

CHAPTER 638

H.B. No. 2124

AN ACT

relating to the permit application for a solid waste disposal facility or an injection well and the powers and duties of the state agencies with jurisdiction over those permits.

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

SECTION 1. Subchapter D, Chapter 5, Water Code, is amended by adding Section 5.121 to read as follows:

Sec. 5.121. PUBLIC INFORMATION. (a) The commission shall comply with Section 4(a)(2), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), by indexing and making available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the commission in the discharge of its functions.

(b) The commission shall comply with Section 4(a)(3), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), by indexing and making available for public inspection all of the commission's final orders, decisions, and opinions.

SECTION 2. Section 27.015, Water Code, is amended to read as follows:

Sec. 27.015. LETTER FROM RAILROAD COMMISSION. (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 stating that drilling or using the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any oil or gas formation.

(b) In a hearing on an application for a disposal well permit under this chapter, the commission may not proceed to hearing on any issues other than preliminary matters such as notice until the letter required from the railroad commission under Subsection (a) of this section is provided to the commission.

SECTION 3. Section 27.017, Water Code, is amended to read as follows:

Sec. 27.017. RECOMMENDATIONS FROM OTHER AGENCIES. The executive director shall submit to the Texas Department of Health, the Water Well Drillers Board, and to other persons which the commission may designate, copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application *within 30 days* [~~and shall have reasonable time to do so as the commission may prescribe~~].

SECTION 4. Section 27.018, Water Code, is amended to read as follows:

Sec. 27.018. HEARING ON PERMIT APPLICATION. (a) If it is considered necessary and in the public interest, the commission may hold a public hearing on the application. The commission shall hold a hearing on a permit application for an injection

well to dispose of industrial and municipal waste if a hearing is requested by a local government located in the county of the proposed disposal well site or by an affected person. In this subsection, "local government" has the meaning provided for that term by Chapter 26 of this code.

(b) The commission by rule shall provide for giving notice of the opportunity to request a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and affected persons. The commission shall define "affected person" by rule.

(c) *Before the commission begins to hear testimony in a contested case as defined by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), evidence must be placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons. If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the record that notice was mailed to the address of the affected person included in the appropriate county tax rolls at the time of mailing. For the purposes of this subsection, the affidavit of the commission employee responsible for the mailing of the notice, attesting to the fact that notice was mailed to the address included in the tax rolls at the time of mailing, shall be prima facie evidence of proper mailing. The commission may not proceed with receipt of testimony in a contested case until there is compliance with this subsection.*

(d) An application for an injection well to dispose of hazardous waste shall be subject to the pre-application local review process established by Section 4(e)(12), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes).

SECTION 5. Section 27.051(a), Water Code, is amended to read as follows:

(a) The commission may grant an application in whole or part and may issue the permit if it finds:

(1) that the use or installation of the injection well is in the public interest;

(2) that no existing rights, including, but not limited to, mineral rights, will be impaired;

(3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution; ~~and~~

(4) that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073 of this code;

(5) *that the applicant has provided for the proper operation of the proposed hazardous waste injection well;*

(6) *that the applicant for a hazardous waste injection well not located in an area of industrial land use has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste injection well on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be reasonably minimized or mitigated; and*

(7) *that the applicant owns or has made a good faith claim to, or has the consent of the owner to utilize, or has an option to acquire, or has the authority to acquire through eminent domain, the property or portions of the property where the hazardous waste injection well will be constructed.*

SECTION 6. Section 27.073, Water Code, is amended to read as follows:

Sec. 27.073. FINANCIAL RESPONSIBILITY. (a) A person to whom an injection well permit is issued may be required by the commission or railroad commission to maintain a performance bond or other form of financial security to ensure that an abandoned well is properly plugged.

(b) *Each state agency is authorized to receive funds as the beneficiary of a financial responsibility mechanism established under this section for the proper plugging of an injection well. Each state agency is authorized to expend such funds from a financial responsibility mechanism for the plugging of wells covered by that mechanism.*

(c) *If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow as provided by the commission an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.*

(d) *In addition to other forms of financial security authorized by the rules of the commission, the commission may authorize an applicant to use the letter of credit form of financial security if either the issuing institution or another institution which guarantees payment under the letter:*

- (1) *is a bank chartered by the state or by the federal government; and*
- (2) *is federally insured and its financial practices are regulated by the state or federal government.*

SECTION 7. Section 4(e)(4), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subparagraph (C) to read as follows:

(C) *Before the state agency begins to hear testimony in a contested case as defined by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), evidence must be placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons. If mailed notice to an affected person is required, the state agency or other party to the hearing shall place evidence in the record that notice was mailed to the address of the affected person included in the appropriate county tax rolls at the time of mailing. For the purposes of this subparagraph, the affidavit of the state agency employee responsible for the mailing of the notice, attesting to the fact that notice was mailed to the address included in the tax rolls at the time of mailing, shall be prima facie evidence of proper mailing. The state agency may not proceed with the receipt of testimony in a contested case until there is compliance with this subparagraph.*

SECTION 8. Section 4(e)(5), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(5)(A) *Before a permit may be [is] issued, amended, extended, or renewed for a solid waste facility for storage, processing, or disposal of hazardous waste, the state agency to which the application is submitted shall determine the type or types of financial assurance which may be used by the applicant to comply with rules adopted by the agency regarding such financial assurance. Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit has been issued, amended, extended, or renewed, the state agency that has issued, amended, extended, or renewed the permit shall require the permittee to execute the financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility [~~require the permittee to execute a bond or give other financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility~~]. A state agency may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility other than a solid waste facility for disposal of hazardous waste on the permittee's executing a bond or giving other financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility. The state agency to which the application is submitted shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste. Financial requirements established by the state agency shall at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C., 6901 et seq., as amended.*

(B) *Each state agency is authorized to receive funds as the beneficiary of a financial assurance mechanism established under this section for the proper closure of a solid waste management facility. Each state agency is authorized to expend such funds from a financial assurance mechanism for the closure of facilities covered by that mechanism.*

(C) *If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow as provided by*

the commission an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(D) In addition to other forms of financial security authorized by the rules of the state agency, the state agency may authorize the applicant to use the letter of credit form of financial security if either the issuing institution or another institution which guarantees payment under the letter:

(i) is a bank chartered by the state or by the federal government; and

(ii) is federally insured and its financial practices are regulated by the state or the federal government.

SECTION 9. Section 4(e), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Paragraph (13) to read as follows:

(13) The commission may grant an application for a permit in whole or in part if it finds that:

(A) the applicant has provided for the proper operation of the proposed hazardous waste management facility;

(B) the applicant for a proposed hazardous waste management facility not located in an area of industrial land use has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be reasonably minimized or mitigated; and

(C) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire through eminent domain, the property or portion of the property where the hazardous waste management facility will be constructed.

SECTION 10. This Act takes effect September 1, 1987, and applies to permit applications for injection wells or solid waste disposal facilities first submitted to the Texas Water Commission and the Texas Department of Health on or after that effective date; provided, however, this Act does not apply to injection wells or solid waste management facilities for which a notice of intent to file a permit application was filed prior to September 1, 1987.

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.

Passed by the House on May 19, 1987, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2124 on June 1, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2124 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 30, 1987, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2124 on June 1, 1987, by a viva-voce vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.