

SUBJECT: Allowing wastewater discharge permit renewals without public hearings

COMMITTEE: Natural Resources — favorable, with amendment

VOTE: 8 ayes — Counts, T. King, Cook, Corte, Hamric, R. Lewis, Shields, Walker
0 nays
1 absent — Puente

WITNESSES: For — Monte Akers, Texas Municipal League
Against — Ken Kramer, Sierra Club, Lone Star Chapter
On — Margaret Hoffman, Texas Natural Resource Conservation Commission

BACKGROUND: Current law requires the Texas Natural Resource Conservation Commission (TNRCC) to give notice to persons who, in the commission's judgment, may be affected by an application for a permit, permit amendment, or permit renewal for wastewater discharge. On the motion of a TNRCC commissioner, a request by the executive director of the agency, or a request by an affected person, TNRCC must hold a public hearing on the application for the permit, permit amendment, or permit renewal.

However, applications to amend permits to *improve the quality* of the waste authorized for discharge may be set for consideration and acted upon by the commission at a regular meeting without a public hearing, as long as the applicant does not seek to increase significantly the quantity of waste authorized to be discharged or to change materially the pattern or place of discharge.

DIGEST: HB 1479, as amended, would allow TNRCC to approve a renewal or an amendment of a wastewater discharge permit at a regular meeting without the necessity of holding a public hearing, as long the activities to be authorized by the renewal or amendment would *maintain or improve* the quality of waste to be discharged and the applicant was not seeking to increase the quantity of waste authorized to be discharged or to change the pattern or place of discharge.

For Texas Pollutant Discharge Elimination System (TPDES) permits, the commission would have to give notice and the opportunity to request a public meeting in compliance with TPDES program requirements. The commission would have to consider and respond to all timely and significant public comment.

HB 1479, as amended, would take effect September 1, 1999, and would apply only to an application to renew or amend a wastewater discharge permit that was filed on or after that date.

**SUPPORTERS
SAY:**

HB 1479, as amended, would allow permit holders who merely are renewing their permits without changing the quantity or quality of their authorized wastewater discharge to do so without the unnecessary delay of a public hearing. Any affected person who might have had a problem with the permit could have asked to be given standing for a contested case hearing when the original permit application was filed.

It is unfair to expose a permit holder to the possibility of a costly and time-consuming contested case hearing if the permit renewal or amendment would not affect the quality, quantity, or location of discharge. Contested case hearings sometimes are misused by people who want to delay facilities for political reasons or by those who did not succeed in stopping the original application and are using the permit renewal process to try to force the applicant to defend the application all over again. Cities who hold discharge permits are forced to pass on these unnecessary costs to their customers.

The bill would not affect notice and public hearing requirements for first-time applicants for wastewater discharge permits. Thus, it would not curtail the right of the public to participate in the environmental permitting process. Indeed, the bill as amended would reduce the number of permit amendments that could escape hearing requirements, because someone amending a permit could escape a hearing only if the amendment did not seek to increase the quantity or change the pattern of discharge. Under current law, the applicant can escape a hearing if the amendment would not increase the discharge quantity "significantly" or change the pattern "materially."

TNRCC would have to give notice of TPDES permit amendments and renewals and to provide the opportunity to request a public meeting in compliance with TPDES program requirements. The commission would have

to consider and respond to all prompt and significant public comment.

Allowing public meetings for TPDES permits would ensure that Texas is able to maintain delegation of the National Pollutant Discharge Elimination System (NPDES) program. In September 1998, the U.S. Environmental Protection Agency delegated administration of the NPDES program to TNRCC, freeing holders of wastewater discharge permits in Texas from having to obtain both state and federal permits.

**OPPONENTS
SAY:**

HB 1479, as amended, would deny those who might be affected by the amendment or renewal of a wastewater discharge permit the right to request a contested case hearing. This would erode the public's right to participate in the environmental permitting process. During permit renewals, the operators of municipal or industrial facilities should have to face the possibility of a hearing so they can be made aware of problems caused by their discharges. The bill would prevent a concerned citizen from requesting a hearing on a permit renewal or amendment even if the applicant was an industrial facility with a bad compliance record and a history of discharging toxins in violation of the permit.

Under the bill, a citizen no longer could request a public hearing on the proposed renewal of an industrial or municipal wastewater discharge permit in certain circumstances. The bill also would expand the number of permit amendments that TNRCC could act on without a hearing by stipulating that this would be allowed for amendments that merely would maintain, rather than improve, the quality of waste to be discharged.

HB 1479 is another in a long series of bills, enacted in the name of streamlining the regulatory process, that create barriers to public participation in the environmental permitting process. The Legislature should not continue to chip away at the right of the public to participate meaningfully in these decisions.

NOTES:

The committee amendment would allow, rather than require, TNRCC to approve permit renewals or amendments without hearings. The committee amendment would add the phrase that the commission could approve such applications "at a regular meeting without the necessity of holding a public hearing."

Committee amendments also would delete the word “significantly” from the phrase “increase significantly the quantity of waste authorized to be discharged” and deleted the word “materially” from the phrase “change materially the pattern or place of discharge.” The committee amendment also would add the provision requiring public meetings for TPDES permits.

A related bill, HB 1283 by Counts, would eliminate the cap on general permits for wastewater discharges. The House passed HB 1283 on March 23, and the Senate Natural Resources Committee reported the bill favorably without amendments on April 16.