

SUBJECT: Restricting TCEQ regulation of emissions from residential water heaters

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Bonnen, Hancock, Lucio, T. King, Kuempel, West

0 nays

1 absent — Driver

WITNESSES: For — Richard Bye, CenterPoint Energy/Atmos Energy/Texas Gas Service; (*Registered, but did not testify*: Kathy Garcia, CPS Energy - San Antonio; Rick Grundman, Texas Gas Service; Celina Romero, Atmos Energy)

Against — Tom “Smitty” Smith, Public Citizen

On — David Schanbacher, Texas Commission on Environmental Quality

BACKGROUND: The State Implementation Plan (SIP) outlines Texas’ approach for complying with the federal air quality standards set forth by the U.S. Environmental Protection Agency (EPA). Strategies in the SIP focus on reducing nitrogen oxide (NO_x), a precursor to ozone formation. To comply with EPA standards, the state must reduce NO_x emissions to a specific number of tons per day. Federal sanctions may be imposed on Texas if the state fails to comply with the SIP.

An emissions standard for gas-fired water heaters sold, distributed, or installed is outlined in Title 30 of the Texas Administrative Code. In ch. 117, subch. D, div. 1, sec. 117.465 (b)(2), the NO_x emission limit for residential gas-fired water heaters is set at 10 nanograms/Joule (ng/J). In 2004, the Texas Commission on Environmental Quality (TCEQ) voted to delay the implementation of this emissions standard until 2007.

In 2005, the 79th Legislature enacted HB 965 by Haggerty, which required TCEQ to perform a study on the technical and economic feasibility of regulating water heaters. According to TCEQ’s report, residential water heaters that meet the lower emission standard of 10 ng/J are not cost-effective. The report recommended that TCEQ repeal rules concerning

residential water heaters by December 31, 2006, and propose emission reductions to offset the SIP credits.

DIGEST: CSHB 2712 would prohibit TCEQ from adopting or enforcing regulations to limit emissions from residential water heaters to less than 40 ng/J of NO_x. TCEQ would be able to adopt or enforce such a regulation only if a lower limit were established at the federal level.

The bill would strike and repeal expired provisions from Health and Safety Code, sec. 382.0275.

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, 2007.

SUPPORTERS SAY: CSHB 2712 would follow TCEQ's own recommendation to prohibit the imposition of economically and technically infeasible empirical limits on residential water heaters. The installation of residential water heaters emitting less than 40 ng/J of NO_x currently is impractical, and the bill would ensure that this regulation was not imposed upon the people of Texas.

In 2005, HB 965 responded to the lack of information regarding the economic and technical practicality of regulating NO_x emissions from residential water heaters. Manufacturers' reports indicated that they could not produce residential natural gas-fired water heaters that met the 10 ng/J standard by January 1, 2007, when the regulation of residential water heaters was set to begin in the SIP. As a result, TCEQ's executive director signed a memorandum to allow residential water heaters emitting 40 ng/J to be manufactured and installed after January 1, 2007. Also, TCEQ began a rulemaking process to repeal the rule on residential water heaters. This procedure was included in the most-recent SIP for the Dallas-Fort Worth and Houston-Galveston-Brazoria regions, which began in December 2006 and is still being crafted. CSHB 2712 simply would reflect these rulemaking developments in statute.

Manufacturers expect to produce water heaters that meet the 10 ng/J emission limit by January 2008. However, these water heaters will cost \$90 to \$125 more than currently available water heaters. Also, these water heaters will have storage capacities of only 50 gallons or less. Consequently, these heaters will not be desirable for public use.

The bill would not prohibit TCEQ from regulating residential water heaters in the case of lower limits set at the federal level. This would position Texas to comply with future federal laws or rules if necessary.

OPPONENTS
SAY:

Residential water heaters are a large source of NO_x emissions. The NO_x emitted from gas water heaters results in the creation of ozone. In order to meet the SIP requirements, Texas must make a concerted effort to implement NO_x reductions strategies set forth in the SIP. CSHB 2712 would prevent the implementation of these emission reduction standards.

The current rule on cleaner residential water heaters is a smart approach to reduce NO_x emissions. Cleaner residential water heaters represent an appropriate choice for installation in new buildings. Although this technology is more expensive, it is an important means of improving air quality. Use of this technology should be promoted rather than circumvented.

NOTES:

The committee substitute would have the same effect as the bill as introduced, but it would repeal sec. 382.0275(c) rather than striking the language.