

BILL ANALYSIS

Senate Research Center
80R8507 SMH-F

S.B. 1916
By: Shapleigh
Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law authorizes the Texas Commission on Environmental Quality (TCEQ) to deny a permit, permit amendment, or special permit, but also appears to allow the applicant the ability to fix those problems in order to have the permit approved. The Texas Clean Air Act addresses, among other topics, the manner in which TCEQ is authorized to deny an application for an air quality permit.

Recently, however, permit applicants have begun arguing that the Clean Air Act does not authorize denial of a permit application, even after a contested hearing that results in TCEQ finding that the permit does not comply with the Clean Air Act. Under Sections 382.0518(d) and (e), Health and Safety Code, TCEQ is required, if it finds that a proposed facility would contravene the standards of the Clean Air Act, to set out in a report to the applicant the specific objections. TCEQ is required to grant the permit if the applicant satisfies TCEQ's objections. As a result, TCEQ is effectively precluded from immediately denying a permit, even if the applicant has been party to a contested case hearing and subsequent finding by an administrative law judge. Instead, TCEQ is required to set out its objections and wait to see if the applicant satisfies those objections.

As proposed, S.B. 1916 requires TCEQ to deny an air permit application if TCEQ finds that the emissions from the proposed facility will contravene the standards established in the Clean Air Act and the application has gone through a contested case hearing. This bill also provides that if, on the other hand, the permit application has not gone through a contested hearing, the requirement for a report from TCEQ will still apply, providing applicants the opportunity to meet the objections of TCEQ.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

SECTION 1. Amends Sections 382.0518(d) and (e), Health and Safety Code, as follows:

(d) Requires the Texas Natural Resource Conservation Commission (TNRCC) to deny, rather than prohibits TNRCC from granting, the permit, permit amendment, or special permit if TNRCC finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter (Clean Air Act). Requires TNRCC, if the application for the permit, permit amendment, or special permit has not been the subject of a contested case hearing and TNRCC makes the finding described by this subsection, to set out in a report to the applicant its specific objections to the submitted plans of the proposed facility and authorizes TNRCC to grant or deny the application as provided by Subsection (e).

(e) Requires TNRCC to deny, rather than prohibits TNRCC from granting, the permit, permit amendment, or special permit if the person applying for such fails or refuses to alter the plans and specifications to meet TNRCC's specific objections.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2007.