

**SUBJECT:** Continuing air permit exemptions for grandfathered facilities

**COMMITTEE:** Environmental Regulation — committee substitute recommended

**VOTE:** 5 ayes — Chisum, Allen, Howard, Kuempel, Talton  
2 nays — Dukes, Hirschi  
2 absent — Jackson, Puente

**WITNESSES:** For — Mary Miksa, Texas Association of Business and Commerce; Ben Seabree, Texas Mid-Continent Oil and Gas Association  
Against — None  
On — Ivan Smith, Sierra Club

**BACKGROUND :** The Texas Natural Resource Conservation Commission (TNRCC) may grant standard exemptions from air permitting requirements to facilities when new operations or changes in operating procedures will not result in significant increases in air pollution. Exemptions may be granted to both permitted and nonpermitted facilities.  
  
Grandfathered facilities in operation when the state adopted air quality regulations in the 1970s are exempt from permitting requirements so long as they do not make changes increasing the amount of air contaminants released.

**DIGEST:** CSHB 3019 would provide that standard exemptions from air permits could be authorized for changes to nonpermitted facilities if requested under or authorized by TNRCC rule before September 1, 1999.  
  
The bill would take effect September 1, 1997.

**SUPPORTERS SAY:** CSHB 3019 would qualify grandfathered facilities for standard exemptions from TNRCC air permitting requirements for changes made to their facilities only until September 1, 1999. After 1999, these facilities would no longer be able to claim standard exemptions. Two years would be enough time for

facilities to start preparing to come under TNRCC permitting authority but would not be so soon as to cause economic disruption and chaos for these facilities and the people they serve. Changes required to bring these facilities into compliance could take hundreds of millions of dollars.

TNRCC already grants exemptions to nonpermitted facilities. This bill would merely put a time limit on how long they could continue to do so. Due to a statutory change in 1991, confusion has arisen as to whether or not TNRCC has the legal authority to grant standard exemptions to nonpermitted facilities; CSHB 3019 would settle the matter and avoid lengthy court battles about it.

It is important that these facilities be brought into compliance with the Texas Clean Air Act. According to some estimates, over half of the industrial air pollution in Texas is released by nonpermitted plants, a group that includes some refineries and electric utilities. Many of these plants are emitting pollutants in areas that are now considered nonattainment areas by the Environmental Protection Agency. Since residents of these areas must pay for car inspections and take other actions required by the federal government in nonattainment areas, grandfathered facilities in these areas should also have to shoulder some of the burden and reduce emissions significantly.

CSHB 3019 would encourage these plants to reduce air pollution voluntarily so at the end of the two years their good faith efforts would be taken into account by state officials. The bill would also encourage industry representatives to resume previously interrupted discussions with TNRCC officials concerning measures that could be taken to reduce emissions from grandfathered plants. These aging plants, exempted from permit requirements since the 1970s, are continuing to operate without permits partly because they can claim standard exemptions for changes made at their facilities. Under CSHB 3019 they would no longer be able to claim these exemptions after 1999.

**OPPONENTS  
SAY:**

Grandfathered facilities should not be allowed to continue to make changes to their facilities without air permits even for two more years. These facilities, mostly refineries and utilities, should be required to come into compliance with the Texas Clean Air Act and obtain TNRCC permits like most other large industrial facilities in the state. Most chemical plants, for

example, are permitted by TNRCC and must comply with all applicable rules and requirements — there is no reason why some refineries and utilities should not have to do so as well. These facilities, exempted from complying with permit requirements since the 1970s, have been using standard exemptions to upgrade their aging facilities so they will not have to apply for permits or comply with state air pollution standards.

Standard exemptions, granted to those who are making changes to their facilities that will not significantly contribute to pollution, should only be allowed to apply to changes made within a *permitted* facility. Indeed, current law implies this, and TNRCC has acknowledged that it may not have the authority to continue to grant standard exemptions to unpermitted “grandfathered” facilities. If TNRCC decides to stop granting exemptions for changes made to nonpermitted facilities, this will force them to take immediate action, rather than waiting for two years, to decrease their emissions.

Grandfathered facilities should not be granted another two years to pollute at will — permit applications and approval will take years to complete anyway, so the process should be initiated as soon as possible. Allowing these facilities another two years would give them the hope that they would be able to change the law next session to further prolong their grandfathered status, and they would have no incentive to start cleaning up their facilities.

OTHER  
OPPONENTS  
SAY:

The bill should be amended to require nonpermitted facilities in existence before 1971 to submit an air emissions reduction plan to TNRCC by 1998 to ensure progress towards cleaning up grandfathered facilities in the interim.

NOTES:

The original version of the bill would have allowed standard exemptions only for construction of new facilities.