

**SUBJECT:** Eliminating volume cap on general permits for wastewater dischargers

**COMMITTEE:** Natural Resources — favorable, without amendment

**VOTE:** 8 ayes — Counts, T. King, Cook, Hamric, R. Lewis, Puente, Shields, Walker  
0 nays  
1 absent — Corte

**WITNESSES:** For — None  
Against — Ken Kramer, Sierra Club; Stuart Henry

**BACKGROUND:** Water Code sec. 26.040 allows the Texas Natural Resource Conservation Commission (TNRCC) to issue general permits to authorize wastewater discharges as long as not more than 500,000 gallons is discharged in a 24-hour period and the discharge does not include pollutants that will cause significant adverse effects on water quality.

**DIGEST:** HB 1283 would remove the statutory limitation that prohibits TNRCC from issuing general permits for wastewater discharges that exceed 500,000 gallons in a 24-hour period. The bill also would allow TNRCC to issue general permits for storm-water discharges.

HB 1283 also would remove a statutory requirement that discharges under a general permit cannot begin until 30 days after TNRCC receives a notice of intent (NOI). Under HB 1283, a general permit could authorize discharges to begin immediately after the discharger filed a complete and accurate NOI or could specify a date or period of time when discharges could begin.

A general permit could authorize a discharge even if the discharger had not filed a NOI, if TNRCC found a NOI inappropriate. If TNRCC proposed to renew a general permit before its expiration date, the permit would remain in effect until TNRCC took final action on the proposed renewal.

The bill would require TNRCC to publish notice of a proposed statewide general permit in the *Texas Register* and in one or more newspapers of statewide or regional circulation designated by the commission.

HB 1283 would take effect September 1, 1999.

SUPPORTERS  
SAY:

HB 1283 would remove statutory limitations that severely restrict TNRCC's ability to issue general permits for wastewater discharges. Under current law, the agency cannot issue general permits to those who discharge more than 500,000 gallons in a 24-hour period. Small cities must apply for individual site-specific discharge permits that are costly and time-consuming to obtain. In fact, almost no city with a population of more than 5,000 can meet the 500,000-gallon, 24-hour limit for a general permit.

An artificial volume threshold is not an efficient measure of how closely a discharge should be regulated, since some facilities and cities discharge high-volume, low-pollutant waters that do not threaten human health or the environment.

Under general wastewater discharge permits, treatment standards could be applied statewide to all facilities with similar effluent loads, allowing similar categories of dischargers or those within a particular stream segment to be grouped under a single permit. This would reduce the workload both for applicants and for TNRCC staff, saving the taxpayers money at both ends. General permits do not relieve the applicants of responsibility to comply with water-quality rules, so the environment and public health still would be protected.

TNRCC estimates that unless the 500,000-gallon, 24-hour limit is removed, the agency will need an additional \$2.27 million and 47 extra employees in fiscal 2001 to implement changes required under the federal National Pollutant Discharge Elimination System (NPDES) program. In September 1998, the U.S. Environmental Protection Agency (EPA) delegated administration of NPDES to TNRCC, freeing holders of wastewater discharge permits in Texas from having to obtain both state and federal permits. The state is required to phase in a host of new requirements under the NPDES program, including the permitting of storm-water discharges. Under current law, TNRCC will have to issue individual storm-water discharge permits on a

case-by-case basis to almost every city in Texas, and the costs to the state, the dischargers, and their customers will be enormous.

Allowing discharges to begin as soon as a NOI was filed would allow small, relatively insignificant discharges without the 30-day waiting period now required. These types of discharges would include car washes that churches or schools hold as fundraisers, community swimming pool discharges, and certain discharges from construction sites. This change would be consistent with the EPA's general wastewater permit program.

Allowing a general permit to continue in effect until TNRCC has renewed it would protect dischargers from being out of compliance through no fault of their own. It may not be possible for TNRCC to resolve problems with the permit before that permit expires. HB 1283 would allow TNRCC to take the time to address any concerns that are raised and come up with a suitable permit, without leaving permittees without coverage.

Requiring the commission to publish notice of a statewide permit in one or more newspapers of regional or statewide circulation would limit state costs but still inform the public about permits.

OPPONENTS  
SAY:

General permits provide less rigorous regulation than individual permits, which allow TNRCC to evaluate each site individually. HB 1283 would allow TNRCC to issue general permits for major discharges — for example, those from municipal sewage-treatment plants and feedlots — if TNRCC found, among other things, that such a permit would not include “pollutants that cause significant adverse effects to water quality.” This standard is too subjective to protect public health, safety, or the environment.

Expanding the use of general permits effectively would limit meaningful public participation in environmental permitting hearings. While the general permit process provides an opportunity for public notice and comment, it does not give the public the opportunity to request a contested case hearing on the permit before an independent administrative law judge.

General permits for wastewater discharges are appropriate in some circumstances to protect water quality, but they should apply only to relatively minor volumes of water or relatively minor discharges to the environment. Limiting wastewater discharges to 500,000 gallons over 24

hours is a reasonable threshold in most cases. A cap on discharge volumes for general permits is essential because large-volume dischargers can overwhelm the receiving stream's capacity to assimilate wastewater. As a result, a 500,000-gallon discharge can cause significant problems for downstream landowners.

The law should not allow a discharger operating under a general permit to discharge without submitting a NOI. Full public notice should be part of all permitting programs.

OTHER  
OPPONENTS  
SAY:

Rather than removing the 500,000-gallon cap for all wastewater discharge permits, the cap should be removed only for storm-water discharges. TNRCC then would not have to spend extra money and time to process the new storm-water discharge permits required under the NPDES program.

The statute should be amended to allow general permits for specific categories of discharges rather than doing away with the current cap entirely. Different thresholds could be set for different categories of discharges as long as the discharges were relatively minor and the thresholds still protected human health and the environment.

NOTES:

The companion bill, SB 504 by Brown, was referred to the Senate Natural Resources Committee on February 15.