

CHAPTER 485

H.B. No. 2049

AN ACT

relating to the representation of the general public on the Texas Natural Resource Conservation Commission, the confidentiality of information submitted to the Texas Air Control Board, and the effective administration of air quality permitting programs, including compliance with federal Clean Air Act requirements.

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

SECTION 1. Section 5.052(a), Water Code, is amended to read as follows:

(a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate *to represent the general public.*

SECTION 2. Section 381.020, Health and Safety Code, is amended and renumbered to read as follows:

Sec. ~~382.040~~ [381.020]. DOCUMENTS; PUBLIC PROPERTY. All information, documents, and data collected by the board in performing its duties are state property. Subject to the limitations of Section ~~382.041~~ [381.022], all board records are public records open to inspection by any person during regular office hours.

SECTION 3. Section 381.022, Health and Safety Code, is amended and renumbered to read as follows:

Sec. ~~382.041~~ [381.022]. CONFIDENTIAL INFORMATION. (a) *Except as provided by Subsection (b), a [A] member, employee, or agent of the board may not disclose information submitted to the board relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.*

(b) *A member, employee, or agent of the board may disclose information confidential under Subsection (a) to a representative of the United States Environmental Protection Agency on the request of a representative of that agency if:*

(1) *at the time of disclosure the member, employee, or agent notifies the representative that the material has been identified as confidential when submitted; and*

(2) *the board, before the information is disclosed, has entered into an agreement with the United States Environmental Protection Agency that ensures that the agency treats information identified as confidential as though it had been submitted by the originator of the information with an appropriate claim of confidentiality under federal law.*

SECTION 4. Section 382.003(9), Health and Safety Code, is amended to read as follows:

(9) "Modification of existing facility" means any physical change in, or change in the method of operation of, a stationary source in a manner that increases the amount of any air pollutant emitted by the source into the atmosphere or that results in the emission of any air pollutant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air pollutant emitted that is authorized by one or more board exemptions;

(B) insignificant increases at a permitted facility; ~~[or]~~

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere; *or*

(D) *an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, pursuant to Section 382.057, from preconstruction permit requirements.*

SECTION 5. Sections 382.032(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a) A person affected by a ruling, order, decision, or other act of the board *or of the executive director, if an appeal to the board is not provided,* may appeal the action by filing a petition in a district court of Travis County.

(b) The petition must be filed within 30 days after the date of the board's or executive director's action or, in the case of a ruling, order, or decision, within 30 days after the effective date of the ruling, order, or decision. *If the appeal relates to the board's failure to take final action on an application for a federal operating permit, a reopening of a federal operating permit, a revision to a federal operating permit, or a permit renewal application for a federal operating permit in accordance with Section 382.0542(b), the petition may be filed at any time before the board or the executive director takes final action.*

(e) In an appeal of an [a-board] action of the board or executive director other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.

SECTION 6. Sections 382.051(b) and (c), Health and Safety Code, are amended to read as follows:

(b) *To assist in fulfilling its authorization provided by Subsection (a), the [The] board may issue:*

- (1) special permits for certain facilities;
- (2) a general permit *developed by rule* for numerous similar sources *subject to Section 382.054; [ø]*
- (3) a standard permit *developed by rule* for numerous similar facilities *subject to Section 382.0518;*
- (4) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site; or
- (5) other permits as necessary.

(c) The board may issue a federal operating permit for a federal source in violation only if the operating permit incorporates a compliance plan for the federal source[, as equipped by Section 503 of the federal Clean Air Act (42 U.S.C. Section 7661b), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and any rules adopted by the board,] as a condition of the permit.

SECTION 7. Sections 382.0511(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The board may consolidate into a single permit:

- (1) any permits, special permits, or exemptions for a facility or federal source issued by the board before December 1, 1991; or
- (2) any permit issued by the board on or after December 1, 1991, with any permits, special permits, or exemptions issued or qualified for by that date.

(c) *The board by rule 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 the owner or operator has obtained a preconstruction permit or permit amendment required by Section 382.0518 or an exemption allowed under Section 382.057. [The board may allow changes within a permitted facility or a facility that has filed a timely and complete application for a federal operating permit under Section 382.054 without requiring a permit revision if:*

~~(1) the changes are not modifications under any provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);~~

~~(2) the changes do not cause emissions in excess of emissions allowable under the permit;~~

~~(3) the changes do not alter any permit condition; and~~

~~(4) the facility notifies the board in writing at least seven days in advance of the proposed changes, unless the board by rule provides a different time frame for emergencies.]~~

SECTION 8. Section 382.0513, Health and Safety Code, is amended to read as follows:

Sec. 382.0513. PERMIT CONDITIONS. The board may establish [by rule] and enforce permit conditions consistent with this chapter. *Permit conditions of general applicability shall be adopted by rule [and rules adopted by the board].*

SECTION 9. Section 382.0514, Health and Safety Code, is amended to read as follows:

Sec. 382.0514. **SAMPLING, [AND] MONITORING, AND CERTIFICATION.** The board may require, at the expense of the permit holder and as a condition of the permit:

- (1) sampling and monitoring of a permitted *federal* source or facility; ~~[and]~~
- (2) *certification of the compliance of the owner or operator of the permitted federal source with the terms and conditions of the permit and with all applicable requirements; and*
- (3) *a periodic report of:*
 - (A) *the results of sampling and monitoring; and*
 - (B) *the certification of compliance* ~~[a regular periodic report of sampling and monitoring results].~~

SECTION 10. Section 382.054, Health and Safety Code, is amended to read as follows:

Sec. 382.054. **FEDERAL OPERATING PERMIT.** *Subject to Section 382.0511(c), a [A] person may not operate a federal source unless the person has obtained a federal operating permit from the board under Section [Sections] 382.0541, [and] 382.0542, or 382.0543.*

SECTION 11. Section 382.0541, Health and Safety Code, is amended to read as follows:

Sec. 382.0541. **ADMINISTRATION AND ENFORCEMENT OF FEDERAL OPERATING PERMIT.** (a) The board may:

(1) require a federal source ~~[subject]~~ *to obtain a permit under [Title III of] the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) [Amendments of 1990 (Pub. L. No. 101-549) to comply with that Act and regulations adopted under that Act];*

(2) require an existing facility or source to use, at a minimum, any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency;

(3) require *facilities or federal sources that are new or modified and are subject to Section 112(g) [a new or modified facility or source subject to Title III] of the federal Clean Air Act (42 U.S.C. Section 7412) [Amendments of 1990 (Pub. L. No. 101-549)] to use, at a minimum, the more stringent of:*

(A) *the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions from the proposed facility or federal source; or*

(B) *any applicable maximum achievable control technology (MACT), including any MACT developed pursuant to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412)[, as amended by Section 301 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), required by the board or by the United States Environmental Protection Agency];*

(4) *establish maximum achievable control technology requirements in accordance with Section 112(j) of the federal Clean Air Act (42 U.S.C. Section 7412) [on a case-by-case basis if the United States Environmental Protection Agency does not adopt those requirements];*

(5) *issue initial permits with terms not to exceed five years for federal sources under Title [IV or] V of the federal Clean Air Act [Amendments of 1990 (Pub. L. No. 101-549)], with [five-year] terms not to exceed five years for all subsequently issued or renewed permits;*

(6) *administer the use of emissions allowances under Section 408 of the federal Clean Air Act (42 U.S.C. Section 7651g)[, as amended by Section 401 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549)];*

(7) *reopen and revise an affected federal operating permit if:*

(A) *the permit has a [with a] term of three years or more remaining in order to incorporate requirements under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) adopted after the permit is issued; [and]*

(B) *additional requirements become applicable to an affected source under the acid rain program;*

(C) the federal operating permit contains a material mistake;

(D) inaccurate statements were made in establishing the emissions standards or other terms or conditions of the federal operating permit; or

(E) a determination is made that the permit must be reopened and revised to assure compliance with applicable requirements;

(8) incorporate a federal implementation plan as a condition of a permit issued by the board;

(9) exempt federal sources from the obligation to obtain a federal operating permit;

(10) provide that all representations in an application for a permit under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) are binding on the applicant until issuance or denial of the permit;

(11) provide that all terms and conditions of any federal operating permit required under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) shall be a complete and segregable section of the federal operating permit; and

(12) issue initial permits with fixed terms of five years for federal sources under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) with fixed five-year terms for all subsequently issued or renewed permits.

(b) The board by rule shall provide for objection by the administrator to the issuance of any operating or general permit subject to Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) [Amendments of 1990 (Pub. L. No. 101-549)] and shall authorize the administrator to revoke and reissue, terminate, reopen, or modify a federal operating permit.

(c) This section does not affect the permit requirements of Section 382.0518, except that the board may consolidate with an existing permit issued under this section a permit required by Section 382.0518.

(d) The board promptly shall provide to the applicant notice of whether the application is complete. Unless the board requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the board receives an application, the application shall be deemed complete.

(e) ~~[(d)] Subsections [Subsection] (a)(3) and (4) do [does] not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).~~

SECTION 12. Section 382.0542, Health and Safety Code, is amended to read as follows:

Sec. 382.0542. ISSUANCE OF FEDERAL OPERATING PERMIT; APPEAL OF DELAY. (a) ~~[The board shall grant a permit required by Section 382.054 not later than 18 months after the date on which the board receives an administratively complete application if, from information available to the board, including information presented at any hearing held under Section 382.0561, the board finds that the facility or source for which the permit is sought meets the requirements of Subsection (b).~~

~~[(b)] A federal [facility or] source is eligible for a permit required by Section 382.054 if from the information available to the board, including information presented at a hearing held under Section 382.0561, the board finds that:~~

~~(1) [emissions from the facility or source will comply with the intent of this chapter, including protection of the public's health and physical property;~~

~~[(2)] the federal [facility or] source will use, at a minimum, any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency;~~

~~(2) for a federal source that is new or modified and subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412) [(3) for a new or modified source or facility subject to Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549)], the federal source [or facility] will use, at a minimum, the more stringent of:~~

~~(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions from the proposed federal [facility or] source; or~~

(B) any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency; and

(3) ~~the federal [(4) emissions from the facility or] source will comply with the following [all applicable] requirements, if applicable [of]:~~

~~(A) Title V of the federal Clean Air Act (42 U.S.C. Sections 7661–7661f) and the regulations adopted under that title;~~

~~(B) each standard or other requirement provided for in the applicable implementation plan approved or adopted by rule of the United States Environmental Protection Agency under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401–7515) that implements the relevant requirements of that Act, including any revisions to the plan;~~

~~(C) each term or condition of a preconstruction permit issued by the commission or the United States Environmental Protection Agency in accordance with rules adopted by the commission or the United States Environmental Protection Agency under Part C or D, Title I of the federal Clean Air Act (42 U.S.C. 7401–7515);~~

~~(D) each standard or other requirement established under Section 111 of the federal Clean Air Act (42 U.S.C. Section 7411), including Subsection (d) of that section;~~

~~(E) each standard or other requirement established under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) including any requirement concerning accident prevention under Subsection (r)(7) of that section;~~

~~(F) each standard or other requirement of the acid rain program established under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651–7651o) or the regulations adopted under that title;~~

~~(G) each requirement established under Section 504(b) or Section 114(a)(3) of the federal Clean Air Act (42 U.S.C. Section 7661c or 7414);~~

~~(H) each standard or other requirement governing solid waste incineration established under Section 129 of the federal Clean Air Act (42 U.S.C. Section 7429);~~

~~(I) each standard or other requirement for consumer and commercial products established under Section 183(e) of the federal Clean Air Act (42 U.S.C. Section 7511b);~~

~~(J) each standard or other requirement for tank vessels established under Section 183(f) of the federal Clean Air Act (42 U.S.C. Section 7511b);~~

~~(K) each standard or other requirement of the program to control air pollution from outer continental shelf sources established under Section 328 of the federal Clean Air Act (42 U.S.C. Section 7627);~~

~~(L) each standard or other requirement of regulations adopted to protect stratospheric ozone under Title VI of the federal Clean Air Act (42 U.S.C. Sections 7671–7671q) unless the administrator has determined that the standard or requirement does not need to be contained in a Title V permit; and~~

~~(M) each national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470–7492), but only as the standard, increment, or requirement would apply to a temporary source permitted under Section 504(e) of the federal Clean Air Act (42 U.S.C. Section 7661c)~~

~~[(A) Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101–549);~~

~~[(B) Title IV of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101–549);~~

~~[(C) Sections 111 and 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);~~

~~[(D) Parts C and D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);~~

~~[(E) the state implementation plan requirements approved by the United States Environmental Protection Agency;~~

~~[(F) this chapter and rules adopted under this chapter; and~~

~~[(G) the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), as revised].~~

(b) ~~The [(e) If the] board shall. [does not act]~~

(1) take final action on an application for a permit, permit revision, [~~a permit application~~] or permit renewal [~~application~~] within 18 months after [of] the date on which the board receives an administratively complete application;

(2) under an interim program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the interim program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the interim program;

(3) under the fully approved program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the fully approved program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the program; and

(4) take final action on a permit reopening not later than 18 months after the adoption of the requirement that prompted the reopening.

(c) If the board fails to take final action as required by Subsection (b)(1) or (4), a person affected by the board's failure to act may obtain judicial review under Section 382.032 at any time before the board takes final action. A reviewing court may order the board to act on the application without additional delay if it finds that the board's failure to act is arbitrary or unreasonable.

~~(d) [In considering the issuance, amendment, or renewal of a permit, the board may consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the board.]~~

[~~(e)~~] Subsection (a)(2) [~~(b)(3)~~] does not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).

SECTION 13. Chapter 382, Health and Safety Code, is amended by adding Section 382.0543 to read as follows:

Sec. 382.0543. REVIEW AND RENEWAL OF FEDERAL OPERATING PERMIT. (a) In accordance with Section 382.0541(a)(5), a federal operating permit issued or renewed by the board is subject to review at least every five years after the date of issuance to determine whether the authority to operate should be renewed.

(b) The board by rule shall establish:

(1) the procedures for notifying a permit holder that the permit is scheduled for review in accordance with this section;

(2) a deadline by which the holder of a permit must submit an application for renewal of the permit that is between the date six months before expiration of the permit and the date 18 months before expiration of the permit;

(3) the general requirements for an application; and

(4) the procedures for reviewing and acting on a renewal application.

(c) The board promptly shall provide to the applicant notice of whether the application is complete. Unless the board requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the board receives an application, the application shall be deemed complete.

(d) The board shall take final action on a renewal application for a federal operating permit within 18 months after the date an application is determined to be administratively complete. If the board does not act on an application for permit renewal within 18 months after the date on which the board receives an administratively complete application, a person who participated in the public participation process or a person affected by the board's failure to act may obtain judicial review under Section 382.032 at any time before the board takes final action.

(e) In determining whether and under which conditions a permit should be renewed, the board shall consider:

(1) all applicable requirements in Section 382.0542(a)(3); and

(2) whether the federal source is in compliance with this chapter and the terms of the existing permit.

(f) The board shall impose as terms and conditions in a renewed federal operating permit any applicable requirements under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The terms or conditions of the renewed permit must provide for compliance with any applicable requirement under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The board may not impose requirements less stringent than those of the existing permit unless the board determines that a proposed change will meet the requirements of Section 382.0541.

(g) If the applicant submits a timely and complete application for federal operating permit renewal, but the board fails to issue or deny the renewal permit before the end of the term of the previous permit:

(1) all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied; and

(2) the applicant may continue to operate until the permit renewal application is issued or denied, if the applicant submits additional information that is requested in writing by the board that the board needs to process the application on or before the time specified in writing by the board.

(h) This section does not affect the board's authority to begin an enforcement action under Sections 382.082-382.084.

SECTION 14. Section 382.055, Health and Safety Code, is amended to read as follows:

Sec. 382.055. REVIEW AND RENEWAL OF PRECONSTRUCTION PERMIT. (a) A preconstruction [Subject to Section 382.0541(a)(5), a] permit issued or renewed by the board [on or after December 1, 1991,] is subject to review [every five years after the date of issuance] to determine whether the authority to operate should be renewed according to the following schedule:

(1) a preconstruction permit issued before December 1, 1991, is subject to review not later than 15 years after the date of issuance;

(2) a preconstruction permit issued on or after December 1, 1991, is subject to review every 10 years after the date of issuance; and

(3) for cause, a preconstruction permit issued on or after December 1, 1991, for a facility at a nonfederal source may contain a provision requiring the permit to be renewed at a period of between five and 10 years. [A permit issued before December 1, 1991, is subject to review 15 years after the date of issuance.]

(b) The board by rule shall establish:

(1) a deadline by which the holder of a preconstruction permit must submit an application to renew [for review of] the permit;

(2) the general requirements for an application for renewal of a preconstruction permit [that must be met by the applicant]; and

(3) the procedures for reviewing and acting on renewal [review] applications.

(c) Not less than 180 days before the date on which the renewal application is due, the board shall provide written notice to the permit holder, by registered or certified mail, that the permit is scheduled for review in accordance with this section. The notice must include a description of the procedure for filing a renewal [review] application and the information to be included in the application.

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the board shall consider, at a minimum:

(1) whether the facility is or has been in substantial compliance with this chapter and the terms of the existing permit; and

(2) the condition and effectiveness of existing emission control equipment and practices; and

~~(3) all applicable requirements of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).~~

(e) The board shall impose as a condition for renewal of a *preconstruction* permit [~~any applicable requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), as well as~~] those requirements determined to be economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area. The board may not impose requirements less stringent than those of the existing permit unless the board determines that a proposed change will meet the requirements of Section [~~Sections~~] 382.0518 [~~and 382.0541~~].

(f) ~~On or before the 180th day after the date on which an application for renewal is filed, the board shall renew the permit [In this subsection, a "reasonable time" may not exceed the time limitations established by the United States Environmental Protection Agency for federal sources under Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549). The board shall renew a permit within a reasonable time after the date on which a complete application is filed] or, if the board determines that the facility will not meet the requirements for renewing the permit, shall:~~

(1) set out in a report to the applicant the basis for the board's determination; and

(2) establish a schedule, to which the applicant must adhere in meeting the board's requirements, that:

(A) includes a final date for meeting the board's requirements; and

(B) requires completion of that action as expeditiously as possible.

(g) If the applicant meets the board's requirements in accordance with the schedule, the board shall renew the permit. If the applicant does not meet those requirements in accordance with the schedule, the applicant must show in a contested case proceeding why the permit should not expire immediately. The applicant's permit is effective until:

(1) the final date specified by the board's report to the applicant;

(2) the existing permit is renewed; or

(3) the date specified by a board order issued following a contested case proceeding held under this section.

(h) If the holder of a *preconstruction* permit to whom the board has mailed notice ~~under~~ [of] this section does not apply for *renewal* [~~review~~] of that permit by the date specified by the board under this section, ~~the permit shall expire at the end of the period described in Subsection (a).~~[:

~~(1) a permit issued on or after December 1, 1991, expires five years after the date on which the permit is originally issued or, if the permit has been renewed, five years after the date on which the permit is last renewed; and~~

~~(2) a permit issued before December 1, 1991, expires 15 years after the date on which the permit is originally issued or, if the permit has been renewed before December 1, 1991, 15 years after the date on which the permit is last renewed.]~~

(i) This section does not affect the board's authority to begin *an* enforcement action under Sections 382.082-382.084.

SECTION 15. Sections 382.056(a)-(c), Health and Safety Code, are amended to read as follows:

(a) An applicant for a permit under Section 382.0518 or 382.054 or a permit renewal review under Section 382.055 shall publish notice of intent to obtain the permit or permit review. *The board by rule may require an applicant for a federal operating permit to publish notice of intent to obtain a permit or permit review consistent with federal requirements and with the requirements of this section.* The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. *If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Section 21.109, Education Code, and Section 19 TAC Subsection 89.2(a), the applicant shall also publish the notice at least once in an additional publication of general circulation in the*

municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The board by rule shall prescribe when notice must be published and may require publication of additional notice. Notice required to be published under this section shall only be required to be published in the United States.

(b) The notice must include:

- (1) a description of the location or proposed location of the facility *or federal source*;
- (2) a statement that a person who may be affected by emissions of air contaminants from the facility, ~~or~~ proposed facility, *or federal source* is entitled to request a hearing from the board;
- (3) a description of the manner in which the board may be contacted for further information; and
- (4) any other information the board by rule requires.

(c) At the site of a facility, ~~or~~ proposed facility, *or federal source for which an applicant is required to publish notice under this section* [~~for which a permit application or permit review application is submitted~~], the applicant shall place a sign declaring the filing of an application for a permit or permit review for a facility at the site and stating the manner in which the board may be contacted for further information. The board shall adopt any rule necessary to carry out this subsection.

SECTION 16. Section 382.0561, Health and Safety Code, is amended to read as follows:

Sec. 382.0561. FEDERAL OPERATING PERMIT: HEARING. (a) *Public* [~~The following public~~] hearings on applications for issuance, revision, reopening, or renewal of a federal operating permit shall be conducted under this section only and not under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes):

~~[(1) a public hearing on a permit application for a federal operating permit under Sections 382.054-382.0542 that is not subject to Section 382.0518; or~~

~~[(2) a public hearing on an application for renewal of a federal operating permit under Section 382.055].~~

(b) On determination that an application for a federal operating permit under Sections 382.054-382.0542 or a renewal of a federal operating permit under Section 382.0543 [~~382.055~~] is administratively complete and before the beginning of the public comment period, the board or its designee shall prepare a draft permit.

(c) The board or its designee shall hold a public hearing on a federal operating permit, a reopening of a federal operating permit, or renewal application before granting the permit or renewal if within the public comment period a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located requests a hearing. The board or its designee is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(d) The following shall be available for public inspection in at least one location in the general area where the facility is located:

- (1) information submitted by the application, subject to applicable confidentiality laws;
- (2) the executive director's analysis of the proposed action; and
- (3) a copy of the draft permit.

(e) The board or its designee shall hold a public comment period on a federal operating permit application, a federal operating permit reopening application, or a federal operating permit renewal application under Sections 382.054-382.0542 or 382.0543 [~~382.055~~]. Any person may submit a written statement to the board during the public comment period. The board or its designee [~~executive director~~] shall receive public comment for 30 days after the date on which notice of the public comment period is published. The board or its designee [~~executive director~~] may extend or reopen the comment period if the director finds an extension or reopening to be appropriate.

(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with Section 382.056.

(g) Any person may submit an oral or written statement concerning the application at the hearing. The individual holding the hearing may set reasonable limits on the time allowed for oral statements at the hearing. The public comment period extends to the close of the hearing and may be further extended or reopened if the *board or its designee* [~~executive director~~] finds an extension or reopening to be appropriate.

(h) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the [~~executive director's~~] preliminary decision of the *board or its designee* to issue or deny a permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(i) The *board or its designee* [~~executive director~~] shall consider all comments received during the public comment period and at the public hearing in determining whether to issue the permit and what conditions should be included if a permit is issued.

SECTION 17. Section 382.0562, Health and Safety Code, is amended to read as follows:

Sec. 382.0562. NOTICE OF DECISION. (a) The *board or its designee* [~~executive director~~] shall send notice of a *proposed final action* [~~decision~~] on a federal operating permit by first-class mail to the applicant and all persons who comment during the public comment period or at the public hearing. The notice shall include a response to any comment submitted during the public comment period and shall identify any change in the conditions of the draft permit and the reasons for the change.

(b) The notice required by Subsection (a) shall:

(1) state that any person affected by the decision of the *board or its designee* [~~executive director~~] may *petition the administrator in accordance with Section 382.0563 and rules adopted under that section* [~~appeal the decision to the board not later than the 30th day after the date on which notice was mailed~~];

(2) state the date by which *the petition* [~~an appeal~~] must be filed; and

(3) explain the *petition* [~~appeal~~] process. [~~and explain that an appeal is a contested case hearing before the board; and~~

[~~(4) state that a letter to the board stating that the person is appealing the decision constitutes an appeal of the decision.~~]

SECTION 18. Section 382.0563, Health and Safety Code, is amended to read as follows:

Sec. 382.0563. PUBLIC PETITION TO THE ADMINISTRATOR [~~APPEAL TO BOARD~~]. (a) *The board by rule may provide for public petitions to the administrator in accordance with Section 505 of the federal Clean Air Act (42 U.S.C. Section 7661d).* [~~Any person, including the applicant, affected by a decision of the executive director under Section 382.0561 may appeal the decision to the board not later than the 30th day after the date on which notice was mailed. The issues on appeal must be identified with specificity in the request for a contested case hearing.~~]

(b) *The petition for review to the administrator under this section does not affect:*

(1) *a permit issued by the board or its designee; or*

(2) *the finality of the board's or its designee's action for purposes of an appeal under Section 382.032.* [~~An appeal under this section is a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).~~]

(c) *The board or its designee shall resolve any objection that the United States Environmental Protection Agency makes and terminate, modify, or revoke and reissue the permit in accordance with the objection not later than the 90th day after the date the board receives the objection.* [~~The filing of an appeal to the board under this section does not affect a permit issued by the executive director. A final order by the board reversing or modifying the executive director's decision takes effect when it becomes final and appealable.~~]

SECTION 19. Section 382.0564, Health and Safety Code, is amended to read as follows:

Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL ENTITIES. The board by rule *may* [~~shall~~] allow for notification of and review by the administrator and affected states of *permit applications, revisions, renewals, or draft permits* [~~any permit~~]

application or draft permit] prepared under Sections 382.054–382.0543[382.0542 if notification and review is requested].

SECTION 20. Section 382.057(a), Health and Safety Code, is amended to read as follows:

(a) Consistent with Section 382.0511, the board by rule may exempt from the requirements of Section 382.0518 [~~and Sections 382.054–382.0542~~] changes within a permitted facility and certain types of facilities if it is found on investigation that such changes or types of facilities will not make a significant contribution of air contaminants to the atmosphere. *The board by rule shall exempt from the requirements of Section 382.0518 or issue a standard permit for the installation of emission control equipment that constitutes a modification or a new facility, subject to such conditions restricting the applicability of such exemption or standard permit that the board deems necessary to accomplish the intent of this chapter, except as prohibited by the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).* The board may not exempt any [~~source or~~] facility or any modification of an existing facility defined as “major” under the federal Clean Air Act [~~Amendments of 1990 (Pub.L. No. 101-549)]~~] or regulations adopted under that Act. *Nothing in this subsection shall be construed to limit the board’s general power to control the state’s air quality under Section 382.011(a).*

SECTION 21. Section 382.059, Health and Safety Code, is amended to read as follows:

Sec. 382.059. REVOCATION OF PERMIT OR EXEMPTION. (a) The board may revoke and reissue, terminate, or modify a *federal operating permit, preconstruction permit, or exemption* issued under this chapter if the board determines that:

(1) any of the terms of the *federal operating permit, preconstruction permit, or exemption* are being violated; [~~or~~]

(2) emissions from the proposed facility will contravene air pollution control standards set by the board or will contravene the intent of this chapter; *or*

(3) *the federal operating permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the federal operating permit.*

(b) The board may:

(1) begin proceedings to revoke and reissue, terminate, or modify a permit if a violation at a facility is continued after 180 days following the date on which the notice of violation is provided under Section 382.082; and

(2) consider good faith efforts to correct the violation in deciding whether to revoke and reissue, terminate, or modify a *federal operating permit, preconstruction permit, or exemption*.

(c) *Subsection (b)(1) does not affect the board’s authority to bring suit for injunctive relief under Section 382.084.*

SECTION 22. Section 382.0591, Health and Safety Code, is amended to read as follows:

Sec. 382.0591. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE PROVIDED BY [~~CERTAIN~~] FORMER OR CURRENT EMPLOYEES. (a) The board shall deny an application for the issuance, amendment, renewal, or transfer of a permit and may not issue, amend, renew, or transfer the permit if the board determines that [~~a former employee~~]:

(1) *a former employee* participated personally and substantially as an employee in the board’s review, evaluation, or processing of the application before leaving employment with the board; and

(2) after leaving employment with the board, *that former employee* provided assistance to the applicant for the issuance, amendment, renewal, or transfer of the permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) *The board or the executive director may not issue a federal operating permit for a solid waste incineration unit if a member of the board or the executive director is also responsible in whole or in part for the design and construction or the operation of the unit.*

(c) The board shall provide an opportunity for a hearing to an applicant before denying an application under this section.

(d) [(e)] Action taken under this section does not prejudice any application other than an application in which the former employee provided assistance.

(e) [(d)] In this section, "former employee" means a person:

(1) who was previously employed by the board as a supervisory or exempt employee; and

(2) whose duties during employment with the board included involvement in or supervision of the board's review, evaluation, or processing of applications.

SECTION 23. Section 382.061, Health and Safety Code, is amended to read as follows:

Sec. 382.061. DELEGATION OF POWERS AND DUTIES. (a) The board may delegate to the executive director the powers and duties under Sections 382.051–382.0563 [382.055, 382.057,] and 382.059, *except for the adoption of rules.*

(b) An applicant or a person affected by a decision of the executive director may appeal to the board any decision made by the executive director, *with the exception of a decision regarding a federal operating permit, under Sections 382.051–382.055 and 382.059 [these sections].*

(c) *Any person, including the applicant, affected by a decision of the executive director regarding federal operating permits may:*

(1) *petition the administrator in accordance with rules adopted under Section 382.0563; or*

(2) *file a petition for judicial review under Section 382.032.*

SECTION 24. Section 382.062, Health and Safety Code, is amended to read as follows:

Sec. 382.062. APPLICATION, PERMIT, AND INSPECTION FEES. (a) The board shall adopt, charge, and collect a fee for:

(1) each application for:

(A) a permit or permit amendment, revision, or modification not subject to Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 *et seq.* and 7661 *et seq.*) [Amendments of 1990 (Pub. L. No. 101-549)];

(B) a renewal review of a permit issued under Section 382.0518 not subject to Title IV or V of the federal Clean Air Act [Amendments of 1990 (Pub. L. No. 101-549)];

(2) inspections of a *federal [facility or] source* performed to enforce this chapter or rules adopted by the board under this chapter until the *federal [facility or] source* is required to obtain an [a Title IV or V] operating permit under Section 382.054 [the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549)]; and

(3) inspections performed to enforce this chapter or rules adopted by the board under this chapter at a facility [or source] not required to obtain an [a Title IV or V] operating permit under Section 382.054 [the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549)].

(b) The board may adopt rules relating to charging and collecting a fee for an exemption from a permit *or for a standard permit* authorized by board rule and for a variance.

(c) For purposes of the fees, the board shall treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) A fee assessed under this section may not be less than \$25 or more than \$75,000.

(e) The board by rule shall establish the fees to be collected under Subsection (a) in amounts sufficient to recover:

(1) the reasonable costs to review and act on a variance application and enforce the terms and conditions of the variance; and

(2) not less than 50 percent of the board's actual annual expenditures to:

(A) review and act on permits or special permits;

(B) amend and review permits;

(C) inspect permitted, exempted, and specially permitted facilities; and

(D) enforce the rules and orders adopted and permits, special permits, and exemptions issued under this chapter, excluding rules and orders adopted and permits required under Title IV or V of the federal Clean Air Act (*42 U.S.C. Sections 7651 et seq. and 7661 et seq.*) [~~Amendments of 1990 (Pub. L. No. 101-549)~~].

SECTION 25. Sections 382.0622(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) Clean Air Act fees shall be deposited in the state treasury to the credit of the clean air fund and shall be used to safeguard the air resources of the state. [~~All unexpended and unobligated money remaining in the fund on the last day of each fiscal biennium shall be transferred to the credit of the general revenue fund.~~]

(c) The board shall request the appropriation of sufficient money to safeguard the air resources of the state, including payments to the Public Safety Commission for incidental costs of administering the vehicle emissions inspection and maintenance program, except that after the date of delegation of the state's permitting program under Title V of the federal Clean Air Act (*42 U.S.C. Sections 7661 et seq.*) [~~Amendments of 1990 (Pub. L. No. 101-549)~~], fees collected under Section 382.0621(a) may be appropriated only to cover costs of developing and administering the federal permit program under Titles IV and V of the federal Clean Air Act (*42 U.S.C. Sections 7651 et seq. and 7661 et seq.*) [~~Amendments of 1990 (Pub. L. No. 101-549)~~].

(d)(1) Through the option of contracting for air pollution control services, including but not limited to compliance and permit inspections and complaint response, the board may utilize appropriated money to purchase services from units of local government meeting each of the following criteria:

(A) the unit of local government received federal fiscal year 1990 funds from the United States Environmental Protection Agency pursuant to Section 105 of the federal Clean Air Act (*42 U.S.C. Section 7405*) for the operation of an air pollution program by formal agreement;

(B) the local unit of government is in a federally designated nonattainment area subject to implementation plan requirements, including automobile emission inspection and maintenance programs, under Title I of the federal Clean Air Act (*42 U.S.C. Sections 7401-7515*) [~~Amendments of 1990 (Pub. L. No. 101-549)~~]; and

(C) the local unit of government has not caused the United States Environmental Protection Agency to provide written notification that a deficiency in the quality or quantity of services provided by its air pollution program is jeopardizing compliance with a state implementation plan, a federal program delegation agreement, or any other federal requirement for which federal sanctions can be imposed.

(2) The board may request appropriations of sufficient money to contract for services of local units of government meeting the eligibility criteria of this subsection to ensure that the combination of federal and state funds annually available for an air pollution program is equal to or greater than the program costs for the operation of an air quality program by the local unit of government. The board is encouraged to fund an air pollution program operated by a local unit of government meeting the eligibility criteria of this subsection in a manner the board deems an effective means of addressing federal and state requirements. The services to be provided by an eligible local unit of government under a contractual arrangement under this subsection shall be at least equal in quality and quantity to the services the local unit of government committed to provide in agreements under which it received its federal 1990 air pollution grant. The board and the local units of government meeting the eligibility criteria of this subsection may agree to more extensive contractual arrangements.

(3) Nothing in this subsection shall prohibit a local unit of government from voluntarily discontinuing an air pollution program and thereby relinquishing this responsibility to the state.

SECTION 26. Chapter 382, Health and Safety Code, is amended by adding Section 382.064 to read as follows:

Sec. 382.064. INITIAL APPLICATION DATE. An application for a federal operating permit is not required to be submitted to the board before the approval of the Title V permitting program by the United States Environmental Protection Agency.

SECTION 27. Section 382.084(c), Health and Safety Code, is amended to read as follows:

(c) The board or the executive director may seek an injunction or cause a suit for injunctive relief to be instituted to stop:

(1) work on a facility that is:

(A) being done without a construction permit, special permit, or exemption required under this chapter; or

(B) in violation of the terms of a permit, special permit, or exemption issued under this chapter; and

(2) the operation of a facility that:

(A) is operating without a *federal* [an] operating permit required under this chapter; or

(B) is operating in violation of the terms of a *federal* [an] operating permit issued under this chapter.

SECTION 28. Notwithstanding Section 2.35, Chapter 3, Acts of the 72nd Legislature, 1st Called Session, 1991, Sections 382.0541, 382.0542, and 382.0561–382.0563, Health and Safety Code, and the federal operating permit requirement described by Section 382.054, Health and Safety Code, take effect on the effective date of this Act.

SECTION 29. (a) Except as provided by Subsection (b) of this section, this Act takes immediate effect.

(b) Section 25 of this Act takes effect September 1, 1993.

SECTION 30. 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 according to its terms, and it is so enacted.

Passed by the House on May 12, 1993: Yeas 101, Nays 36, 1 present, not voting; the House refused to concur in Senate amendments to H.B. No. 2049 on May 26, 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 H.B. No. 2049 on May 30, 1993: Yeas 124, Nays 17, 1 present, not voting; passed by the Senate, with amendments, on May 22, 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 H.B. No. 2049 on May 29, 1993: Yeas 31, Nays 0.

Approved June 9, 1993.

Effective June 9, 1993, except § 25 effective Sept. 1, 1993.