

**SUBJECT:** Allowing modifications of facilities without permit amendment

**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; Michael White, Texas Mid-Continent Oil and Gas Association; Billie G. Meador, Texas Instruments  
Against — Ken Kramer, Sierra Club  
On — Jeffrey Anthony Saitas, Texas Natural Resource Conservation Commission

**BACKGROUND:** The state law implementing federal Clean Air Act requirements, Health and Safety Code sec. 382, requires that before a facility regulated by the Texas Natural Resource Conservation Commission (TNRCC) may be modified, a TNRCC permit or permit amendment must be obtained. "Modification of an existing facility" is defined as any physical change or change in the method of operation of a stationary source that increases the amount of any air pollutant emitted by the source into the atmosphere or the emission of any air pollutant not previously emitted.

TNRCC permits provide for specific maximum allowable quantities of emissions from a permitted facility. A permit may provide, for example, how many pounds of pollutants may be released in an hour, or how many tons of pollutants may be released in a year.

To get a permit a facility must use at least the best available control technology (BACT) to reduce or eliminate emissions, considering technical practicability and economic reasonableness.

**DIGEST:** CSHB 2878 would allow certain facilities regulated by TNRCC to be modified without a new permit or permit amendment if the proposed change would not result in new emissions or an increase of emissions above the amount previously authorized by TNRCC.

The definition of "modification of an existing facility" would be amended to exclude a physical change or a change in the method of operation of a facility that would not result in a net increase in allowable emission of any air contaminant, or an emission of any new air contaminant. This would apply only if:

- the facility had received a preconstruction permit or been exempted by TNRCC from having to get a preconstruction permit in the 10 years preceding when the change would occur or;
- the facility used an air pollution control method at least as effective as the best available control technology (BACT), considering technical practicality and economic reasonableness, whether or not it had a permit. The air control technology used would have to be of the same class or type that the board would have required for a similar facility as a condition of issuing a permit in the 10 years preceding when the change would occur.

To determine whether or not a proposed change at an existing facility would result in a net increase of allowable emissions, TNRCC would consider the effect on emissions of any air pollution control method applied to the facility and any decreases in allowable emissions from other facilities that have received preconstruction permits in the 10 years preceding when the change would occur.

A physical change or a change in the method of operation of a facility would be within the scope of a flexible permit.

The bill would take effect September 1, 1995.

**SUPPORTERS SAY:** Under current law operators of facilities regulated by TNRCC must apply for a permit amendment to modify the facility even if the change does not result in an increase in previously authorized emissions. Permit amendments are expensive and time-consuming, and completely

unnecessary when there is no net increase in allowable emissions, no new contaminants are being emitted and the facility has installed state-of-the-art emission control technology.

Permit amendments are required by the TNRCC even if a plant installs new pollution control equipment that allows it to increase output with *lower* emissions. Manufacturers should not be punished for operating more efficiently and installing improved equipment if they stay within emission levels that have been demonstrated to be safe.

CSHB 2878 would not allow large increases in actual emissions. Recent TNRCC permits do not allow a significant difference between allowable and actual emissions. Allowable emissions are calculated based on the maximum design "throughput" of the manufacturing plant (the amount that would be emitted if the plant was running at maximum capacity) and are not inflated to allow for a large amount of allowable emissions.

The small amount of additional emissions that would be allowed by this bill have already been reviewed for their effect on air quality and human health. When the TNRCC issues a permit or permit amendment, air quality impact reviews are performed using allowable emissions, and they must be proven safe by rigorous health-effects modeling that is required for a permit. This bill would not allow increases above allowable emissions without a permit amendment authorized by TNRCC.

CSHB 2878 would provide Texas businesses with the flexibility to respond appropriately to rapidly changing market conditions. A permit amendment can add two to nine months to the process of designing and constructing alterations to an existing manufacturing operation and in that time many market opportunities are gone forever.

Permit amendments are also time-consuming for TNRCC staff to process, and result in no demonstrable benefit to the environment. CSHB 2878 would save the state an estimated \$1 million now spent by the TNRCC in processing permit amendments.

Unnecessary roadblocks and delays for large manufacturers make it more tempting for them to leave Texas rather than face cumbersome bureaucratic requirements that make it impossible to respond quickly to fast changing world markets and business conditions. CSHB 2878 would encourage responsible manufacturing facilities and the jobs that go with them to stay in the state.

The flexibility in CSHB 2878 would apply only to facilities whose owners and operators have made a substantial capital investment to install the latest design in pollution controls or have received a TNRCC permit or permit amendment in the last 10 years. An out-of-date facility with a permit that is more than 10 years old would be subject to the same review that is now required by current law.

Best available control technology (BACT) has not changed significantly in 10 years for most industries, including the technology required for chemical plants and refineries.

CSHB 2878 would also provide an incentive for owners to upgrade their operations and install state-of-the-art emission control equipment, so they too can benefit from the flexibility offered by the bill.

**OPPONENTS  
SAY:**

CSHB 2878 would allow many manufacturing facilities to substantially increase their emissions of air contaminants without having to undergo additional review by TNRCC. There would be no appropriate agency review of the effects that these additional releases could have on air quality and public health.

CSHB 2878 could allow increased emissions without review from facilities like chemical plants, refineries, semi-conductor plants or even large hog farms. Air pollution is a serious threat to human health, and it would be risky to loosen pollution controls even if those extra emissions are technically "allowable." Extra emissions would also make it that much harder to clean up the areas identified by the federal government as needing to reduce air pollution.

The actual amount of emissions released by a manufacturing facility may be significantly lower than the emissions allowable under its permit. This is

because the amount of allowable emissions may have been set years ago, using techniques that are no longer up-to-date, or the permitting agency, knowing that any change would require a permit amendment and additional review, may not have carefully scrutinized differences between allowable and actual emissions or questioned the manufacturer's estimate of maximum output of emissions.

Some manufacturers have exaggerated their estimates of maximum output of emissions to make sure they would not violate the terms of their permit. This was probably done in good faith, since they wanted to remain in compliance with the law and were merely assuring themselves of some leeway between allowable and actual emissions. They knew that under current law any increase in emissions would trigger additional agency review. CSHB 2878 would allow them to unfairly take advantage of this leeway in a manner that could harm the environment and endanger public health.

The difference in allowable and actual emissions could result in significant increases in pollution without the opportunity for scrutiny that is afforded under the current requirements for obtaining an amended permit. The TNRCC emissions inventory shows the difference between actual and allowable emissions from all pollutants at permitted facilities is approximately 2.8 million tons per year.

State air emissions permits are for 10 years. Considerable changes in pollution control technology can occur within that time, and under current law TNRCC can consider new technological requirements for a stationary source of emissions at the time of permit renewal, amendment or modification. This allows flexibility in keeping up with new technologies that may significantly reduce air pollution.

Under CSHB 2878 a facility that did not increase allowable emissions could continue to operate with outmoded technology, despite modifications to the facility. Older facilities should only be given increased flexibility with regards to emissions if they install the best available control technology that is available now — not what was available up to 10 years ago. Also, the rigorous health-effects modeling that is required for a permit today was not in use years ago.

Although the bill would save money by eliminating the need for some permit reviews, the state would lose an equal amount in application fees, according to the Legislative Budget Board fiscal note.

NOTES:

The committee substitute limited the new definition of "modification of an existing facility" to facilities permitted in the last 10 years.

The Senate companion bill to CSHB 2878, SB 1126 by Nixon et al., is similar to HB 2878 but includes a provision that would exempt certain changes to natural gas facilities from the definition of "modification of an existing facility." SB 1126 passed the Senate by nonrecord vote on April 24.

Also on today's calendar is HB 2877 by Holzhauser, which deals with TNRCC requirements for renewal of a preconstruction permit.