

SUBJECT: Notice and hearing procedures for multiple plant permits

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 5 ayes — Chisum, Bonnen, Kuempel, Uher, Geren  
0 nays  
4 absent — Bosse, Dukes, Howard, Zbranek

SENATE VOTE: On final passage, February 28 — 30-0

WITNESSES: None

BACKGROUND: Health and Safety Code, sec. 382.05194(a) sets requirements for applying for a multiple plant permit (MPP). An MPP, an air-emissions permit for multiple plant sites owned or operated by the same person or persons under common control, is subject to certain restrictions.

Sec. 382.05194(d) requires the Texas Natural Resource Conservation Commission (TNRCC) to publish notice of a proposed MPP for existing facilities in the *Texas Register* and in one or more statewide or regional newspapers designated by TNRCC as providing reasonable notice throughout the state. If the MPP would affect only part of the state, the notice must be published in a newspaper of general circulation in the affected area. TNRCC may require additional notice. The notice must include an invitation for written comments by the public regarding the MPP. The notice must be published at least 30 days before the date TNRCC issues the MPP.

Sec. 382.05194(e) requires TNRCC to hold a public meeting to provide an additional opportunity for public comment. TNRCC must give notice of the meeting, as part of the published notice, at least 30 days before the date of the meeting. Sec. 382.05194(f) requires TNRCC to issue a written response to public comment related to a proposed MPP at the same time that it issues or denies the permit. The response must be made available to the public, and TNRCC must mail the response to each person who made a comment.

**DIGEST:** SB 688 would repeal the current notice, public meeting, and response provisions for MPPs and replace them with new provisions, including an alternative notice procedure for small business stationary sources.

The applicant for an MPP, rather than TNRCC, would have to publish notice of intent to obtain an MPP in accordance with procedures for a standard permit, except that the notice would have to be published in one or more statewide newspapers or regional newspapers that provided reasonable notice throughout the state. If the MPP for existing facilities would affect only part of the state, the notice would have to appear in a newspaper of general circulation in the affected area. TNRCC could require additional notice.

TNRCC could authorize an MPP applicant that was, or was part, of a small business stationary source to provide notice using an alternative method if TNRCC found that the proposed method would result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected people, the cost, and consistency with applicable federal requirements.

TNRCC would have to provide an opportunity for a public hearing and the submission of public comment and would have to send notice of a decision on an application for an MPP permit in the same manner as provided by secs. 382.0561 (hearing for a federal operating permit) and 382.0562 (notice of decision).

A person affected by a TNRCC decision to issue or deny an MPP could move for rehearing and would be entitled to judicial review under the current provisions for appeal of a commission action.

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, 2001.

**SUPPORTERS SAY:** SB 688 would consolidate and separate the notice provisions for MPPs. It would bring public hearing requirements into line with required hearings for federal permits instead of requiring a different hearing protocol. This would make the hearing process less confusing for both businesses and citizens.

The bill would shift to the applicant the cost of publishing notice of an MPP application notice. It also would conform with federal law by establishing alternative notice provisions for small businesses.

**OPPONENTS  
SAY:**

The bill should not provide for alternative notice, which federal law does not require specifically. Texas citizens are used to seeing required legal notices in newspapers and would be confused by, or possibly not reached by, alternative notice. Alternative notice would not protect Texas' air quality so much as it would provide businesses with potential cost savings. Such savings should not be a factor in TNRCC's approach to public notice.