

SUBJECT: Reporting and regulation of emissions events

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Bonnen, Howard, Driver, Homer, T. King, Kuempel, W. Smith
0 nays

WITNESSES: For — Cindy Morphew, Texas Oil and Gas Association; Patrick Mullin, Exxon Mobil Corp., Texas Association of Business, Texas Chemical Council, Texas Oil and Gas Association; Stephanie Strother, Association of Electric Companies of Texas

Against — Beth O'Brien, Public Citizen

BACKGROUND: Health and Safety Code, ch. 382 is the Texas Clean Air Act. Sec. 382.0215 requires the owner or operator of a facility to notify the Texas Commission on Environmental Quality (TCEQ) after the discovery of an emissions event.

Sec. 382.003(6) defines a facility as a discrete structure or piece of equipment that is a source of air contaminants. Sec. 382.0215(a) defines an "emissions event" as an event, such as an upset or unscheduled maintenance, startup, or shutdown activity, that results in the unauthorized emission of air contaminants from an emissions point. Activities are not considered unscheduled if the activity does not result in the emission of less than a reportable quantity of unauthorized emissions. For emissions to not be considered unscheduled, the owner also must provide notice to the commission. The emissions can not exceed the amount specified in the notice.

Sec. 382.0216(c) requires a facility to either file a corrective action plan or obtain authorization for emissions from TCEQ after the commission determines that emissions events at the facility are excessive. Under subsec. (i), the commission must initiate enforcement against a facility if the owner or operator fails to report an emissions event.

DIGEST:

CSHB 1900 would define an emissions event as an upset event, or unscheduled maintenance, startup, or shutdown activity that came from a “common cause.” An event would be one that resulted in the unauthorized emissions of air contaminants from one or more emissions points at a regulated entity. The owner or operator would have to notify the commission of an emissions event in a single report for each event.

A “regulated entity” would mean all regulated units, facilities, equipment, structures, or sources at one location that were owned and operated by the same person. It would include property that was owned or controlled commonly as identified in a permit or used in conjunction with a regulated activity at the location. Operators of pipelines, gathering lines, and flowlines could treat all such facilities in a particular county as a single regulated entity for the purpose of assessment and regulation of emissions events.

For an event to not be considered unscheduled, emissions could not exceed the estimated amount included in a notice by more than a reportable quantity.

In TCEQ’s rules, the criteria for determining whether an event was excessive would have to take into account the size and complexity of a regulated entity. TCEQ no longer would consider the need for startup, shutdown, and maintenance activities at an entity as part of its minimum criteria in defending a commission enforcement action.

The bill would take effect September 1, 2005, and would apply to any emissions event that occurred on or after that date.

**SUPPORTERS
SAY:**

CSHB 1900 would improve oversight and enforcement of emissions events by streamlining what currently is a redundant reporting requirement. Based on a current definition of “facility,” which includes every piece of equipment in an energy or chemical plant, the operator of a plant must issue a separate report for each item of equipment when an emissions upset occurs. The bill would allow a plant operator to file a single report for the plant when an event occurred. This would allow for greater efficiency for industry and for TCEQ and would allow the public more easily to understand and evaluate the regularity and volume of emissions events.

Under the bill, before an emissions event was deemed excessive, that event would have to exceed by a reportable quantity the amount included in a filed notice. If an operator notified TCEQ that emissions would occur and that the amount of emissions was only slightly higher than what was included in the notice, the event would not be excessive. Only an event that was significantly greater than what was expected would be considered excessive, a reasonable benchmark for TCEQ and the operator.

Finally, the bill would require TCEQ to take into account the size and complexity of a plant when considering whether an event was excessive. It is unfair to treat large plants with tens of thousands of points of concern the same as small plants where there may be only 100 emissions points that must be controlled. It would be appropriate for TCEQ to consider an emissions event in relation to the size of the plant from which it originated, as those larger facilities can be expected to have more and higher levels of emissions events than smaller plants.

**OPPONENTS
SAY:**

Upset emissions are a serious environmental and public health concern, and CSHB 1900 would initiate changes that could exacerbate the problem. Upsets are pollution events that occur in excess of the amount of emissions for which a plant is permitted. The pollutants emitted during upsets cause cancer, aggravate respiratory conditions, and contribute to neurological and reproductive disorders. Often, these pollutants go unreported and are not accounted for in calculations of the State Implementation Plan, a federal Clean Air Act mandate upon which federal highway funding is contingent. Although the bill would streamline reporting of emissions events, some provisions would weaken state oversight of these troublesome occurrences.

An emission should not be greater than a reportable amount before an emissions event is considered an unscheduled event. Current law requires plants to treat startup, shutdown, and maintenance as scheduled events only if the estimated emissions are reported in advance and if the actual emissions do not exceed the amount estimated. In other words, state law allows excess emissions provided that TCEQ is notified. CSHB 1900 would allow a plant to exceed the excess level of pollution by a degree up to a reportable level, allowing a higher level of pollutants into the air than is allowed currently.

Large plants should not have leeway in generating emissions events, because the issue should be the size and frequency of these harmful occurrences, not the size or complexity of a plant.

NOTES:

As filed, the bill would have deleted a requirement that TCEQ take into account the percentage of a facility's total annual operating hours during which emissions events occur.

The companion bill, SB 948 by Armbrister, was reported favorably, as substituted, by the Senate Natural Resources Committee on April 26.