

SUBJECT: Expanding the voluntary cleanup program

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Chisum, Jackson, Hirschi, Howard, Kuempel, Puente Talton
0 nays
2 absent — Allen, Dukes

WITNESSES: For — Rob Looney, Texas Mid-Continent Oil and Gas Association, Ed McCarthy, Chevron, USA

Against — Reggie James, Consumers Union; Russ Tidwell, Texas Trial Lawyers Association; Leslie Fields, Sierra Club

On — Chuck Epperson and Barry Williams, Texas Natural Resource Conservation Commission

BACKGROUND : The 74th Legislature authorized the Texas Natural Resource Conservation Commission (TNRCC) to create a voluntary cleanup program, which became effective September 1, 1995. The program provides technical, legal and administrative incentives to encourage cleanup of contaminated sites. Under the program, a person may clean up a contaminated site with the approval and oversight of TNRCC. When the site has been remediated to a level the TNRCC deems appropriate, the site owner is provided with a certificate of completion. This certificate protects *future* lenders and landowners protection from liability to the state for cleanup of the sites.

Under current law, any site is eligible in the cleanup program except the portion of the site subject to a commission order or permit. Since the program was initiated in 1995, 430 entities have volunteered to clean up their sites under the voluntary cleanup programs, and 95 sites have been issued a certificate of completion.

DIGEST: CSHB 2705 would expand the TNRCC's voluntary cleanup program to include those who acquired a contaminated site prior to September 1, 1995, but who did not cause any contamination at the site or operate it prior to the

date they acquired it *and* who brought in a responsible party to perform a voluntary cleanup of the site.

A person who purchased a site before September 1, 1995, would be released from liability to the state for cleanup of contamination released at the site if that person received a certificate of completion from TNRCC. The protection from liability granted by the bill would only apply if the person had not operated the site before its purchase and another person who was a responsible party for the site performed a voluntary cleanup of the site.

The responsible party doing the cleanup of the site would remain liable to the state for any contamination released at the site before the certificate was issued, but would not be liable for any contamination released after the date the certificate was issued.

CSHB 2705 would also provide that a site or portion of a site subject to a TNRCC order or permit would be eligible for participation in a voluntary cleanup program if that permit or order were dismissed. An administrative penalty paid under the permit or order would not be refunded.

The bill would take effect on whichever date was later: September 1, 1997, or the date TNRCC entered into a memorandum of understanding with the U.S. Environmental Protection Agency to authorize the inclusion of certain potentially responsible parties to the group of persons eligible for protection from liability under the voluntary cleanup program.

**SUPPORTERS
SAY:**

CSHB 2705 would increase participation in the voluntary cleanup program and result in more contaminated sites being promptly cleaned up. Voluntary cleanup is usually faster and less expensive to taxpayers than when cleanup is required by a TNRCC enforcement order, or mandated by state and federal superfund program requirements. Mandated remediation is often delayed by legal battles and much more expensive for both landowners and the state.

The bill would provide protection from liability only for those who never contributed to any contamination either before or after they purchased their property but who are not eligible for the release from liability granted under the voluntary cleanup program because that protection is currently granted

only to *future* landowners and lenders. This would provide an incentive for more sites to be cleaned up by removing the liability of the owners of those sites. The bill would result in a number of sites being remediated at no cost to taxpayers that would never have been cleaned up otherwise.

The bill would also allow a site to become eligible for participation in the voluntary cleanup program upon dismissal of a permit or order. This would allow even more sites to become eligible for voluntary cleanup. TNRCC could only dismiss a permit or order under special circumstances and only if the EPA would approve that dismissal.

OPPONENTS
SAY:

Protection from liability should not be expanded to encompass a whole new group of people. As more and more people are released from liability, it will become difficult to find responsible parties to clean up contaminated sites and cleanup costs will have to be borne by state taxpayers.

TNRCC should not be able to dismiss the permit or order of a site so that it could become eligible for voluntary cleanup. Permitted sites should have to clean up any contamination they are responsible for under the strict conditions of their permit.

NOTES:

The committee substitute deleted a number of provisions in the original version of the bill, including provisions authorizing responsible parties and others to be completely released from liability, authorizing the resubmission of rejected applications, and authorizing persons to petition TNRCC to review a determination by the executive director that the voluntary cleanup program was not successfully completed.

According to the bill's fiscal note, TNRCC would have to establish a certification process to review applications from people seeking release from liability under the bill, but the agency could collect an application fee to recover oversight costs.

The companion bill, SB 1341 by Brown, was referred to the Senate Natural Resources Committee.