

SUBJECT: Consolidating TNRCC permit processing

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Chisum, Jackson, Allen, Howard, Talton

2 nays — Hirschi, Puente

2 absent — Dukes, Kuempel

WITNESSES: For — None

Against — None

On — David Duncan, Texas Natural Resource Conservation Commission;
Mary Kelly, Texas Center for Policy Studies

DIGEST: CSHB 1228 would establish consolidated air, water, and waste permit processing by the Texas Natural Resource Conservation Commission (TNRCC) and exempt solid waste management facilities existing before September 1, 1987 from air impact reviews. Under the bill, if such solid waste facilities expanded to cover a greater area, the “areal” expansion would also be exempt from air impact review.

A plant, facility or site that required more than one TNRCC permit could request consolidated permitting and a single permit if it filed all applications within a 30-day period. TNRCC would be required to conduct one consolidated permit hearing for the multiple permits included in the application and would have to designate a lead program for a consolidated permit. If an applicant for a consolidated permit submitted an incomplete application or failed to respond to “notices of deficiency” on flaws in the application, the executive director of TNRCC could return parts of the application or require separate processing.

TNRCC would have to comply with any timely request from an applicant that the consolidated application be processed separately. “Timely” would be defined as any point before the public was notified about the opportunity to request a hearing on a permit. After this point, the executive director

could separate applications for processing on a showing of “good cause,” so long as the application had not yet been referred to the State Office of Administrative Hearings (SOAH). Good cause would include a change in regulatory or statutory requirements, or a substantial change in factual circumstances. Once an application was referred to SOAH, agency rules for withdrawing the permit application would apply.

A consolidated permit issued under CSHB 1228, as well as existing consolidated permits, could be renewed or amended either as consolidated or separate permits. The fee for a consolidated permit would be computed as if the permits had been separately processed, but TNRCC could issue rules to reduce the fee if the agency found that consolidation saved it money.

TNRCC would adopt rules to establish a consolidated permitting process. The rules would provide for combining public notice on consolidated permit applications into a single notice.

The bill would take effect September 1, 1997, and apply to permit applications filed with TNRCC on or after that date.

**SUPPORTERS
SAY:**

CSHB 1228 would streamline the permitting process for both applicants and TNRCC. Consolidated applications are cost-efficient, reduce paperwork and delays for the agency and applicant alike, and increase public participation in the permitting process. State laws concerning “one-stop permitting” were inadvertently repealed in 1993, and the agency's authority to issue combined permits has been in doubt ever since. CSHB 1228 would clarify this situation by establishing consolidated permitting at TNRCC.

Holding one hearing for a facility that must obtain multiple permits would allow both TNRCC and members of the public to consider the effect of all types of pollution from one facility at the same time. Those wishing to protest the application would find it less expensive and time consuming to have only a single hearing on which to concentrate.

CSHB 1228 would make consolidated permitting voluntary rather than mandatory because the 30-day window for submitting all applications could create insurmountable difficulties for some facilities. Separate permits should be left as an option for these applicants; it would be unfair to force a

facility to comply with such tight deadlines and meddle in what is essentially a business decision.

Furthermore, it would be unfair to require applicants to stick with a consolidated permit if they found the process too difficult. CSHB 1228 would allow applicants to opt out of consolidated permitting, unless the process was well underway. This flexibility is necessary because of the vagaries of the solid waste disposal business and the complex regulations that govern it. However, CSHB 1228 would not allow an applicant to opt out for less compelling reasons. Once a notice of hearing was posted, the applicant could not easily switch back to separate processing. This would prevent applicants from trying a different tactic to avoid dealing with protests to their application.

TNRCC already can exempt certain solid waste landfills from air permits on a case-by-case basis. The agency grants such exemption only when appropriate and where there is no danger posed to the public. Allowing the agency to exempt certain facilities from air impact reviews would pose no danger to the public and would merely provide for increased flexibility in the permitting process.

**OPPONENTS
SAY:**

CSHB 1228 would improperly reverse the logical authority in permitting decisions. The TNRCC should be permitted — not required — to initiate consolidated permitting upon request by an applicant. Furthermore, the executive director of TNRCC — not the permit applicant — should have the final say about whether or not a facility would be a good candidate for the consolidated permitting process. And finally, the agency — not the applicant — should decide whether to issue multiple permits or only one encompassing permit as a result of a consolidated permit application.

Under CSHB 1228, the permit applicant would independently control whether multiple permit applications for a single facility were processed together or separately, to the exclusion of both the affected parties and the executive director of TNRCC. Those who could be affected by a facility should also have the right to request a consolidated permitting process, leaving the final decision to the executive director of TNRCC.

TNRCC should not be allowed to exempt solid waste management facilities from air impact reviews. This term includes both hazardous waste facilities and municipal landfills, both of which can contribute to air pollution and represent a threat to public health and safety.

OTHER
OPPONENTS
SAY:

CSHB 1228 contains confusing language on permits “which authorize more than one permit program.” This section should be amended to clarify its reference.

NOTES:

The committee substitute would allow TNRCC to exempt certain facilities from air impact reviews and require, rather than allow, the agency to issue one consolidated permit upon request of the applicant. The substitute also would apply consolidated permitting procedures to renewed as well as new permits.

The companion bill, SB 1224 by Brown, has been referred to the Senate Natural Resources Committee.