

SUBJECT: Solid waste permit requirements

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Chisum, Jackson, Dukes, Howard, Kuempel, Talton, Yost

0 nays

2 absent — Saunders, Stiles

WITNESSES: For — Duncan Norton, Waste Management of Texas; Lena Guerrero, Safety-Kleen Corporation; Jack Carmichael, Texas Chapter of Solid Waste Association of North America

Against — None

DIGEST: CSHB 2441 would limit the authority of the Texas Natural Resource Conservation Commission (TNRCC) to conduct a hearing on the amendment of a solid waste facility permit. A hearing could be held only if the application proposed major changes in the facility's design, operations or procedures that would invoke significant regulatory review or a modification of the rights of a person affected by the proposed amendment.

The bill would also specify the scope of a hearing granted to a person affected by an application to amend, extend or renew a permit held by a solid waste facility. The hearing issues would be limited to:

- the permit applicant's compliance record during the current term of the permit;
- whether the applicant owed fees, taxes, fines or assessments to the state;
- whether the applicant knowingly made a false or misleading statement in connection with an original or renewal application and

- whether the applicant had demonstrated compliance with regulatory requirements applicable to the new or expanded operations addressed in the application.

Denials of applications to amend, renew or extend a permit would be allowed only if, after an opportunity for a hearing, TNRCC found that:

- a significant violation existed that the applicant has not made a substantial attempt to correct;
- the applicant knowingly made a false or misleading statement in connection with an original or renewal application; or
- the applicant was unable to demonstrate compliance with regulatory requirements for the change in the permit.

CSHB 2441 would also provide that a facility required to obtain multiple permits could file the permits simultaneously, and the TNRCC would be required to hold one consolidated hearing on all the permits.

A municipal solid waste facility would not be required to obtain a separate air quality permit.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

CSHB 2441 would help to streamline and clarify the process by which extensions and renewals of solid waste permits are handled by TNRCC. TNRCC would not be particularly limited in decision-making abilities — the bill would merely require that attention be focused on the important issues that need to be addressed regarding permit changes (health and safety of the public and noncompliance issues) rather than the frivolous side issues that are often used to delay permit requests.

CSHB 2441 would not preclude public access to hearings on any pertinent or significant item regarding noncompliance (which could affect health and safety or the environment), but would bar the discussion of issues that were not germane and that would merely serve to delay permit hearings. These

delays are extremely expensive for municipal solid waste facility operators and TNRCC.

Landfills have to be put somewhere. Texas produces 18 million tons per year of municipal solid waste. The number of active solid waste facilities in Texas is declining precipitously as landfills become full, and many cannot afford to comply with strict new regulations imposed under Subtitle D of the federal Resource Conservation and Recovery Act (RCRA). Federal regulations are changing so fast that permits must be frequently modified. CSHB 2441 would increase industries' flexibility to comply promptly with these regulations.

Landfills are vital in protecting the health and safety of the public and are strictly regulated under both state and federal guidelines, and most employ the best available control technology (BACT). CSHB 2241 would ensure that solid waste industry applications for permit changes are not tied up endlessly by those who object to a change in permit.

Past compliance history will have already been addressed during the applicant's initial permit hearing, and it is redundant and time-consuming to bring it up again. What is essential is compliance during the current permit period.

It would be an excellent idea to hold one consolidated hearing for a facility required to simultaneously obtain multiple permits. This would save time and money for both the permittee and the permitting agency, cut down on unnecessary bureaucracy, streamline the entire permitting process and make it easier for interested parties to keep up with the permitting process.

TNRCC does not require solid waste facilities to obtain separate air permits — the bill would merely codify what is current practice. Air quality requirements are already incorporated into the municipal solid waste facility's permit.

**OPPONENTS
SAY:**

CSHB 2441 would seriously restrict TNRCC's ability to ensure that existing solid waste facilities (hazardous, industrial and municipal) are not a danger to public health, by substantially limiting the scope of TNRCC's decision-making ability regarding permit changes as well as limiting the

public's ability to participate in agency decisions on municipal solid waste permits.

Renewal or amendment of a permit could only be denied for very specific criteria. TNRCC would have little flexibility in making permit decisions, and would have to prove a specific condition existed, before a permit change could be denied (shifting the burden of proof from the permit holder to TNRCC). Currently, TNRCC can revoke a permit if the applicant submits a false statement — the bill would change that to "knowingly" submitting a false statement. It would be very hard to prove that an applicant "knowingly" made a false statement.

CSHB 2441 would leave TNRCC, as well as people adversely affected by facilities, with little room to respond to specific, local or newly discovered conditions (like new evidence of groundwater vulnerability). The facility's past compliance history should be taken into account to try and track any ominous patterns of past noncompliance.

Limiting when a hearing could be conducted and narrowing the scope of hearings to specific criteria would narrow the possibility for public participation regarding facilities that could have a significant impact on their quality of life and property values. The bill would give TNRCC broad discretion to grant significant permit amendments with no public participation. No hearing, for example, could be conducted on a permit change unless it proposed a "major or substantive" change. If TNRCC defines "major" broadly, hearings would not be held on the majority of permit changes.

TNRCC's ability to protect the public health would be weakened by providing that the agency could not require a municipal solid waste facility to obtain a separate air pollution permit.

TNRCC can already consolidate permit hearings. CSHB 2441 would limit TNRCC's flexibility in deciding when a consolidated hearing should be held by requiring such a hearing if permits were filed "simultaneously".

NOTES:

The committee substitute specified that an applicant would have to "knowingly" make a false statement, and added the provision regarding consolidated hearings.

The original version of HB 2441 provided that before an application could be denied, an applicant who had been unable to demonstrate compliance with a new requirement had also not proposed a reasonable schedule for meeting the new requirement. The original bill also provided that the commission could conduct a public meeting on an application to amend a permit instead of a hearing.