

SUBJECT: Consolidating TNRCC's emergency and temporary order statutes

COMMITTEE: Environmental Regulation— favorable, with amendment

VOTE: 8 ayes — Chisum, Jackson, Allen, Hirschi, Howard, Kuempel, Puente, Talton  
0 nays  
1 absent — Dukes

SENATE VOTE: On final passage, May 1 — 30-1 (Barrientos)

WITNESSES: (*On House companion, HB 3460*)  
For — Gary Gibbs, Association of Electric Companies of Texas; Janet Hamilton, Champion International Corporation  
  
Against — None

DIGEST: SB 1874, as amended, would consolidate the Texas Natural Resource Conservation Commission's (TNRCC) authority to issue emergency and temporary orders into a new subchapter of the Water Code, and would delete existing emergency and temporary order statutes where they are currently found throughout the Water Code and the Health and Safety Code.

**General provisions.** The bill would allow the commission, by order or rule, to delegate to TNRCC's executive director the authority to receive applications and issue emergency orders. The commission could also authorize a representative to act on its behalf for the executive director.

A permit could be issued under an emergency order without a hearing unless the law under which the commission acted specifically required notice of an emergency order. Otherwise, emergency orders would be issued after providing notice and opportunity for a hearing that the commission considered practicable under the circumstances. Administrative Procedure Act requirements would not apply to an emergency order issued without a hearing.

In general, emergency or temporary orders would be limited to a reasonable time specified by the order, but could not exceed 180 days, and could be renewed only once for another period of 180 days.

The bill would also establish statutory provisions governing applications for emergency or temporary orders and hearings that would affirm, modify or set aside orders.

**Consolidation of existing statutes.** The bill would consolidate current statutes concerning emergency or temporary orders for:

- discharge of waste and pollutants into or adjacent to water, but adding a new provision that would allow such discharges to ameliorate serious drought conditions;
- certain utility rate increases;
- utilities that have discontinued operations or are referred for receivership;
- underground or aboveground storage tanks;
- solid waste management;
- on-site sewage disposal systems;
- air emergencies;
- catastrophic air emissions;
- corrective action concerning by-product materials (primarily uranium);
- discharge of waste or pollutants and;
- suspension of permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses if the commission found that an emergency existed that could not be resolved in another way.

The bill would make various changes concerning emergency orders in specific situations in an attempt to standard emergency order requirements across the board as consistent as possible while preserving current limitations on authorizations.

The bill would take effect September 1, 1997, but if SB 1857 or any other bill which transferred jurisdiction of certain radioactive by-product material from uranium mines to the Texas Department of Health (TDH) from the Texas Natural Resource Conservation Commission (TNRCC) took effect,

the provisions in SB 1874 concerning emergency orders to persons responsible for processing or disposing of by-product materials would have no effect.

**SUPPORTERS  
SAY:**

SB 1874 would consolidate emergency orders into one section of the Water Code and standardize requirements for these orders, which would make it easier both for the regulated community and the state to understand what actions are allowed during emergencies.

The bill would also make small changes to address omissions from current law that hamper the TNRCC's ability to respond quickly and effectively to emergency conditions. The necessity for this was demonstrated by an emergency encountered in 1996 by TNRCC when the agency discovered that it lacked the authority to grant a temporary disposal authorization when a large manufacturing facility experienced a tank leak during a downpour. Despite the threat to waters of the state, TNRCC was unable to authorize the facility to utilize an onsite injection well.

The bill would give the commission explicit statutory authority to delegate to TNRCC's executive director the authority to issue every kind of emergency order. Under current law, the executive director already has this authority in some kinds of emergencies but not in others, while in still other cases authority is delegated directly to the director without approval by the commission. SB 1874 would make provisions concerning delegation consistent with each other. It is important for the executive director to have this authority in all cases since the nature of some emergency situations means that action must sometimes be taken immediately to prevent greater harm, and it may be impossible to find all three commissioners and hold a meeting in a matter of hours.

Allowing emergency discharges, which would still have to be consistent with federal requirements, to ameliorate serious drought conditions would be appropriate in limited situations. Some uses of water that would be completely justifiable under normal situations make less sense during critical drought conditions.

For example, a permit may not allow water below a certain temperature to be discharged to protect aquatic life. During a serious drought, a company

under such a permit might want to temporarily reduce its use of water by releasing its discharge into a holding pond to cool it down rather than a cooling and evaporation tower. This would save substantial amounts of fresh water without endangering the environment but could not be allowed without an emergency order. SB 1874 would give TNRCC the flexibility to authorize orders of this nature during a serious drought if such an action were appropriate and presented no danger to human health or the environment.

**OPPONENTS  
SAY:**

The bill should not allow emergency discharges of wastewater or pollutants to ameliorate drought conditions. Drought conditions develop slowly and can be foreseen and there is no need to deal with them on an emergency basis without a hearing. SB 1874 would allow TNRCC to discharge effluent to fill up a lake in response to area resident complaints about low-water levels without taking into consideration the considerable long-term environmental ramifications of such an action.

**NOTES:**

The committee amendment would add an exception to the effective date for two provisions concerning the enactment of legislation that would transfer jurisdiction of by-product radioactive material from uranium mines from TNRCC to TDH. SB 1857 by Brown, which would make the transfer, is also on the May 26 House calendar.