

SUBJECT: Allowing construction during Clean Air Act permit process

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 6 ayes — Bonnen, Driver, Homer, T. King, Kuempel, W. Smith
0 nays
1 absent — Howard

SENATE VOTE: On final passage, April 26 — 27-0

WITNESSES: For — None
Against — Cyrus Reed, Lone Star Chapter of Sierra Club

BACKGROUND: The Texas Clean Air Act, Health and Safety Code, ch. 382, has as a stated purpose safeguarding the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants. Under the Act the Texas Commission on Environmental Quality (TCEQ) may issue a permit for construction or modification of a facility that may emit air contaminants. Applications for such a permit must include copies of all plans and specifications necessary to determine if the facility will comply with applicable federal and state air control statutes, rules, and regulations and with the intent of the act.

"Modification of existing facility" means any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted.

The U.S. Environmental Protection Agency (EPA) designates ozone nonattainment areas pursuant to the federal Clean Air Act of 1990. In the State Implementation Plan (SIP), the state agrees to implement specific measures or strategies to reduce ozone producing emissions to meet EPA standards by certain deadlines. The EPA can impose sanctions on an area if a state fails to submit a SIP that fully adopts specific

programs and describes how a region will reach attainment or if an activity of the SIP is not being implemented.

DIGEST: SB 1740 would allow construction to begin after a certain permit applications had been submitted but before TCEQ had made a determination on issuing the permit. It would apply to permits under the Texas Clean Air Act for a modification or a lesser change to an existing facility. Construction before TCEQ's permitting determination would be at the risk of the entity undertaking construction and would have to be permissible under federal law.

When deciding whether to grant the permit, the commission could not consider the fact that construction already had begun on the project.

The bill would take effect September 1, 2005, and would apply only to an application for a permit issued by TCEQ that was submitted to the commission on or after that date.

SUPPORTERS SAY: Currently, an applicant seeking a Clean Air Act pre-construction permit must obtain a final decision on the permit from TCEQ before beginning construction. This delay can cause hardships for the business doing the construction. This bill would help these businesses adhere to a schedule.

The state would not be at risk if the applicant decided to start construction because the risk would be taken by the applicant. The bill also would apply to lesser actions for which little or no financial or environmental risk should be involved. In the rare event of an environmental risk, TCEQ would shut down any construction that was deemed to have a negative impact on air quality. Also, this change in procedure would have to be permissible under federal law.

OPPONENTS SAY: If a particular construction plan would have a negative health impact, TCEQ should have a chance to prevent the possible damage before work was undertaken. The permit procedure exists for the public's protection, and it is not enough to rely on the possibility that TCEQ would be able to shut down a project deemed to have a negative impact on air quality once construction started without a permit.

Construction of modifications so minor that they do not meet the requirements for requesting TCEQ authorization or permits already is allowed in statute. Furthermore, the bill's language is ambiguous as there

is no definition of "a lesser change to an existing facility." Defining "lesser change" would allow TCEQ more accurately to determine the influence the bill might have on the SIP. If it were determined that these changes negatively would influence ozone levels, then TCEQ rules might have to put emissions restrictions on other entities in order to comply with EPA emissions requirements. As a result, the additional hurdles for business might exceed the benefits intended by the bill.

**OTHER
OPPONENTS
SAY:**

This change could require a revision to the State Implementation Plan (SIP), which would need to be approved by the Environmental Protection Agency. The EPA could not approve a change that would interfere with the attainment of national ozone standards, and this bill could affect those standards. Final authorization of the bill should be linked to EPA approval of the permitting changes in the bill.