

SUBJECT: Permit terms of certain hazardous waste disposal injection wells

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Chisum, Jackson, Allen, Howard, Kuempel, Talton
0 nays
3 absent — Dukes, Hirschi, Puente

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 28 — 31-0

WITNESSES: None

BACKGROUND : The Texas Natural Resource Conservation Commission (TNRCC) regulates injection wells used for disposal of solid waste and certain hazardous waste. Regulations require that materials in these wells be below the lowest level of underground drinking water.

The TNRCC must issue an injection well permit before a well may be constructed. The permit has a term of 10 years and costs \$2,000.

There are approximately 65 industrial injection wells in Texas permitted to dispose of hazardous waste. Twenty-four of them are authorized by the Environmental Protection Agency (EPA) to dispose of restricted hazardous waste; of that 24, six are commercial and 18 are noncommercial facilities.

Applicants proposing to use injection wells for disposal of restricted hazardous waste must demonstrate that the material injected into the well would not migrate from the authorized disposal zone for 10,000 years. The well must be constructed before EPA can grant its authorization.

DIGEST: CSSB 1929 would apply to a TNRCC-permitted facility that had not yet received authorization from the EPA to inject hazardous waste by September 1, 1997. The bill would establish that a state permit or other authorization issued to the facility would not be subject to cancellation, amendment, modification, revocation, or denial of a renewal because the permit holder had failed to begin construction or operation before the

expiration of the particular permit or authorization period and that the fixed term of each permit or other authorization issued to the facility would begin on the date the facility first received solid waste.

CSSB 1929 would also require the TNRCC to adopt rules regulating the disposal of solid waste generated incidentally by the operation of an injection well permitted for the disposal of waste. The rules would have to be consistent with federal law and EPA rules.

The bill would take effect September 1, 1997.

**SUPPORTERS
SAY:**

CSSB 1929 would ensure that certain permitted injection wells in Texas would be able to start the term of their permits on the date the facility began to receive solid waste, rather than the date the permit was approved.

The bill would remedy a catch-22 situation created by EPA requirements. When the owner of an injection well proposes to dispose of certain kinds of hazardous waste, it must apply to EPA for an exemption from federal rules before it can begin accepting waste. In order to be approved by EPA, the applicant must demonstrate that the material injected into the well will not migrate from the authorized disposal zone for 10,000 years. This process can take so long that by the time the application is granted, the state permit required prior to construction would already have expired or be near to expiring, and renewal could be denied because construction had not begun before the end of the permit term. It is unfair and unnecessary for the applicant in such a situation to have to renew or reapply for a permit because construction on the site was never begun due to EPA delays.

The bill is not narrowly drawn to apply to any specific projects; it would pertain to any permitted facility that has applied for yet not received an EPA authorization. If the language of the bill was construed to apply to all facilities receiving state permits in the future and awaiting EPA authorization, it would apply to an even broader range of facilities.

A facility must go to considerable time and trouble and spend a significant amount of money to successfully apply for an injection well hazardous waste disposal facility permit from TNRCC. Merely applying to renew the permit can mean further time and expense since the agency may require new

studies and surveys. Although the permit itself costs only \$2,000, the studies and other surveys required can cost several million dollars.

The bill also would require the TNRCC to adopt rules regulating the disposal of solid waste that was generated by the operation of an injection well in order to allow facilities to dispose of waste safely on site rather than transporting to another location, endangering motorists along the route. These rules would not affect federal delegation of environmental programs because they would have to be consistent with EPA rules.

OPPONENTS
SAY:

CSSB 1929 is clearly meant to apply only to certain facilities already permitted by the state and waiting to receive EPA authorization. It is so narrowly drawn that if an applicant for a similar kind of facility in another part of Texas had the same problem, it would not be able to avail itself of the benefits SB 1929 would offer. This would put some facilities at a competitive advantage over their competitors. The bill should either apply to all permitted facilities in Texas who are delayed by federal permitting requirements or none at all. Special exceptions should not be granted to only a few facilities, like the one operated by Loving County Disposal Inc.

If CSSB 1929 were enacted, the EPA might have to review delegation of the Texas injection well permit program since federal rules require the maximum term of a permit for this kind of facility be 10 years. This bill, in essence, would lengthen the term of a permit. Establishing that the fixed term of a permit would begin on the date the facility first received solid waste also would make it unclear whether and when the TNRCC or other agencies would have regulatory enforcement jurisdiction over such a site. The state must be able to exercise authority during the construction phase in order to ensure that the well would be protective of human health and the environment.

A facility that delays starting up operations, whether because of the EPA or its own financial difficulties, should not be able to keep a permit valid for an indefinite amount of time. Hazardous waste injection well permits are issued for 10 years; if 10 years or a sizeable length of time passes since the time an injection well permit is issued, the applicant should be required to apply for a renewal of that permit. Otherwise, new discoveries about the geology of the area or changes in state and federal standards for protecting

drinking water supplies, for example, could not be applied to the site. The Railroad Commission would not have the opportunity to make its customary re-review of such a site to ensure that it would not endanger oil and gas production.

Citizens in the area where any hazardous waste storage disposal facility would be located should also be given the opportunity to request a contested case hearing during the new permit or permit renewal process if new concerns were been raised about the site. Injection well permits cost only \$2,000, which is not a sizeable amount for a hazardous waste disposal company to pay every 10 years. Furthermore, a new set of studies, while expensive, would be a small price to pay to ensure the safety of a major environmental project. The operator could quickly recoup these expenses when the facility opened. Hazardous waste disposal, while bound by strict regulations, is a highly profitable business; otherwise, no one would apply to operate such an enterprise.

OTHER
OPPONENTS
SAY:

The language of the bill is ambiguous and should be amended to clarify as to whether the provisions would apply only to facilities that already had a permit on September 1, 1997, and were awaiting EPA authorization or also to facilities in the future, which as a matter of course would not yet have received EPA authorization on September 1, 1997.

NOTES:

The committee substitute deleted a provision that would have required the TNRCC to develop separate standards for the permit terms of certain solid waste facilities and injection wells and for cancellations and other changes in those permits. The committee substitute added provisions establishing that permit conditions in the bill would apply only to permitted facilities that on September 1, 1997, had not received EPA authorization to inject hazardous waste, specifying that a state permit issued to the facility would not be subject to cancellation because of failure to begin construction, and fixing the term of a permit to begin on the date the facility first received waste.

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