

AN ACT

relating to procedures for certain environmental permit applications.

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

SECTION 1. Section 2003.047, Government Code, is amended by adding Subsections (e-1), (e-2), (e-3), (e-4), (e-5), (i-1), (i-2), and (i-3) to read as follows:

(e-1) This subsection applies only to a matter referred under Section 5.556, Water Code. Each issue referred by the commission must have been raised by an affected person in a comment submitted by that affected person in response to a permit application in a timely manner. The list of issues submitted under Subsection (e) must:

(1) be detailed and complete; and

(2) contain either:

(A) only factual questions; or

(B) mixed questions of fact and law.

(e-2) For a matter referred under Section 5.556 or 5.557, Water Code, the administrative law judge must complete the proceeding and provide a proposal for decision to the commission not later than the earlier of:

(1) the 180th day after the date of the preliminary hearing; or

(2) the date specified by the commission.

1 (e-3) The deadline specified by Subsection (e-2) may be
2 extended:

3 (1) by agreement of the parties with the approval of
4 the administrative law judge; or

5 (2) by the administrative law judge if the judge
6 determines that failure to extend the deadline would unduly deprive
7 a party of due process or another constitutional right.

8 (e-4) For the purposes of Subsection (e-3)(2), a political
9 subdivision has the same constitutional rights as an individual.

10 (e-5) This subsection applies only to a matter referred
11 under Section 5.557, Water Code. The administrative law judge may
12 not hold a preliminary hearing until after the executive director
13 has issued a response to public comments under Section 5.555, Water
14 Code.

15 (i-1) In a contested case regarding a permit application
16 referred under Section 5.556 or 5.557, Water Code, the filing with
17 the office of the application, the draft permit prepared by the
18 executive director of the commission, the preliminary decision
19 issued by the executive director, and other sufficient supporting
20 documentation in the administrative record of the permit
21 application establishes a prima facie demonstration that:

22 (1) the draft permit meets all state and federal legal
23 and technical requirements; and

24 (2) a permit, if issued consistent with the draft
25 permit, would protect human health and safety, the environment, and
26 physical property.

27 (i-2) A party may rebut a demonstration under Subsection

1 (i-1) by presenting evidence that:

2 (1) relates to a matter referred under Section 5.557,
3 Water Code, or an issue included in a list submitted under
4 Subsection (e) in connection with a matter referred under Section
5 5.556, Water Code; and

6 (2) demonstrates that one or more provisions in the
7 draft permit violate a specifically applicable state or federal
8 requirement.

9 (i-3) If in accordance with Subsection (i-2) a party rebuts
10 a presumption established under Subsection (i-1), the applicant and
11 the executive director may present additional evidence to support
12 the draft permit.

13 SECTION 2. Section 5.115, Water Code, is amended by
14 amending Subsections (a) and (d) and adding Subsection (a-1) to
15 read as follows:

16 (a) For the purpose of an administrative hearing held by or
17 for the commission involving a contested case, "affected person,"
18 or "person affected," or "person who may be affected" means a person
19 who has a personal justiciable interest related to a legal right,
20 duty, privilege, power, or economic interest affected by the
21 administrative hearing. An interest common to members of the
22 general public does not qualify as a personal justiciable interest.

23 (a-1) The commission shall adopt rules specifying factors
24 which must be considered in determining whether a person is an
25 affected person in any contested case arising under the air, waste,
26 or water programs within the commission's jurisdiction and whether
27 an affected association is entitled to standing in contested case

1 hearings. For a matter referred under Section 5.556, the
2 commission:

3 (1) may consider:

4 (A) the merits of the underlying application,
5 including whether the application meets the requirements for permit
6 issuance;

7 (B) the likely impact of regulated activity on
8 the health, safety, and use of the property of the hearing
9 requestor;

10 (C) the administrative record, including the
11 permit application and any supporting documentation;

12 (D) the analysis and opinions of the executive
13 director; and

14 (E) any other expert reports, affidavits,
15 opinions, or data submitted on or before any applicable deadline to
16 the commission by the executive director, the applicant, or a
17 hearing requestor; and

18 (2) may not find that:

19 (A) a group or association is an affected person
20 unless the group or association identifies, by name and physical
21 address in a timely request for a contested case hearing, a member
22 of the group or association who would be an affected person in the
23 person's own right; or

24 (B) a hearing requestor is an affected person
25 unless the hearing requestor timely submitted comments on the
26 permit application.

27 (d) The commission shall adopt rules for the notice required

1 by this section. The rules must provide for the notice required by
2 this section to be posted on the Internet by the commission.

3 SECTION 3. Section 5.228(c), Water Code, is amended to read
4 as follows:

5 (c) The executive director shall participate as a party in
6 contested case permit hearings before the commission or the State
7 Office of Administrative Hearings to:

8 (1) provide information to complete the
9 administrative record; and

10 (2) support the executive director's position
11 developed in the underlying proceeding, unless the executive
12 director has revised or reversed that position.

13 SECTION 4. Subchapter M, Chapter 5, Water Code, is amended
14 by adding Section 5.5553 to read as follows:

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

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

24 SECTION 5. (a) The changes in law made by this Act apply
25 only to:

26 (1) a permit application that is filed with the Texas
27 Commission on Environmental Quality on or after the effective date

1 of this Act; or

2 (2) a judicial proceeding initiated on or after the
3 effective date of this Act that challenges an act or decision of the
4 Texas Commission on Environmental Quality made during a permit
5 proceeding.

6 (b) A permit application filed or a judicial proceeding
7 initiated before the effective date of this Act is governed by the
8 law in effect when the permit application was filed or the judicial
9 proceeding was initiated, and the former law is continued in effect
10 for that purpose.

11 (c) Notwithstanding Subsection (a), the changes in law made
12 by this Act do not apply to:

13 (1) a permit application:

14 (A) filed after the effective date of this Act;
15 and

16 (B) that is substantially similar to a permit
17 application for which a draft permit has been issued and that was:

18 (i) filed before the effective date of this
19 Act; and

20 (ii) withdrawn at the request of the permit
21 applicant; or

22 (2) a judicial proceeding:

23 (A) initiated after the effective date of this
24 Act; and

25 (B) that is substantially similar to a judicial
26 proceeding initiated before the effective date of this Act that has
27 been dismissed at the request of the permit applicant.

1 (d) Not later than January 1, 2016, the Texas Commission on
2 Environmental Quality shall adopt rules to implement the changes in
3 law made by this Act. For an application filed after the effective
4 date of this Act but before the adoption of rules to implement the
5 changes in law made by this Act, the commission shall provide
6 sufficient notice to the applicant and other participants in the
7 permit proceeding that the changes in law made by this Act apply to
8 the proceeding.

9 SECTION 6. This Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 709 passed the Senate on April 16, 2015, by the following vote: Yeas 22, Nays 9; and that the Senate concurred in House amendments on May 13, 2015, by the following vote: Yeas 21, Nays 10.

Secretary of the Senate

I hereby certify that S.B. No. 709 passed the House, with amendments, on May 1, 2015, by the following vote: Yeas 83, Nays 37, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor