

SUBJECT: Temporary windup permits for concentrated animal feeding operations

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 5 ayes — Hardcastle, Miller, B. Brown, D. Jones, Swinford

1 nay — Burnam

1 absent — Laney

WITNESSES: For — John Cowan, Texas Association of Dairymen; (*Registered but did not testify*;) Billy Howe, Texas Farm Bureau; James Terrell, Select Milk Producers; Ross Wilson, Texas Cattle Feeders Association; Ken Horton, Texas Pork Producers Association

Against — Stuart Henry; Jackson Battle, City of Waco; Travis Brown, Public Citizen; (*Registered but did not testify*;) Ken Kramer, Sierra Club, Lone Star Chapter; Matthew Wojnowski, City of Temple

On — Stephanie Bergeron, Texas Commission on Environmental Quality

BACKGROUND: Texas Administrative Code, ch. 321, subchapter B sets forth Texas Commission on Environmental Quality (TCEQ) rules for concentrated animal feeding operations (CAFOs). HB 2912 by Bosse, the sunset bill for the Texas Natural Resource Conservation Commission (now TCEQ) enacted by the 77th Legislature in 2001, requires TCEQ to authorize the construction or operation of a new CAFO or an increase in the number of animals confined under an existing operation only by individual permit. The act prohibits the issuance of a general permit to authorize the discharge of agricultural waste into or adjacent to waters from a CAFO if the waters are within a major sole-source impairment zone (Water Code, sec. 26.503).

Texas' environmental laws prohibit the direct discharge of any animal waste in Texas waterways except during a chronic or catastrophic rain event. CAFO operators must report discharge violations to TCEQ within 24 hours. TCEQ issues CAFO permits through a contested hearings process, and permits must be renewed every five years. TCEQ also may revoke a CAFO permit.

Among its core provisions, the federal Clean Water Act of 1972 prohibits the discharge of pollutants from a point source to waters of the United States, except by permit. CAFOs are regulated by the U.S. Environmental Protection Agency (EPA) as “point source” polluters under the Clean Water Act. EPA recently published a final rule requiring CAFOs to apply for certain discharge permits and to develop and implement a nutrient management plan (40 CFR, Parts 9, 122, 123, and 412). A combination of voluntary programs and state and federal regulatory programs are used to ensure that CAFOs meet the federal requirements.

In recent years, the dairy industry in Texas has participated in a voluntary Agricultural Producers Certification Options (APCO) program for producers. The APCO program requires independent assessment of dairy operations and development and implementation of a comprehensive nutrient management plan before a dairy is declared environmentally friendly.

DIGEST:

CSHB 1148 would require TCEQ to issue a temporary windup permit of at least six months to a person whose permit to operate a CAFO was revoked or nonrenewed. If the revocation or nonrenewal was appealed, the court or agency hearing the appeal would have to extend the permit for the duration of the appeals process. The windup permit would have to be extended for at least six months beyond the final appeal decision if the decision supported the nonrenewal or revocation.

The bill would take effect September 1, 2003, and would apply only to a permit renewal or revocation proceeding that began on or after that date.

**SUPPORTERS
SAY:**

CSHB 1148 would give a CAFO adequate time to wind up its operations after losing its permit to nonrenewal or revocation. The bill would not lift state or federal regulations during the windup period, and CAFO operators still could be fined for illegal discharges.

During a recent renewal hearing in Erath County, an administrative law judge denied an operator’s CAFO renewal and gave him only 30 days to wind up his operations. That is not enough time for a dairy producer to maximize receipts for the dispersion of a herd. Losing a permit leaves a producer in a distressed situation and seriously devalues the facility. A dairyman who had to close down operations could not resell his property for agricultural use, so it would

be only fair to give him 180 days to feed his cattle out in such a situation. CSHB 1148 would level the playing field between agricultural interests and an environmental community that is trying to run Texas CAFO operators out of business.

Dairymen want to be good stewards of the environment, and at least 15 dairies in Erath County have upgraded their standards voluntarily through the APCO program. More stringent permit standards by the state and federal government, as well as increased participation in voluntary assessment programs like APCO, have led to greatly improved performance by CAFOs in central Texas. Erath County's dairy industry generates more than \$200 million in revenue for the central Texas economy. CSHB 1148 would recognize the industry's good-faith efforts by preventing harsh punishment for dairy farmers who have fallen on hard times.

**OPPONENTS
SAY:**

CSHB 1148 would protect a handful of dairy producers in Erath County to the detriment of thousands of central Texas citizens whose drinking water is being polluted by animal waste. Erath County has the largest concentration of dairies in Texas, and runoff from the county's CAFOs has been identified as a major pollution source in the North Bosque River, which provides 75 percent of Lake Waco's water and provides drinking water for much of the greater Waco area. Waste from dairy cattle carries high levels of phosphorus, and when it leaks from waste lagoons or fields into rivers and streams, it creates an environmental health hazard. The runoff is causing algae blooms in Lake Waco, and the city's costs for water treatment have skyrocketed as a result of CAFO pollution.

Only two CAFO permits in history have been revoked or nonrenewed. The state shuts down CAFO polluters only after years of egregious violations. A CAFO should be shut down as soon as possible after a court orders it.

CSHB 1148 would add to a growing list of proposed regulatory breaks for polluters this session. HB 2 by Swinford would change the definition of affected people in a contested case hearing for air, water, and waste permits. HB 1063 by W. Smith would repeal a statute allowing notices of violations to be considered in an entity's compliance history. Citizens deserve the peace of mind of knowing that the state cares enough to protect environmental health and water safety on their behalf.

OTHER
OPPONENTS
SAY:

CSHB 1148 is unnecessary. An administrative law judge or hearings examiner already has the discretion to give a producer time to wind up his operations. This bill would remove discretion from TCEQ and the courts and would make the six-month stay mandatory. It would give a lawyer an incentive to keep an appeal going, even when the threat to the environment was severe, thus allowing a CAFO operator to continue to pollute the water indefinitely.

NOTES:

The committee substitute would modify the original bill by requiring a six-month windup permit for nonrenewals as well as for revocations.

Three other bills this session that affect CAFOs have been left pending in the House Agriculture and Livestock Committee:

- HB 2936 by Mabry, which would prohibit TCEQ from granting or renewing certain CAFO permits;
- HB 1357 by Miller, which would require a person who wished to file a complaint against a CAFO to pay a deposit; and
- HB 1358 by Miller, which would impose written notice requirements on a person who wished to protest a CAFO permit or renewal.