0535, Water Code, as that  
10 law existed before the effective date of this Act, is only required  
11 to complete additional training on the subjects added by this Act to  
12 the training program required by Section 5.0535, Water Code. A  
13 member described by this subsection may not vote, deliberate, or be  
14 counted as a member in attendance at a meeting of the commission  
15 held on or after December 1, 2023, until the member completes the  
16 additional training.

17           SECTION 22. A permit holder subject to Section 5.584, Water  
18 Code, as added by this Act, shall first report to the Texas  
19 Commission on Environmental Quality the status of the permitted  
20 activity not later than December 31, 2024.

21           SECTION 23. The change in law made by this Act to Section  
22 7.052, Water Code, applies only to a violation that occurs on or  
23 after the effective date of this Act. A violation that occurs  
24 before the effective date of this Act is governed by the law in  
25 effect on the date the violation occurred, and the former law is  
26 continued in effect for that purpose.

27           SECTION 24. (a) The Texas Commission on Environmental

1 Quality shall submit to the environmental flows advisory group the  
2 first biennial report on the implementation and effectiveness of  
3 environmental flow standards under Section [11.1471\(g\)](#), Water Code,  
4 as added by this Act, not later than January 1, 2024.

5 (b) The environmental flows advisory group shall produce  
6 and deliver to the commission the first biennial statewide work  
7 plan developed under Section 11.02363, Water Code, as added by this  
8 Act, not later than January 1, 2025.

9 SECTION 25. This Act takes effect September 1, 2023.