

SUBJECT: Enhanced review process for land reclamation tire projects

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 6 ayes — Harless, Márquez, Isaac, Kacal, C. Turner, Villalba
0 nays
3 absent — Lewis, Reynolds, E. Thompson

SENATE VOTE: On final passage, April 4 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify:* Brian Sledge, Solid Waste Association of North America, Texas Chapter)
Against — None
On — (*Registered, but did not testify:* Steven Shepherd, Texas Commission on Environmental Quality)

BACKGROUND: Title 30, Texas Administrative Code, subchapter F, §328.66 governs land reclamation projects using tires. The code requires anyone intending to initiate a land reclamation tire project to submit an application to the Texas Commission on Environmental Quality (TCEQ) for review. A project cannot move forward without approval from the executive director, who has 60 days to review the application. The applicant must provide notice of the project to the appropriate local governmental entities and the general public by mail and publishing in the newspaper.

“Land reclamation project using tires” is defined in §328.53 as a project to fill, rehabilitate, improve, and/or restore already excavated, deteriorated or disturbed land for the purpose of restoring it to its natural grade and prepare it for reuse.

Under §328.66, any excavation pit, hole or other disturbed land area to be used for a tire reclamation project must have existed beforehand and must have been excavated for other purposes. Shredded, split or quartered tires

placed below ground have to be mixed with inert filling material (e.g. dirt) in no more than a 50-50 proportion. In addition, tire pieces may be placed no closer than 18 inches below the final grade or ground surface.

DIGEST: SB 1156 would prohibit a person from beginning a land reclamation tire project without a permit issued by the TCEQ.

TCEQ by rule would prescribe minimum standards to protect the soil and water for a land reclamation tire project and would adopt procedures for applications and permitting by September 1, 2014.

Permitting process. TCEQ could not grant a permit for a land reclamation tire project without either first receiving comments from local entities in which the proposed project would be located — including a municipality, county commissioners court, groundwater conservation district, regional planning commission, council of governments, or similar regional planning agency — or the earlier of:

- sixty days after the application was filed; or
- the day after the county commissioners court had conducted two regularly scheduled meetings following the date the application was filed.

TCEQ could not grant a permit if it received notice that the proposed project violated a local regulation, ordinance, order, or other law in the area. TCEQ could deny, revoke, suspend, or amend a permit for good cause due to considerations of public health and safety, air or water pollution, or land use. TCEQ also could amend, extend, transfer, or renew a permit.

Application. An application for a land reclamation tire project would have to include:

- a legal description of the area to be reclaimed;
- a map clearly identifying the area to be reclaimed and its topography;
- an affidavit from the property owner certifying that the reclamation project complied with the relevant laws and rules;
- a demonstration of the seasonal high groundwater level in the area; and
- an analysis and evaluation of the environmental impacts on the soil

and groundwater in the area of the proposed project and a comparison of at least one reasonable alternative method of land reclamation for the project.

TCEQ could request additional information upon determining that an application did not address all applicable requirements.

Other provisions. The bill would codify provisions in the Texas Administrative Code requiring applicants to provide notice to local entities and that all tires used to fill land would have to be split, quartered, or shredded. TCEQ could grant an exception if warranted by circumstances.

Any person who was responsible for an ongoing or pending land reclamation tire project who had yet to bury tires before the bill's effective date would have to obtain a permit under the bill before starting the project. If a project had buried tires before the effective date, it would be subject to the law in effect on the date the tires were placed below ground.

SB 1156 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, 2013.

**SUPPORTERS
SAY:**

SB 1156 would provide an enhanced opportunity for local entities, including municipalities, counties, and groundwater conservation districts, to review and comment on a proposed permit for a land reclamation tire project. Under current TCEQ rules for such projects, local entities have the opportunity to comment on a project, but there is nothing stopping TCEQ from granting the application for the project even if it is found to be against local laws and poses serious health and safety concerns.

Creating a guaranteed opportunity in statute for local entities to review a project would provide a chance to determine if a particular proposal violated any local ordinances or other regulations. Under the bill, TCEQ would not be allowed to issue a permit for projects that violated local provisions.

Local entities would have 60 days, or two regularly scheduled commissioners' court meetings, to comment on a permit. Explicitly allowing TCEQ the authority to deny, revoke, suspend, or amend a permit for good cause would empower the commission to protect the public against land reclamation tire projects that could harm public health and

water quality.

OPPONENTS
SAY:

SB 1156 would elevate the permitting process for land reclamation tire project to a higher tier of scrutiny, review, processing, and contested case hearing. The enhanced permitting process authorized in the bill — that TCEQ would implement administratively by rule — would raise the level of TCEQ review of these projects to that of a municipal landfill.

Under current rules, applications are processed and issued by the executive director, but they would be subject to a full formal comment period, response to comment, and contested case hearing under SB 1156. This higher standard of review would make it harder for land reclamation tire projects to initiate new sites. The bill would add regulatory hurdles for these businesses without a clear and pressing public health and safety concern.

A higher standard of governmental review for these projects would result in added costs for obtaining an authorization, which would be passed on to consumers. Raising the costs of retiring tires could have negative effects, such as increasing the incidence of illegal disposal.