

SUBJECT: Amending requirements for air emission permits

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Chisum, Jackson, Dukes, Howard, Kuempel, Stiles, Talton, Yost
0 nays
1 absent — Saunders

WITNESSES: For — Jim Kennedy, Texas Chemical Council
Against — None
On — Jeffrey Anthony Saitas, Texas Natural Resource Conservation Commission

BACKGROUND: The Health and Safety Code provisions implementing requirements of the federal Clean Air act require certain preconstruction permits be obtained from the Texas Natural Resource Conservation Commission (TNRCC). TNRCC may impose, as a condition for *renewal* of such a permit, requirements determined to be economically reasonable and technically practicable considering the age of the facility and the effect of the emissions on the surrounding area. TNRCC must hold a hearing on such permits only if an affected party asks for a hearing and is not required to hold a hearing if the basis of the request is determined to be unreasonable.

DIGEST: HB 2877 would prohibit TNRCC from imposing requirements for renewal of a preconstruction permit more stringent than those of the existing permit, unless the commission determined that additional requirements would be necessary to comply with state or federal air quality control requirements or the requirement was necessary to avoid a condition of air pollution.

TNRCC would be prohibited from holding a hearing if the basis of a request for that hearing by a person who may be affected was determined to be unreasonable.

Reasons for considering a hearing request unreasonable would include, but not be limited to, that the change would not result in the emission of an air contaminant not previously emitted or an increase of allowable emissions. The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

Manufacturing facilities that must obtain TNRCC air emission permits are sometimes frustrated by the imposition of unnecessary requirements during the permitting process. The imposition of additional requirements varies, depending on agency policy and individual staffers and makes it difficult for regulated industries to plan. CSHB 2877 would help clear up some of this confusion, by specifying that additional requirements would be imposed only to correct a condition of air pollution or to incorporate new federal or state regulations for control requirements.

The bill would also clarify that a request for public hearing would automatically be considered unreasonable if there was no increase in emissions or new pollutants emitted. The bill would, however, leave TNRCC the flexibility to deem other requests unreasonable as well. This would ensure that permitting actions that would not have any environmental impact would not be impeded by hearings that consume time and resources with no benefit to the public.

Requests for hearings have been abused in the past by those who are not affected by permit changes but whose agenda is to slow down the permitting process. If an existing facility is not going to increase emissions above allowable levels, there should be no need for a hearing.

TNRCC has plenty of authority to consider compliance history in its decision on any permitting action. If anyone has a concern about a facility's lack of compliance with environmental regulations in the past, they can make that concern known to the agency during the public notice period, and TNRCC will evaluate their compliance history during the permitting process.

**OPPONENTS
SAY:**

It may seem reasonable to prohibit hearings if no increase in emissions is anticipated, but some permit changes can have serious effects that are not related to emission increases. People could, for example, have moved so near to the perimeter of a manufacturing facility that a permit change could adversely affect them. It is simply good public policy to allow citizens a voice in matters that can directly impact them.

The past compliance history of a regulated facility should be reasonable grounds for requesting a hearing, even if allowable emissions would not change. If past compliance was deemed an unreasonable reason for a request for public hearing, egregious violators of pollution laws could change or renew their permits without a hearing, and citizens who may

have been affected by past violations would not have a forum in which to be heard.

It is unwise to tie the hands of a state agency that is responsible for protecting the environment as well as the health and safety of all Texans. Forbidding permit requirements that are more stringent than those of existing permits, in certain circumstances, would tie the hands of TNRCC and narrow its ability to make permit decisions based on local conditions.

NOTES:

The committee substitute added the provision that a hearing request could be considered unreasonable for reasons other than those specified.

Also on today's calendar is CSHB 2878 by Holzheuser, which would allow modifications of facilities without a permit amendment.