

HB 483 – As Amended

Limiting the public’s right to protect itself from pollution while giving an unfair advantage to corporations

Problems with HB 483

- Prohibits the public from being able to challenge any changes that DEQ makes in an air permit or major facility siting act certificate, if the public did not raise the issue in the public comment period. This could seriously limit the public’s ability to protect itself. If DEQ issues a draft air permit that has adequate pollution emissions limits and monitoring requirements but then decides to weaken the emission limit or monitoring requirement in the final permit, the public would be prohibited from appealing that change because they failed to comment on it during the public comment period. The same prohibition does not apply to company’s challenging their own permits. If a company challenges its own permit, it is allowed to raise any issue it wants whether it raised it during the public comment period or not.
- Makes it harder for citizens to challenge State agency decisions on air pollution permits by forcing them to meet a much higher standard of review. Currently the Board of Environmental Review cannot overturn a DEQ permitting decision unless the public proves by a “preponderance of evidence” that DEQ made a mistake. This bill would raise that standard to “clear and convincing evidence” – a much more difficult standard for the public to meet.
- Limits who can legally challenge permits. Currently, a person or organization challenging a permit must prove that it has standing to sue by showing that the permit will impact its rights. This bill limits who is able to challenge a permit by creating a new, undefined standard. This unclear language will provide companies seeking permits to pollute another opportunity to argue that particular citizens do not have a right to appeal.
- Shortens the time for the public to file appeals from 4 weeks to 2 weeks. Two weeks is simply not enough time for the public to thoroughly review a final permit and submit a document that details every technical and legal concern the public has with a permit.
- Allows the Board of Environmental Review to decide whether a member of the public has to post a bond to challenge an air or water quality permit. This bill could allow a politically appointed board to prevent members of the public with meritorious claims from challenging a permit because that person cannot afford to post a bond to protect their health. While the amendments to this bill attempt to limit the imposition of a bond in certain circumstances, the fact remains – a politically appointed Board will have the final say over whether a bond will be required. Currently the Board only has this authority when someone asks the Board to stop a project while the appeal is decided.
- Allows a company to hold on to an air pollution permit indefinitely regardless of innovations in pollution control technology because DEQ will be allowed to continually extend a permit deadline. Currently permits have deadlines to make sure a company is

building a facility with the most current pollution control technology. This bill would allow DEQ to indefinitely extend deadlines, thereby allowing companies to hold on to permits for many years and eventually build a facility using out-of-date technology.

- Forces the BER to issue decisions on permit appeals in 5 months regardless of the complexity of the case. This bill would make it even harder for the BER to meet this new timeframe because a good portion of time will now be spent arguing over whether a member of the public still has standing to appeal and whether they must now post a bond when they appeal. Furthermore, it will be nearly impossible for the parties to comply with this expedited timeframe in complex cases and still allow for discovery, depositions, motions, a hearing with expert witnesses and the board to issue findings of fact and conclusions of law. The BER is a 7 member, volunteer board that meets once every 60 days. This bill requires that board to make a decision on a complex issue in about 3 meetings and still conduct its normal business of considering and adopting rules and hearing other appeals.
- Once a company files an application the laws in place at that time are the only laws they are required to comply with unless a federal court finds that an existing law is illegal. This means that if the federal government or State adopts a law to better protect public health, DEQ will not be able to incorporate that change into the permit.