

SUBJECT: Emergency response costs and other requirements at solid waste facilities

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Bonnen, Hancock, Lucio, Driver, T. King, Kuempel, West
0 nays

WITNESSES: For — Jonathan S. Allan, City of Helotes, Linda Boyer-Owens, David E. Chardavoyne, San Antonio Water System; Renee Green, Bexar County (*Registered, but did not testify*: Sarah Baker, Greater Edwards Aquifer Alliance; Jennifer Brown, City of San Antonio; Beth O'Brien, Public Citizen)

Against — Jerome Alder, Austin Wood Recycling; Casey Johnson, C & D Waste Ltd. of Lubbock; Vance Kemler, TxSWANA Texas Chapter/Solid Waste Association of North America/City of Denton; Bart McKay, Silver Creek Materials and Compost; Adrian L. Neely, Triad C & D Recycling; Mark Rose, Living Earth Technology/The Letco Group; Wade Wheatley; Texas Disposal Systems (*Registered, but did not testify*: Eric Glenn, Texas Aggregate and Concrete Association)

On — Glenn Shankle, Texas Commission on Environmental Quality

BACKGROUND: Under federal law, Texas must comply with U.S. Environmental Protection Agency (EPA) air quality standards to reduce ground-ozone emissions in non-attainment and near non-attainment areas. Non-attainment areas have failed to meet federal standards for ambient air quality. Near non-attainment areas currently meet federal standards but are at risk of violating standards. The State Implementation Plan (SIP) outlines Texas' strategy to reach compliance with federal standards.

Three near non-attainment areas have Early Action Compacts (EAC), including Austin, San Antonio, and Northeast Texas. These areas have submitted EAC plans that were used to develop SIP strategies to reduce emission standards to meet the eight-hour ozone standard.

On December 25, 2006, a brush pile measured at 70 feet tall and 400 feet long caught fire at a compost and mulch facility in the town of Helotes.

DIGEST:

HB 2541 would permit TCEQ to respond to certain emergencies, regulate certain recycling facilities, and establish permit requirements for facilities located on aquifers.

Fire or emergency response. The bill would permit TCEQ to make an immediate response to a fire or other emergency involving solid waste in order to protect public health or safety. The solid waste would include processed or unprocessed material suitable for recycling or composting. The state's solid waste fund could be used in responding to such incidents.

TCEQ could recover expenses incurred for responding to this type of an incident from persons legally responsible for solid waste. The state would be permitted to file a lawsuit to collect these expenses. If the commission used money from the solid waste fund to respond to a fire or other solid waste emergency, the money collected from the responsible party would be deposited to the state treasury to TCEQ until the amount deposited equaled the amount of dedicated money used.

Regulation of recycling facilities. TCEQ could regulate recycling facilities that stored combustible materials. Specifically, these regulations would apply to recycling facilities located in counties with more than 1.3 million residents and with an EAC. The commission could:

- require a recycling facility to grind, compost, recycle, or transfer to another facility at least 50 percent of the combustible recyclable materials that had been received and accumulated at the facility within a year;
- limit the storage capacity of a recycling facility that may operate without obtaining a permit or registering with TCEQ;
- Limit the size of a pile of combustible recyclable materials at a recycling facility, including composting material or mulch;
- impose different standards for the registration of recycling facilities according to the size and number of piles of combustible materials stored or processed at the facility;
- require a recycling facility to create fire lanes between piles of combustible materials; and
- require buffer zones between a recycling facility and a residence, school or church.

Requirements for facilities located on an aquifer: Recycling facilities located on a recharge zone or transition zone of a sole source aquifer would be subject to certain rules set by the commission. At these facilities, TCEQ could:

- impose heightened standards for permits issued; and
- require the installation of groundwater protection features, such as liners and monitoring wells.

The bill would take effect on September 1, 2007. A rule adopted by TCEQ pertaining to this legislation would not become effective until a year after the bill's effective date.

**SUPPORTERS
SAY:**

CSHB 2541 would help ensure that a fire like the one in Helotes in 2006, along with the resulting damage to air and water quality, did not occur again. The Helotes fire resulted in the devastation of the area's air and water quality because there was no regulatory authority over the facility. As that incident demonstrated, clear authority over fires or other solid waste emergencies is needed. The poor air quality in certain areas of the state justifies TCEQ's stricter regulatory authority over recycling facilities that store combustible materials. The importance of sole source aquifers, such as Edward's Aquifer, warrant stricter standards at recycling facilities to prevent future incidents of seepage.

Authorities believe the Helotes fire was caused by spontaneous combustion of organic matter. Fifteen miles from San Antonio, Helotes is located in a near non-attainment area. The compost and mulch facility is located over a recharge zone for the Edward's Aquifer, the source of water for over 1.8 million people. On December 31, a private firefighting company determined that the fire would require more than 100 million gallons of water to extinguish or it could burn for more than a year unattended. The facility's owner, local officials, and state officials could not agree on who should take authority over the fire. In the meantime, the fire contaminated seven aquifer wells with firefighting runoff. The fire's smoke negatively impacted the region's air quality, forcing school closures and residential evacuations. At a cost of \$5.5 million, the fire finally was extinguished on March 27, 2007, by a private contractor.

The state needs the tools and authority to respond more quickly to a fire or other emergency involving solid waste. The bill would remedy any future disagreements over which entity had the authority to respond to a fire or

other such solid waste emergency. CSHB 2541 also would give TCEQ greater ability to regulate the storage of combustible materials at recycling facilities to prevent such incidents in the first place. Also, the bill would strengthen and clarify the regulatory authority over solid waste disasters and recycling facility practices. The proposed rules would fit in with TCEQ's existing authority.

The common-sense rules included in the bill would better enable TCEQ to protect the air and water quality in certain areas of the state. The Helotes fire resulted in environmental damage, deteriorating air quality and forcing the temporary evacuation of residents and closures of schools. In the process of extinguishing the fire with water, contaminated water seeped into the aquifer and resulted in dirty water in nearby wells. Normally, the water from the Edward's Aquifer is so clean that many water providers don't need treatment facilities. The provisions in CSHB 2541 would prevent such incidents in the future, thereby enabling TCEQ to fulfill its objectives in protecting the state's environmental quality.

Other components included in the bill are reasonable and would allow for the smooth implementation of CSHB 2541. Funding the bill also would be feasible, given that more revenue typically exists in the solid waste fund than is appropriated. Also, the bill would give recycling facilities a year to comply with the rules that TCEQ would adopt for provisions set forth in the bill. Certain components of the bill would not apply to all areas of Texas, given that sufficient time did not exist to include all stakeholders in the discussion.

**OPPONENTS
SAY:**

Recycling facilities legitimately engaged in the compost and mulch business do not have problems with fires. These facilities monitor pile temperatures to reduce fire hazards, utilize grinding and processing equipment, and maintain their own fire trucks and fire-fighting units. By contrast, many facilities claim to be in the compost and mulch business, but actually are operating illegal dump sites with no intention to recycle to make compost and mulch. The Helotes fire occurred at such a site. CSHB 2541 would penalize legitimate facilities for the problems that have occurred at illegitimate facilities. Instead of subjecting responsible businesses subject to stricter regulations, the bill should include provisions to better regulate facilities that do not follow standard business practices.

Certain provisions of the bill would apply only to specific regions of the state. Taxpayers across Texas should not have to pay for the regulation of

facilities in counties with EACs and populations over 1.3 million people. Also, state taxes should not fund the permit requirements for facilities located over sole source aquifers. Instead, more authority is needed at the local level. Counties should be held accountable and authorized to ensure compliance over such facilities. The Helotes fire should have been addressed by local officials with local funding.

**OTHER
OPPONENTS
SAY:**

The provisions in this legislation are important due to the fact that recycling facilities currently are under-regulated. The bill should be amended to give TCEQ increased authority to regulate certain recycling facilities in all parts of Texas.

NOTES:

The committee substitute added the provision allowing the commission to recover from a person responsible for solid waste the reasonable expenses incurred during a response and remediation and to deposit it in the state treasury to the credit of the commission. It also added a provision making the bill applicable to facilities in counties with populations of more than 1.3 million and that were subject to an EAC.