HB 2498 would place limits on those seeking to contest permits for new coal mines, or those seeking more stringent reclamation standards. The bill would amend the Government Code and the Natural Resources Code to create rules for a contested case hearing held by, or on the behalf of, the Railroad Commission regarding the application for a permit for a surface coal mining and reclamation operation. While with one exception in South Texas, there are not major permit applications for new coal mines in Texas, coal mines do frequently seek new reclamation standards and permit amendments.

However, the changes proposed in HB 2498 actually lowers the for protections for those seeking contested case hearings, making it more likely that applicants will have an advantage over those seeking to oppose those sites, or do get better standards for reclamation projects.

The bill undermines the very purpose of an independent and impartial hearing process by requiring the hearing examiner to defer to the staff initial decision, treating it as “prima facie” evidence, or in more simple terms putting the burden of proof on those opposing a permit. The point of a hearing officer is to have an independent determination of the facts so that factual decisions are insulated from influences such as the capture of an agency by the regulated community. Requiring that a hearing officer defer to staff undermines the independence of the process and of the hearing officer, further enabling agency capture.

In addition by requiring all issues to be raised in the initial comment period to be considered in the hearing, the bill will keep important information from improving the permits themselves. The discovery and cross-examination process of a hearing brings out information that was not available to the public during the comment period and not available to the staff when performing its review. This information may raise issues the public was not aware of when making
comments, *so its not proper to limit the scope of the hearing to those comments*. Also in light of this new information, it is improper to defer to a staff decision that was made without the benefit of the information.

Also, with regard to deference to staff, a requirement that the hearing examiner defer to staff has the effect of requiring that the Commissioners themselves defer to staff, since the Commissioners will make a decision based on the hearing examiners recommendation. Especially with regard to the RRC, where the Commissioners are elected, the staff should work for the Commissioners, and not the other way around (There actually is Texas caselaw to that effect). To require that a hearing officer defer to the staff determination effectively puts the agency staff in charge of statewide elected officials. From a limited government perspective, that should be considered a bad thing.

As for the requirement that a person commented in order to obtain a hearing, there are a few important points: (1) People may move in or out of an area during the time that a permit is being processed or purchase property during that time. An impacted person should not be deprived of the due process rights of a hearing merely because they moved into the area after the comment period ended; (2) Many people opt not to comment out of faith that the agency will do the right thing without the need for the public to demand it. That sounds naive, but it is rather common. It is improper to punish people for having such faith in the agency by depriving them of the opportunity for a hearing; (3) After the end of the comment period, a community might organize as an association to work cooperatively. The requirement that a person file comments would prevent that association from participating in a hearing. Instead, they would all have to separately participate. This unnecessarily complicates the process for all persons involved, including the applicant, the impacted citizens, and the agency.

The Lone Star Chapter requests that the Committee on Energy Resources vote “no” on HB 2498.

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