

SUBJECT: Requirements for preconstruction air-quality permit amendments

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Chisum, Bonnen, Kuempel, Uher, Geren

0 nays

4 absent — Bosse, Dukes, Howard, Zbranek

WITNESSES: For — Mary Miksa, Texas Association of Business and Chambers of Commerce; Elizabeth Moyer, American Electronics Association; Michael Stewart, Texas Aggregates and Concrete Association; Tony Williams, Texas Cotton Ginners Association

Against — Margot Clarke, League of Conservation Voters Education Fund; David Frederick and George Smith, Sierra Club, Lone Star Chapter

On — David Duncan, Texas Natural Resource Conservation Commission

BACKGROUND: Under Health and Safety Code, sec. 382.0518, before beginning construction of a new facility or modification of an existing facility that may emit air contaminants, the person planning the facility must obtain a permit from the Texas Natural Resource Conservation Commission (TNRCC). TNRCC must grant the permit within a reasonable time if the commission finds that the proposed facility will use at least the best available control technology (BACT) and finds no indication that the facility's emissions will contravene the intent of the Texas Clean Air Act, including protection of public health and property. If the commission finds otherwise, it cannot grant the permit and must explain its objections to the applicant in a written report. If the permit applicant alters the project's plans and specifications to meet the commission's objections, TNRCC must grant the permit. TNRCC may refuse to accept a new application until the person meets the commission's objections to the plans previously submitted.

Sec. 382.056 sets forth requirements for a permit applicant to publish notice of intent to obtain the permit. Sec. 382.05196 defines TNRCC's authority to

adopt permits by rule for certain types of facilities if the facilities would not make a significant contribution to air contaminants in the atmosphere.

DIGEST:

CSHB 2518 would allow a person planning to build or modify a facility to apply for a permit amendment. TNRCC would have to treat an application for a permit amendment in the same manner as an application for a permit, subjecting it to the same tests and criteria.

The bill would exempt an applicant for a permit amendment from the notice requirements if the total emissions increase from all facilities authorized under the amendment would meet the *de minimis* criteria defined by TNRCC rule and the emissions would not change in character. Facilities that handle, load, unload, dry, manufacture, or process grain, seed, legumes, or vegetable fibers would be exempt from the notice requirements if the total emissions increase from all facilities under the amendment would not be significant and the emissions would not change in character. The finding that a total emissions increase would not be significant would have to be made as provided by Health and Safety Code, sec. 382.05196.

The bill would amend the notice requirements in Health and Safety Code, sec. 382.056, to reflect these changes.

CSHB 2518 would take effect September 1, 2001. The changes would apply to an application for a permit amendment that was pending before TNRCC on that date or was filed with TNRCC on or after that date.

SUPPORTERS
SAY:

CSHB 2518 would allow facilities making minor modifications to use a streamlined permitting process that should not require public notice. These facilities would have to use BACT, and the modifications could not alter the character of the facilities' emissions.

CSHB 2518 would encourage older facilities to make modifications and improvements. Currently, the delay and cost involved with providing notice discourages facilities from making modifications to improve environmental quality or efficiency. For example, without this bill, if a cotton gin had three fans to remove sticks and rocks from cotton and wished to add a fourth, the gin would have to go through the notice process because the additional fan would be considered a "new emission source," even though the fan would

deal with the same debris or emissions. Delay can harm some businesses, such as those in the electronics industry, that have a short window of market availability.

This bill would reduce costs for permittees and TNRCC alike. Permittees spend an enormous amount of time waiting to receive notice papers, filling out the papers, placing and documenting notices, returning documentation to TNRCC, and awaiting approval. TNRCC, in turn, must allocate the same amount of oversight to notices for minor modifications as it allocates for a significant modification. CSHB 2518 would allow TNRCC to operate more efficiently by allowing the commission to allocate its resources better.

The terms “*de minimis*” and “not significant” are well defined by both TNRCC and the U.S. Environmental Protection Agency (EPA). It would be appropriate for agricultural operations, most of which are rurally located, to be held to the “not significant” standard. Many agricultural facilities do not qualify for existing environmental compliance breaks.

By using the phrase “permit or permit amendments,” the bill would not redefine the meaning of “permit” to exclude amendments. TNRCC and administrative law judges have not adopted this interpretation.

This bill would have no impact on the State Implementation Plan to meet EPA’s National Ambient Air Quality Standards.

OPPONENTS
SAY:

CSHB 2518 would reduce the public’s right to know what is happening with regard to air emissions and would eliminate public input on some decisions about air-quality permit amendments. As a result, the bill also would limit consideration of the facility’s compliance history, as the public would not be able to raise such issues due to lack of notice and opportunity. This change would apply to all types of stationary sources of air pollution.

CSHB 2518 would not define clearly the terms “*de minimis*” and “not significant.” This is particularly critical, because agriculture-related facilities would receive special treatment — no notice, no public input, no opportunity to consider compliance history — for emissions increases that were “not significant.”

The bill would change a basic presumption that the term “permits” includes both new permits and amendments to existing permits. By adding “or permit amendment” after the term “permit” in some places but not others, the bill would redefine the term “permit” to exclude permit amendments except where specifically noted. The practical effect of this would be to remove amendments from some current requirements.

CSHB 2518 is not necessary to protect cotton ginners or agricultural facilities. Current law already authorizes TNRCC to reduce regulatory burdens on owners of agricultural sources of air pollution.

Air permits already receive special treatment. Unlike water and waste permits, which require two notices (one when the application is filed and one when the draft permit is prepared), original permits, amendments to permits, and renewals of permits for air emissions are subject to only one notice and comment process. Also, current permitting statutes provide breaks for small businesses, for *de minimis* levels of air pollution, for amendments that do not increase air pollution, and for minor amendments. These factors make CSHB 2518 unnecessary.

NOTES:

The author plans to offer a floor amendment to address notice of permit amendments to legislators and to require TNRCC to consider a facility’s compliance history when determining whether a permit amendment should be exempt from notice requirements.

The committee substitute would include permit amendments under Health and Safety Code, sec. 382.0518, instead of creating a new sec. 382.05185, as the filed version would have done. The substitute added the section that would exclude permit amendments from notice requirements if the total increase in emissions met TNRCC’s *de minimis* criteria and the emissions would not change in character or, for agricultural operations, the emissions increase would not be significant as defined by TNRCC rule.