

SUBJECT: Making certain TCEQ penalties for rock crushers or cement plants permissive

COMMITTEE: Environmental Regulation — favorable, as amended

VOTE: 7 ayes — Bonnen, Kuempel, Crownover, Chisum, Flores, W. Smith, West
0 nays

WITNESSES: For — Jill Warren, Jobe Concrete Products
Against — Mike Stewart, Texas Aggregates and Concrete Association

BACKGROUND: Water Code, sec. 5.5145 requires the Texas Commission on Environmental Quality (TCEQ) to issue an emergency order suspending operations of a rock crusher or concrete plant performing wet batching, dry batching, or central mixing operating without a required permit. Sec. 7.052(b) specifies that the penalty for operating without a permit is \$10,000. Each day of a continuing violation is considered a separate violation.

DIGEST: HB 1005, as amended, would allow TCEQ to choose to issue an emergency order suspending operations of a rock crusher or concrete plant operating without a required permit. The bill would specify that the penalty for operating without a required permit could not exceed \$10,000. Each day a violation occurred up to 10 days could be considered a separate violation.

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, 2003.

SUPPORTERS SAY: HB 1005 would provide TCEQ with the discretion to issue emergency shut-down orders or impose penalties on rock crushers or cement plants operating without permits. Current law forces TCEQ to issue a shutdown order and impose a mandatory \$10,000 per day penalty. However, a facility's lack of a permit might be due simply to a missed deadline or paperwork delay. The state should not force TCEQ to shut down operations and impose heavy penalties on good actors operating within the spirit of the law who simply missed a filing deadline. HB 1005 would provide the agency the discretion to

determine an appropriate response for a responsible operator with an innocent reason for not having a permit.

The bill would not detract from the agency's power to crack down on unscrupulous operators. TCEQ could assess penalties equal to those under current law. If an operation without a permit posed a danger to employees, the public, or the environment, the agency still would have the authority to shut the operation down and levy a \$10,000 per day penalty. The bill would provide TCEQ the ability to deal appropriately with good and bad actors alike.

**OPPONENTS
SAY:**

This bill would contradict last session's efforts to crack down on irresponsible operators. An increasing number of rock crushers and concrete plants were operating without obtaining the required permits from TCEQ. Plants that do not have permits are not inspected and often do not comply with statutory and administrative guidelines for worker safety, water pollution, and air emissions. Because of this, the 77th Legislature enacted HB 2912 by Bosse, et al., requiring TCEQ to issue an emergency order suspending operations without permits and assess a \$10,000 penalty. HB 1005 would undo these requirements, making it optional for TCEQ to crack down on operators without permits. In effect, the bill would be a step backward and could provide a crutch for irresponsible operators. The state should not make optional the clear requirements in current law.

NOTES:

The committee amendment would specify a maximum of 10 days for assessing separate violations.