

CHAPTER 802

H.B. No. 2043

AN ACT

relating to the rulemaking process of the Texas Water Commission; permitting of certain disposal wells; and permitting of certain waste management facilities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 5.103(c), Water Code, is amended to read as follows:

(c) Rules shall be adopted in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). *As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of an agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.*

SECTION 2. Section 27.015, Water Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A person making application to the commission for a disposal well permit under this chapter shall submit with the application a letter from the railroad commission *concluding* ~~stating~~ that drilling or using the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any *known* oil or gas *reservoir* ~~formation~~.

(c) *The commission shall find that there will be no impairment of oil or gas mineral rights if the railroad commission has issued a letter under Subsection (a) that concludes that*

drilling and using the disposal well will not endanger or injure any known oil or gas formation.

SECTION 3. Section 361.0791, Health and Safety Code, is amended to read as follows:

Sec. 361.0791. **PUBLIC MEETING AND NOTICE REQUIREMENT.** (a) Notwithstanding other law, the commission shall hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission, on request of a person affected or as otherwise required by commission rule, shall hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) *Notwithstanding other law, the commission shall hold a public meeting on an application for a new municipal solid waste management facility in the county in which the proposed municipal solid waste facility is to be located.*

(c) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) or (b) if notice is provided as required by this section.

(d) [(e)] A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) [(d)] If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission, department, or Texas Air Control Board, as appropriate, an affidavit certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(f) [(e)] The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

- (1) the permit application number;
- (2) the applicant's name;
- (3) the proposed location of the facility; and
- (4) the location and availability of copies of the permit application.

(g) [(f)] The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

SECTION 4. Section 361.081(b), Health and Safety Code, is amended to read as follows:

(b) The applicant must certify to the department or commission that the mailings were deposited as required by Subsection (a). Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section. *Substantial compliance with the notice requirements of Subsection (a) is sufficient for the commission to exercise jurisdiction over an application for a solid waste facility.*

SECTION 5. Section 361.111, Health and Safety Code, is amended to read as follows:

Sec. 361.111. **COMMISSION SHALL [DEPARTMENT MAY] EXEMPT CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES.** (a) *The commission shall [department may] exempt from permit requirements a municipal solid waste management facility that[;*

[(1)] *is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:*

- (1) *a municipality [service area] with a population of less than 50,000;*
- (2) *a county with a population of less than 85,000;*
- (3) *a facility used in the transfer of municipal solid waste that will transfer 125 tons per day or less; and*

(4) *a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred*

to a permitted landfill not more than 50 miles from the materials recovery facility. [5,000 to a solid waste processing or disposal site; and]

(b) *The facility must comply [(2) complies] with design and operational requirements established by commission [board of health] rule that are necessary to protect the public's health and the environment.*

(c) *To qualify for this exemption, the applicant must hold a public meeting on the siting of the facility in the municipality or county where the facility is to be located.*

SECTION 6. Section 361.069, Health and Safety Code, is amended to read as follows:

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

SECTION 7. Section 5.103, Water Code, as amended by this Act, applies to all rules of the Texas Water Commission in existence on the effective date of this Act and to all rules of the Texas Water Commission or the Texas Natural Resource Conservation Commission adopted after that date.

SECTION 8. Section 27.015(a), Water Code, as amended by this Act, applies to an application on which a final decision is rendered by the Texas Water Commission or the Texas Natural Resource Conservation Commission on or after the effective date of this Act. Section 27.015(c), Water Code, as added by this Act, applies only to an application before the Texas Water Commission or the Texas Natural Resource Conservation Commission which is pending on the effective date of this Act.

SECTION 9. Section 361.0791, Health and Safety Code, as amended by this Act, applies only to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is received by the Texas Water Commission or the Texas Natural Resource Conservation Commission on or after the effective date of this Act.

SECTION 10. Sections 361.081(b) and 361.069, Health and Safety Code, as amended by this Act, apply to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is:

- (1) received by the Texas Water Commission or the Texas Natural Resource Conservation Commission on or after the effective date of this Act; or
- (2) pending before the Texas Water Commission or the Texas Natural Resource Conservation Commission on the effective date of this Act.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 23, 1993: Yeas 131, Nays 0, 2 present, not voting; the House refused to concur in Senate amendments on May 28, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on May 30, 1993: Yeas 133, Nays 8, 2 present, not voting; passed by the Senate, with amendments, on May 25, 1993: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on May 30, 1993: Yeas 31, Nays 0.

Approved June 18, 1993.

Effective June 18, 1993.