

- SUBJECT:** Reduced penalties for rock crushers and concrete plants without permits
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 6 ayes — Bonnen, Driver, Homer, T. King, Kuempel, W. Smith
0 nays
1 absent — Howard
- WITNESSES:** For — Mary Miksa, Texas Association of Business; Mike Stewart, Texas Aggregates and Concrete Association
Against — Cyrus Reed, Lone Star Chapter, Sierra Club
- BACKGROUND:** Sec. 382.0518 of the Health and Safety Code requires that an entity obtain a permit before beginning construction of a new facility or beginning modification of an existing facility that may emit air pollution. TCEQ is authorized to use various criteria in deciding to issue a permit, including the applicant's compliance history and the facility's use of environmentally sensitive technology.
- The 77th Legislature in 2001 enacted SB 1390 by Brown to provide TCEQ with stronger enforcement tools for entities that operate rock crushers or concrete plants without a permit. Water Code, sec. 7.052(b) provides a penalty of \$10,000 for operating a rock crusher or concrete plant that performs wet batching, dry batching or central mixing without a permit. Each day the rock crusher or concrete plant continues to operate without a permit is to be considered a separate violation, warranting an additional \$10,000 fine.
- Water Code, sec. 5.5145 requires TCEQ to issue an emergency order to suspend immediately operations of a rock crusher or concrete plant that is found to be operating without a permit.
- DIGEST:** CSHB 1429 would amend Water Code, secs. 5.5145 and 7.052(b) to exempt rock crushers and concrete plants with expired permits from the penalties assessed against those that have failed to obtain permits or have had their permits suspended.

CShB 1429 would assess a penalty of not less than \$5,000 and not more than \$10,000 for constructing a rock crusher without the required preconstruction permit, instead of the existing \$10,000 penalty. Also, it would repeal the requirement that each day that a rock crusher or concrete plant operates without a permit is a separate violation warranting an additional penalty.

The bill would take effect on September 1, 2005.

**SUPPORTERS
SAY:**

The current law, enacted in 2001, was intended to penalize those who completely disregarded the law by operating rock crushers or concrete plants without ever having obtained a permit. However, the law has since been shown to have unintended consequences, such as the targeting of legitimate businesses that previously have obtained permits for their operations.

Requiring an operation immediately to shut down and imposing a fine of \$10,000 per day is an extremely harsh penalty and should not be applied to those who previously have obtained a permit from TCEQ. A business with an expired permit from TCEQ should not be subject to the same penalty as a business that never has obtained a permit from the agency.

The penalties of immediately stopping operations and being subjected to a fine of \$10,000 per day are unnecessarily strict. Instances have arisen in which rock crushing operations that were unaware of their permit status have been charged excessive fines as a result of the provision requiring that each day of operation without a permit warrants an additional \$10,000 fine.

CShB 1429 would take into account the difficulty of the permitting process for the operation of rock crushers and concrete plants and would provide some needed regulatory flexibility for those who already have their permit. Air quality permits for rock crushers and concrete plants are difficult to obtain from TCEQ. Applicants must conform to a number of rigid specifications. For example, applicants must be able to show their site plan, have the yard paved and use the most environmentally friendly technology available, among other requirements.

The process of obtaining a permit from TCEQ can be extremely costly for small businesses as a result of the potential for contested hearings. If an application for a permit is contested, the permitting process can be

prolonged for several months, depending on the circumstances. Businesses lose the profits they would have made had they been able to operate during this time.

**OPPONENTS
SAY:**

Rock crushers and concrete plants need stricter, not less strict, regulation. Rock crushing and concrete plant operations pollute the air with dust and particulate matter and should be closely regulated. CSHB 1429 would move in the opposite direction of improving air quality by exempting certain polluters from being penalized for failing to obtain permits.

CSHB 1429 would remove important and effective enforcement mechanisms from TCEQ. The ability for TCEQ to shut down and heavily fine any rock crusher or concrete plant creates a deterrent to those who may otherwise have opted to operate without a permit.

NOTES:

The substitute refers to "a rock crusher or concrete plant for which the permit has expired" rather than "a rock crusher or concrete plant for which the permit is invalid because it has not been renewed." Also, the substitute would impose a fine of not less than \$5,000 and not more than \$10,000 for the construction of a rock crusher without a preconstruction permit.

The companion bill, SB 1171 by Armbrister, has been referred to the Senate Natural Resources Committee.