

SUBJECT: Permitting requirements for land application of Class B sewage sludge

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Bonnen, Crownover, Chisum, W. Smith, West

0 nays

2 absent — Kuempel, Flores

WITNESSES: For — Keith Massey; Alvin Thomas, Synagro Technologies

Against — None

On — Raj Bhattarai, City of Austin Water and Wastewater Utility; Mike Cowan, Texas Commission on Environmental Quality

BACKGROUND: In 2001, the 77th Legislature enacted HB 2912 by Bosse, et al., the sunset bill for the Texas Natural Resource Conservation Commission (now the Texas Commission on Environmental Quality or TCEQ), requiring permits, rather than registration, for land application of Class B sewage sludge beginning September 1, 2003. Health and Safety Code, sec. 361.121 requires that a permit holder report any noncompliance with permit conditions or applicable permit rules to TCEQ. A permit applicant also must submit information regarding the hydrologic characteristics of the surface water and groundwater at and within one-quarter mile of any land-application unit.

The U.S. Environmental Protection Agency (EPA) regulates the application of sludge under Part 503 of the Clean Water Act of 1993. Sludge is classified as Class A or Class B, depending on how it has been treated. Class A sludge is mixed with other organic materials and composted at temperatures in excess of 160 degrees. Because it is heated longer, Class A sludge is more sterile than Class B sludge. Cities often make and sell Class A sludge to wholesale nurseries as fertilizer. Class A sewage sludge, water treatment sludge, and domestic septage are not subject to permitting requirements under Health and Safety Code, sec. 316.121.

Because Class B sludge is only partially treated and pathogen levels are higher, the use of this sludge is subject to more stringent state and federal regulation. Class B sludge may be used on farmland only with EPA permits. State permits for application of Class B sludge in Texas will be necessary beginning September 1, 2003.

DIGEST:

CSHB 2546 would impose new requirements for notice, reporting, insurance, and practice standards on applicants for permits, permit amendments, or permit renewals to apply Class B sludge to land. TCEQ would be responsible for approving permits for and tracking the application of Class B sludge.

Notice. An applicant would have to publish a notice of intent to obtain a permit at least once in the newspaper of largest circulation in the county in which the Class B sludge would be applied. At the same time, the applicant would have to notify by registered or certified mail any landowner located within one-quarter mile of the proposed area. Notice would have to include the anticipated date of the first sludge application. An affected landowner near the proposed site would be considered to have a personal justiciable interest in any administrative hearing involving a contested case on the granting of the permit.

Reporting. Permit requirements would include the submission of quarterly reports to TCEQ on the source, quality, and quantity of sludge applied; the exact location of its application; the date of delivery and application of Class B sludge; the cumulative amount of metals applied; the crops grown at the application site; and the suggested agronomic application rate for the Class B sludge. A permit also would require the submission of annual reports to TCEQ on compliance with the nutrient management plan and practice standards that minimized the risk of water-quality impairment. A permit holder would have to post a visible sign near the road or sidewalk adjacent to the sludge application premises, stating that a beneficial application site was located there.

Insurance policy required. A permit applicant would have to submit proof of having a \$3 million commercial liability insurance policy and a \$3 million environmental impairment insurance policy. Both policies would have to be issued by an authorized insurance company with an A.M. Best rating of A- or better, and both would have to designate TCEQ as an additional insured.

Insurance would have to be maintained for the life of the permit. Insurance requirements would not apply to a political subdivision.

Practice standards. The applicant would have to submit proof, in the form of a nutrient management plan prepared by a nutrient management specialist, that he or she had minimized the risk of water-quality impairment. Practice standards for the plan would have to be in accordance with the Natural Resources Conservation Service of the U.S. Department of Agriculture.

Tracking. TCEQ would have to create and operate a tracking system for land application of Class B sludge. Permit holders would have to report detailed information on deliveries and applications of Class B sludge to TCEQ, which would have to post the reported information on its website. The tracking system would have to allow a permit holder to report electronically.

A permit holder could not accept Class B sludge unless it was transported and delivered in a firmly secured, covered container.

Prior registration. An applicant who held a registration to apply Class B sludge before September 1, 2002, could apply the sludge under the terms of registration until TCEQ decided to issue or deny the applicant a permit.

Restrictions on use. TCEQ could not issue a permit for land application in a county that bordered the Gulf of Mexico or for land located 500 feet or less from any groundwater or surface water.

Effective dates. The bill would take effect September 1, 2003. Changes to notice and insurance requirements would apply only to applications filed with TCEQ on or after September 1, 2003, or to applications filed previously but found not to be administratively complete before that date.

SUPPORTERS
SAY:

CSHB 2546 would tighten regulations for land application of Class B sludge, ensuring that permit holders were held accountable for safe and responsible use of a potentially hazardous material. The risks of unregulated application of sludge are well documented by EPA. Sludge applied to agricultural land must be processed properly to reduce pathogens to safe levels. Furthermore, application must occur in a safe manner so as to minimize environmental risk and human exposure.

CSHB 2546 would help crack down on bad operators and would require stricter regulations to protect neighboring landowners. Permit applicants would have to notify neighboring landowners of their intent to seek permits and would have to buy ample insurance coverage. Some landowners in Texas have complained about bad actors in the industry who have applied sludge on nearby property without taking necessary precautions, leading to uncontrolled leakage onto neighboring lands and offensive odors. Notice and insurance requirements would discourage bad actors from setting up shop in Texas.

The bill would enact protections specific to Texas that would enhance federal regulations on land application of Class B sludge. Federal regulations have restricted the application of sludge close to wells, rivers, streams, and public water supplies. CSHB 2546 specifically would ban the application of sludge near the Gulf of Mexico and within 500 feet of groundwater or surface water. Keeping Class B sludge away from the water supply is paramount, especially since some sewage plants accept industrial waste and/or mix stormwater runoff with human waste, thus making groundwater contamination more likely when using partially treated sludge.

Safe and regulated land application of Class B sludge is far preferable to the environmentally unfriendly alternatives. Sending sludge to a properly built landfill is expensive and can result in long-term contamination. Building incinerators in such a way as to prevent air pollution and extract enough water to allow burning can be expensive. New York City has tried ocean disposal, but this has proven environmentally unsound.

Handled properly, Class B sludge increases organic matter and restores the fertility of poor soils. It is especially beneficial for land damaged by strip mining or other excavation activities and for use on eroded soil. Sludge also has been used beneficially on forest soils, not only because forests are deficient in major nutrients found in sludge, but also because forests are not major contributors to food-chain crops for human consumption.

The bill would allow cities and counties to continue operating responsibly without onerous insurance requirements. The City of Austin, for example, markets its Class A sludge, called Dillo Dirt, to local nurseries and applies its Class B sludge to municipal land only. As a self-insured political subdivision, the city would find it prohibitively expensive to continue composting sludge

without the insurance exemption. The state and federal governments have encouraged cities and counties to treat and reuse municipal solid wastes as an alternative to unsafe disposal. CSHB 2546 would support environmentally safe and responsible practices by cities like Austin, Fort Worth, and Houston that now divert tons of biosolids away from Texas landfills each year.

**OPPONENTS
SAY:**

The use of Class B sludge should be banned altogether. Because this sludge is only partially treated, it contains organic pathogens such as viruses, bacteria, and fungi. There are many unanswered questions about the long-term effects of metal and chemical buildup in farmland soil due to sludge application, not to mention concerns about groundwater contamination near application sites. Cities and counties in California, Virginia, Florida, and New Hampshire have banned or restricted sludge application. Texas also should ban Class B sludge application until more is known about its potential adverse health effects.

NOTES:

The committee substitute would modify the original bill by:

- adding a requirement that an applicant notify landowners within one-quarter mile of the proposed sludge application site;
- removing a provision that would have required permit holders to meet the same qualifications as certain wastewater operator license holders;
- reducing the required liability insurance from \$5 million to \$3 million;
- designating TCEQ as an additional insured under the permit holder's insurance policies;
- adding a requirement to post a visible sign on the affected land stating that the location was a beneficial land application site;
- requiring a permit holder to accept only Class B sludge transported in a securely closed container;
- adding instructions about the effective dates for former registrants and permit applicants at various stages of the permit application process;
- removing a requirement that political subdivisions obtain liability insurance to qualify for a permit; and
- adding bans on granting permits near the Gulf of Mexico or within 500 feet of any groundwater or surface water.

The companion bill, SB 1351 by Jackson, has been referred to the Senate Natural Resources Committee.