SUBJECT: Amending the permitting process for concrete batch plants

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 5 ayes — Bonnen, Chisum, Crownover, Flores, West

0 nays

2 absent — Kuempel, W. Smith

SENATE VOTE: On final passage, April 25 — voice vote

WITNESSES: For — Michael K. Stewart, Texas Aggregates and Concrete Association

Against — None

BACKGROUND: A concrete batch plant produces concrete by mixing ingredients, such as sand or gravel, fly ash, and cement. Cement and fly ash are stored in silos before being transferred to the weigh bin, or central mixer, where the ingredients are mixed to produce concrete. An aggregate, such as sand or gravel, is stored in stockpiles on-site and introduced to the mixture through a feed hopper. The point where the final mixture is transferred to a cement truck for distribution is covered by a suction shroud.

Health and Safety Code, sec. 382.058 prohibits a person from constructing a concrete batch plant under a standard permit or permit by rule unless the person complies with specific notice and opportunity for hearing requirements. The requirements are specified under sec. 382.056, which establishes procedures for providing public notice of a permit application and requesting a contested case hearing on the permit. Only a person living within one-quarter mile of a proposed plant may request a hearing.

DIGEST: SB 1272 would establish technical requirements for granting a standard permit to a concrete batch plant and establish notice and hearing requirements for an applicant that complied with the technical requirements.

TCEQ would have to issue a standard permit for a concrete batch plant that met the following requirements:

- production records would have to be maintained on site until two years after the end of the period to which they related;
- storage silos or weigh hoppers would have to be equipped with fabric or cartridge filters or vented to a filter system;
- filters, filter systems, and suction shrouds would have to be maintained and operated properly with no leaks or tears;
- except for the suction shroud filter system, each filter system would have to meet a standard of at least 0.01 outlet grain loading measured in grains per dry standard cubic foot;
- each filter system and each emissions control device for mixer or truck loading would have to meet a performance standard of no visible emissions over 30 seconds in a five-minute period using a U.S. Environmental Protection Agency testing method;
- if a cement or fly ash silo was filled at night, the silo's filter exhaust system would have to be illuminated enough to enable a determination of whether the system met the visible-emissions performance standard;
- a conveyance system to or from a storage silo would have to be enclosed, operate properly, and be maintained without leaks or tears;
- except during connection or disconnection to a tanker truck, each conveyance system would have to meet the visible-emissions performance standard;
- a warning device would have to be installed on each bulk storage silo to alert the operator before the silo was filled to a level that could harm the pollution-abatement equipment;
- if filling a silo resulted in failure of a pollution-abatement system or failure to meet the visible-emissions performance standard, the failure would have to be documented and reported to TCEQ;
- roads, parking lots, or other vehicle areas at the facility would have to be paved with a cohesive hard surface that was maintained, cleaned, and watered to minimize dust emissions;
- stockpiles would have to be sprinkled with water or dust-suppressants, or covered to minimize dust emissions;
- any batch material that was spilled would have to be cleaned up immediately and contained or dampened to minimize dust emissions;

- the plant could not produce more than 300 cubic yards of concrete per hour;
- a suction shroud or other device would have to be installed at the batch drop point or, in a central mix plant, at the drum feed and vented to a filter system with a minimum capacity of 5,000 feet per minute of air;
- the bag filter and capture system would have to accommodate the increased flow from the suction shroud and have a control efficiency of at least 99.5 percent;
- the suction shroud baghouse exhaust would have to be at least 100 feet from any property line; and
- except for when entering or exiting the site, stationary equipment, stockpiles, and vehicles used at the plant would have to be located or operated at least 100 feet from the property line, unless roads, parking lots, or other traffic areas were bordered by dust-suppressing fencing and each stockpile was contained in a three-wall bunker.

TCEQ could establish a *de minimis* level of air contaminants for a concrete batch plant under which a standard permit would not be required.

Hearing and notice. The bill would establish specific hearing and notice requirements for an applicant that met the technical requirements that would be established by the bill. An applicant could not begin construction until TCEQ authorized the applicant to use the standard permit. An applicant for a concrete batch plant permit that did not meet the technical requirements would have to comply with existing statutory hearing and notice requirements, instead of those that would be established by the bill.

An applicant that met the technical requirements would have to publish notice within 30 days after receiving notice that the application was technically complete or within 75 days after the executive director of TCEQ received the application, whichever was earlier. An applicant would have to publish notice in a general circulation newspaper in the municipality nearest the proposed plant. If the nearest elementary or middle school was required to offer bilingual education, an applicant also would have to publish notice in a publication of that language, unless a publication did not exist or the publisher refused to publish notice. The notice would have to include:

- a brief description of the proposed location and nature of the plant;

- information on how to contact the TCEQ executive director or applicant, including telephone numbers;
- the location and hours of operation of TCEQ's regional office where the application was available for review; and
- a brief description of the public comment process, including the time and location of the hearing and the address and deadline for filing written comments.

The public comment period would extend from the date notice was published to the close of the public hearing.

A public hearing would not have to comply with Health and Safety Code, sec. 382.056 or the Administrative Procedure Act and would not be an evidentiary proceeding. Anyone could submit oral or written testimony at the hearing. An applicant could set reasonable time limits on oral testimony.

An applicant would have to hold the hearing in cooperation with TCEQ's executive director between 30 and 45 days after publication of notice in the county in which the plant was proposed to be built. The executive director of TCEQ would have to approve or deny the authorization to use the standard permit within 35 days after the hearing. The director would have to base the decision on whether the applicant met the requirements that would be established by the bill and consider comments received during the public comment period and hearing. If the application was denied, the executive director would have to state the reason for the denial and any modifications necessary to qualify for the authorization.

The executive director would have to respond to all public comments received on the application as soon as possible after making a decision on the application. Issuing a response would not affect the validity of the executive director's decision on the permit. Responses would have to be mailed to each person that had filed a comment and be available to the public.

The bill would take effect September 1, 2003.

SUPPORTERS SAY:

SB 1272 would provide a new process for permitting a concrete batch plant, effectively raising the bar on existing requirements for construction and operation. The bill would establish technical standards for concrete plants in

Texas that would be among the most stringent in the nation. It would require the best available control technology on plant filters to prevent fugitive emissions. Conveyor systems for cement or fly ash from storage silos would have to be totally enclosed. In addition, the bill would require all traffic areas to be paved to minimize dust. Stockpiles and vehicles would have to remain at least 100 feet away from the property line.

The bill would mandate an opportunity for public input, while simultaneously streamlining the permitting process. Unlike current law, the bill would require an applicant to hold a public hearing. The hearing would have to be held in the county where the plant would be located and anyone could provide testimony at the hearing.

The current permitting process has become especially burdensome for concrete plants. Permit applicants sometimes spend two or three years and more than $1 million participating in a contested case hearing on a permit. Although concrete plants produce fewer emissions than some fast food restaurants or dry cleaners, under current law they spend a disproportionately large amount of time and money fighting "not in my backyard" interest groups. Members of the concrete industry would prefer to spend this money on building better facilities, rather than on lawyers and expert witnesses. Because of this, the bill would remove the contested case provision for an applicant that met the increased technical standards, published notice, and held a public hearing on the permit.

The bill would not totally eliminate contested case hearings on concrete batch plant permits. Proposed plants that did not meet the more stringent technical standards would have to comply with current law requirements that provide an opportunity to request a contested case hearing. Only plants that met the technical requirements would be eligible for the bill's notice and hearing procedure.

A floor amendment to the bill would impose an additional technical requirement. The central baghouse, comprising the primary equipment area, would have to be located at least one-quarter mile from any residence, school, or church, if the plant was located in an area outside of municipal zoning regulations and in a county of at least one million people.

OPPONENTS SAY:

This bill would allow concrete batch plants to obtain a permit without providing the public an opportunity to request and participate in a contested case hearing. These plants are notorious nuisances in many residential communities. They can produce large quantities of dust and create noisy or dangerous traffic from heavy-duty diesel trucks ferrying concrete to work sites. Neighborhood groups around the state have used the contested case process to stop concrete batch plants that would have had a negative impact on residential property values. This bill would take away this tool for protecting communities.

Eliminating the contested case provision in TCEQ permit procedures for concrete batch plants would impose a burden on courts and create an advantage for unscrupulous applicants. Without an administrative procedure to appeal a decision at the agency, affected persons would have to pursue their appeals in court. These cases would increase the workload for already overburdened courts. In addition, however, it would benefit industry because the difficulty and expense of going to court would reduce the number of cases that applicants had to fight.

The technical requirements that would be established by the bill do not address a fundamental concern: the proximity of a concrete batch plant to residential neighborhoods. Because of the nuisance they pose to nearby communities, the bill should specify that a concrete batch plant could not be located within a certain distance, such as one mile, of a school, residential neighborhood, or other community area.