

SUBJECT: Issuance of permits by TCEQ for oil and gas production sites

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 8 ayes — Keffer, Crownover, Carter, J. Davis, C. Howard, Lozano, Sheffield, Strama

0 nays

1 absent — Craddick

SENATE VOTE: On final passage, April 19 — 29-2 (Gallegos, Watson)

WITNESSES: (*On House companion bill, HB 3110:*)  
For — Teddy Carter, Texas Independent Producers and Royalty Owners Association; Gloria Leal, Texas Alliance of Energy Producers; Douglass Robison, Permian Basin Petroleum Association and Texas Oil and Gas Association; Celina Romero, Texas Pipeline Association and Gas Processors Association; Derek Seal, Texas Oil and Gas Association; (*Registered, but did not testify:* Marty Allday, Enbridge Energy and Copano Energy; Mark Gipson, Devon Energy; Hugo Gutierrez, Marathon Oil Corporation; Adam Haynes, Chesapeake Energy; Paul Kenworthy, Permian Basin Petroleum Association; Kelly McBeth, Crosstex Energy and Prism Gas; Julie Moore, Occidental Petroleum Corporation; Nef Partida, EOG Resources; Steve Perry, Chevron USA; Grant Ruckel, Oneok; Ben Sebree, Texas Oil and Gas Association; Tom Sellers, ConocoPhillips; Bill Stevens, Texas Alliance of Energy Producers)

Against — Cyrus Reed, Lone Star Chapter, Sierra Club; (*Registered, but did not testify:* Ramon Alvarez, Environmental Defense Fund; Luke Metzger, Environment Texas; David Weinberg, Texas League of Conservation Voters)

On — Richard Hyde, Texas Commission on Environmental Quality (TCEQ)

**BACKGROUND:** In January 2011, the Texas Commission on Environmental Quality (TCEQ) adopted a new permit by rule and standard permit for facilities at oil and gas production sites in the Barnett Shale area, a 23-county area in the vicinity of Fort Worth. TCEQ is in the process of developing a new permit by rule and standard permit for facilities at oil and gas production sites in other parts of the state.

**DIGEST:** CSSB 1134 would prohibit TCEQ from adopting or amending permits by rule or standard permits for the oil and gas industry without performing a regulatory impact analysis and certain monitoring and modeling. The bill would limit the use of worst-case scenario modeling and would require credible air quality monitoring data.

The bill also would provide a definition of planned maintenance, startup, and shutdown activities and would require that any permit by rule or standard permit adopted or amended by the agency that authorized such activities comply with the regulatory impact analysis and monitoring requirements.

**Permit for oil and gas production facilities.** CSSB 1134 would prohibit TCEQ from adopting or amending a permit by rule or standard permit for oil and gas production facilities unless TCEQ:

- conducted a regulatory analysis;
- determined, based on the evaluation of credible air quality monitoring data, that the emissions limits or other requirements of the permit were necessary to protect public health and physical property;
- established any required emissions limits or other requirements based on the evaluation of credible air quality monitoring data that was not based on the worst-case scenario of emissions or similar modeling scenarios unless indicated by the data; and
- considered whether the requirements of the permit should be imposed only on facilities in a particular geographic region.

The air quality monitoring data and the evaluation of that data:

- would have to be relevant and technically and scientifically credible, as determined by TCEQ; and

- could be generated by an ambient air quality monitoring program conducted by or on behalf of TCEQ in any part of the state or by another state government entity, a local or federal government entity, or a private organization.

**Authorization for planned maintenance, startup, or shutdown activities.** CSSB 1134 would authorize TCEQ to adopt or amend one or more permits by rule or standard permits to authorize planned maintenance, startup, or shutdown activities for oil and gas production facilities. The adoption or amendment of a permit for these activities would have to comply with the regulatory impact analysis and monitoring requirements.

A planned maintenance, startup, or shutdown activity would be defined as an emissions activity that was not expressly authorized by TCEQ permit or rule but was considered predictable, normal, and routine.

An unauthorized emission event from a planned maintenance, startup, or shutdown activity would be subject to an affirmative defense as established by TCEQ rules if:

- the emission event occurred at an oil and gas production facility as defined under the bill;
- an application or registration to authorize the planned activities of the facility was submitted to TCEQ on or before the earlier of January 5, 2014, or the 120th day after the effective date of a new or amended permit adopted by TCEQ; and
- the affirmative defense criteria in the rules were met.

The affirmative defense would not be available on or after the date that an application or registration to authorize the planned maintenance, startup, or shutdown activities of the facility was approved, denied, or voided.

**Permit amendments.** A permit by rule or standard permit that had been adopted by TCEQ and was in effect on the effective date could be amended to require:

- the permit holder to provide to TCEQ information about a facility authorized by the permit, including its location; and

- any facility handling sour gas to be a minimum distance from a recreational area, residence, or other structure not occupied or used solely by the facility operator or property owner.

The amendment of a permit under this section would not be subject to the regulatory impact analysis and monitoring requirements for adopting or amending a permit by rule or standard permit.

**Effective date.** 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, 2011.

SUPPORTERS  
SAY:

CSSB 1134 would clearly define permitting standards and provide flexibility to TCEQ in developing new or amended air permits by rule and standard permits for oil and gas production sites. This bill is important because it would help to better balance the need for prompt air permit authorization of new and modified oil and gas production facilities with the need to ensure that the emissions from such facilities would not be harmful to public health and property.

CSSB 1134 would require that in adopting or amending permits by rule and standard permits for facilities at oil and gas production sites, TCEQ would have to conduct a regulatory analysis regarding costs and alternatives and consider the economic impact involved. TCEQ also would be required to meet these requirements when developing new or amended permits by rule and standard permits for planned maintenance, startup, and shutdown activities associated with oil and gas facilities. The bill would move the deadline for maintenance, startup, and shutdown activities by two years to allow time for TCEQ to incorporate changes.

TCEQ would be required to develop different permits by rule and standard permits for facilities at oil and gas sites located in different parts of the state if it made sense to do so. For example, the permit by rule or standard permit for facilities at oil and gas sites in the Barnett Shale area may need to be different from the permit by rule or standard permit for facilities at oil and gas sites in the Permian Basin area. This bill would direct TCEQ to avoid a one-size-fits-all approach.

CSSB 1134 would give TCEQ flexibility to utilize, to the maximum extent possible, current and future air quality monitoring data in developing permits by rule and standard permits for facilities at oil and gas sites.

While the U.S. Environmental Protection Agency (EPA) expressed concern about the implementation of SB 1134, the language in the bill would track an existing provision in Texas Clean Air Act that expressly requires that air permits protect the public's health and physical property. That provision has been in effect for decades, and EPA approved that provision many years ago. In addition, SB 1134 would provide that the intent of the Texas Clean Air Act may not be contravened. The Texas Clean Air Act currently requires that the issues that EPA has raised would have to be addressed, including for the oil and gas facilities that are the subject of the bill. In fact, the oil and gas facilities that are the subject of the bill are, and have for decades been, prohibited from causing or contributing to air pollution, which, as defined in the Texas Clean Air Act, includes the issues EPA has raised. If the EPA chose to not approve this change as a State Implementation Plan (SIP) revision, then TCEQ would have 18 months to fix it.

**OPPONENTS  
SAY:**

CSSB 1134 would allow special treatment of the oil and gas industry and delay regulations that should be developed through rulemaking at TCEQ. This bill would delay any new air emissions regulations for oil and gas facilities until TCEQ conducted air quality monitoring and modeling to prove the need for any additional rule. It also would prevent any use of worst-case scenario air modeling for the protection of public health unless the air quality monitoring data proved it necessary.

According to the U.S. Environmental Protection Agency (EPA), CSSB 1134 would prevent the implementation of important air quality standards that assure the protection of health and the environment in air planning and permitting programs as intended by the federal Clean Air Act. It could result in a deficiency in Texas' air permitting program due to the State's inability to fully administer this legislation and submitted to EPA as changes to the State Implementation Plan could not be approved. The EPA has stated that should SB 1134 be adopted, the EPA would have to consider taking action, including the consideration of sanctions under the Clean Air Act.

In addition, CSSB 1134 would give an "affirmative defense" to the oil and gas industry until January 5, 2014, on any changes it made to facilities involving startup, shutdown, or maintenance as long as they did not counteract any existing TCEQ rules. CSSB 1134 should instead allow the affirmative defense until January 5, 2014, or until TCEQ actually

developed and adopted the rule if it was able to do so before January of 2014. This would give more flexibility to TCEQ if it was able to conduct the analysis required in the bill.

NOTES:

The companion bill, HB 3110 by Craddick, was considered in a public hearing by the House Energy Resources Committee on March 30 and was reported favorably, as substituted, on April 14.

The House committee substitute differs from the Senate-passed version of the bill by establishing that an unauthorized emission event from a planned maintenance, startup, or shutdown activity would be subject to an affirmative defense if an application for a permit or registration authorizing the activity was submitted to TCEQ on or before the earlier of January 5, 2014, or the 120th day after the effective date of a new or amended permit, rather than the 30th day after the effective date as in the Senate version.