

- SUBJECT:** Directing TCEQ to adopt rules governing industrial solid waste landfills
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 4 ayes — Bonnen, Kuempel, Chisum, W. Smith  
0 nays  
3 absent — Crownover, Flores, West
- WITNESSES:** For — Tom Hitchcock, Informed Citizens United; A.R. Rusty Senac, City of Beach City, Chambers County; Robert Stokes, Harris County; Chuck Wemple, Galveston Bay Foundation  
  
Against — Jon Fisher, Texas Chemical Council; Mary Miksa, Texas Association of Business and Chambers of Commerce
- BACKGROUND:** The Texas Commission on Environmental Quality (TCEQ) requires a permit for nonhazardous industrial waste disposal. TAC, Title 30, pt. 1, ch. 335, subch. A, rule 335.4 prohibits the disposal of industrial solid waste in such a manner that causes:
- the discharge or threat of discharge of waste into the waters without specific authorization from TCEQ;
  - the creation and maintenance of a nuisance; or
  - the endangerment of public health or welfare.
- DIGEST:** CSHB 2554 would direct the Texas Commission on Environmental Quality (TCEQ) to adopt, as soon as practicable, rules governing all aspects of the management and operation of a new commercial landfill for nonhazardous industrial waste that had not been issued a permit on or before the bill's effective date. TCEQ would have to suspend the permitting process for any pending application until the new rules went into effect. The rules would apply to every application filed on or after the bill's effective date and to any pending applications. TCEQ could allow an applicant to amend a pending application to conform to the new rules.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 2554 would require TCEQ to adopt specific rules governing the management and operation of a nonhazardous industrial solid waste landfill. Instead of rules, the agency currently uses the general performance standards in the Texas Administrative Code to evaluate permit applications. However, these standards do not include the technical specifications necessary to evaluate a proposed facility thoroughly. The agency has initiated a rule-making process to adopt specific rules for these facilities. The bill simply would require the agency to adopt these rules as soon as practicable and suspend approval of pending permits until the new rules were adopted.

The technical guidelines issued by the agency on industrial nonhazardous waste facilities are not rules. The guidelines have not been adopted formally by the commission, nor published in the Texas Register. Moreover, courts have affirmed that the agency cannot use the guidelines as rules in the permitting process.

The bill would not be an attempt to prevent a proposed industrial landfill in Chambers County. In fact, it would specify that an applicant could amend a pending application to conform to the new rules. The bill would require TCEQ to adopt specific rules because the general standards currently in place are inadequate for proper evaluation of any proposed facility. If an industrial waste landfill is improperly designed or operated, contaminants, such as heavy metals or other pollutants, can leak into public groundwater supplies or the environment. Specific technical rules are necessary to ensure that a proposed facility would not pose a threat to human health or the environment. In fact, the current lack of specific rules is troublesome for both sides in a dispute over a permit application. Specific rules benefit a permit applicant because they reduce uncertainty in the permitting process. For facility opponents, they provide specific and objective criteria with which to evaluate a permit application.

**OPPONENTS  
SAY:**

The bill would contradict TCEQ's policy of using performance standards for nonhazardous industrial solid waste facilities. Since the early 1970s, TCEQ and its predecessor agencies have chosen to use performance-based standards

to evaluate permits for these facilities. Performance-based standards are not frozen in time to a specific technology like the prescriptive rules envisioned by the bill. The performance standards ensure that a proposed facility would not allow waste contaminants to escape into groundwater or surface water, or become a nuisance or danger to the public. In addition, TCEQ has issued technical guidelines indicating how a facility should be built. The applications under current standards are detailed technical documents, often including multiple binders of information and analysis.

The bill would be an attempt to address a local issue through legislation that would apply to the whole state. Opponents of the proposed facility in Chambers County have had the opportunity to voice their concerns in the permitting process. The issue currently is being litigated and the state should not enact a law to regulate an issue that is being handled by the courts.

NOTES:

The committee substitute modifies terminology used in the bill as introduced, changing “nonhazardous industrial solid waste facilities” to a “commercial landfill facility that proposes to accept nonhazardous industrial solid waste.”

The companion bill, SB 1539 by Williams, has been referred to the Senate Natural Resources Committee.

A related bill, HB 2052 by W. Smith and Eiland, which would prohibit TCEQ from issuing a permit for a proposed industrial solid waste landfill if the proposed site was in a certain location and the county commissioners court recommended denying the application, was considered in public hearing by the Environmental Regulation Committee on April 1. Another related bill, HB 2955 by W. Smith, et al., which would prohibit TCEQ from issuing a permit if a proposed facility would require a federal permit or extend within 25 feet of an aquifer, was reported favorably, as substituted, by the Environmental Regulation Committee on April 22.