

BILL ANALYSIS

Senate Research Center
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S.B. 1475
By: Shapiro
Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The City of Frisco is home to the only lead smelter battery recycling facility in Texas. In 2009, 1.67 tons of lead was emitted from the Frisco facility, owned by the Exide Battery Corporation. There is growing concern about the impact of the lead emitted from this facility on the community.

Recently, the Environmental Protection Agency (EPA) lowered the federal lead standard in recognition of the threats posed by lead deposits in water, soil, and air. The new standard is 0.15 micrograms of lead per cubic meter of air, down from the original 1.5 micrograms.

The area around the plant in Frisco is one of only 16 areas in the nation that does not meet the new standard, and thus, is in violation of federal law. This failure to meet federal guidelines under the Clean Air Act has resulted in the designation of the area around the facility as a non-attainment area for lead.

As proposed, S.B. 1475 amends current law relating to environmental and public health protections regarding smelter facilities at which lead-acid battery recycling activities are conducted.

[Note: While 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.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Sections 428.0015, 428.0016, 428.002, and 428.003, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 361.133(c), Health and Safety Code, as follows:

(c) Authorizes the Texas Natural Resource Conservation Commission (TNRCC) to use the money collected and deposited to the credit of the account under this section, including interest credited under Subsection (b)(4) (relating to interest on account), only for certain actions and expenses, including expenses, not to exceed 10 percent of the annually appropriated amount of the fee on batteries collected under Section 361.138 (Fee on the Sale of Batteries), related to lead-acid battery recycling activities, including expenses for programs for assessment and remediation of environmental impacts of the activities; to create incentives for the adoption of innovative technology in lead-acid battery recycling to increase the efficiency and effectiveness of the recycling process or reduce the negative environmental impacts of the recycling process; and for studies evaluating the effects of the activities on the public health. Makes a nonsubstantive change.

SECTION 2. Amends Subtitle G, Title 5, Health and Safety Code, by adding Chapter 428, as follows:

CHAPTER 428. RISK REDUCTION AND EMISSIONS CONTROLS
FOR LEAD-ACID BATTERY RECYCLING FACILITIES

Sec. 428.001. DEFINITIONS. Defines, in this section, "air contaminant," "commission," "facility," and "solid waste."

Sec. 428.0015. EMISSIONS HEALTH RISK ASSESSMENT. (a) Requires the owner or operator of a facility, using methods prescribed by the Texas Commission on Environmental Quality (TCEQ) rule, to perform a comprehensive health risk assessment of the facility's air contaminant emissions that evaluates:

(1) the negative public health effects, other than effects related to cancer risks, of each air contaminant and combination of contaminants the facility emits; and

(2) the increased risk of cancer for members of the public associated with exposure to each known or suspected carcinogenic chemical or combination of chemicals contained in the facility's emissions.

(b) Requires the owner or operator of a facility, not later than March 1, 2012, to complete the assessment required by Subsection (a) and present the assessment to TCEQ and to the governing body of each municipality within the boundaries or extraterritorial jurisdiction of which the facility operates.

(c) Requires that the assessment performed under this section be based on information from air monitoring and an accurate inventory of the facility's emissions and to address:

(1) the presence of contaminants emitted by the facility as they may be found in any environmental medium, including the air, water, and soil; and

(2) all pathways and combinations of pathways by which an emitted contaminant may affect the health of an individual, including:

(A) respiration;

(B) dermal exposure; and

(C) ingestion of contaminated soil or ingestion of contaminants contained in plants grown in contaminated soil or in animals contaminated by exposure to contaminants or by contaminated feed.

(d) Requires TCEQ, in developing the methods to be prescribed under Subsection (a), to work with any municipality within the boundaries or extraterritorial jurisdiction of which a facility operates.

(e) Provides that this section expires September 1, 2013.

Sec. 428.0016. SOLID WASTE MANAGEMENT RISK ASSESSMENT. (a) Requires the owner or operator of a facility, using methods prescribed by TCEQ rule, to perform a comprehensive health risk assessment of the facility's active, inactive, and closed solid waste management units to assess the scope of actual and potential contamination of soil, groundwater, and surface water from solid waste management activities at the units. Requires that the assessment evaluate:

(1) the negative public health effects presented and potentially presented, other than effects related to cancer risks, by contamination of soil,

groundwater, and surface water from solid waste management activities at the solid waste management units; and

(2) the increased risk of cancer for members of the public associated with exposure to each known or suspected carcinogenic chemical or combination of chemicals presented and potentially presented by contamination of soil, groundwater, and surface water from solid waste management activities at the solid waste management units.

(b) Requires the owner or operator of the facility, not later than March 1, 2012, to complete the assessment required by Subsection (a) and present the assessment to TCEQ and to the governing body of each municipality within the boundaries or extraterritorial jurisdiction of which the facility operates.

(c) Requires that the assessment performed under this section address:

(1) the presence of solid wastes as they may be found in any environmental medium, including the air, water, and soil; and

(2) all pathways and combinations of pathways by which the solid wastes may affect the health of an individual, including:

(A) respiration;

(B) dermal exposure; and

(C) ingestion of contaminated soil or ingestion of contaminants contained in plants grown in contaminated soil or in animals contaminated by exposure to contaminants or by contaminated feed.

(d) Requires TCEQ, in developing the methods to be prescribed under Subsection (a), to work with any municipality within the boundaries or extraterritorial jurisdiction of which a facility operates.

(e) Provides that this section expires September 1, 2013.

Sec. 428.0017. CESSATION OF OPERATIONS. (a) Requires the owner or operator of a facility to cease operations of the facility immediately if an assessment performed under Section 428.0015 or 428.0016 reveals that exposure to the facility's air contaminant emissions, residues from air contaminant emissions, or contamination from solid waste results in:

(1) a combined and cumulative lifetime increase in risks of deleterious, noncancerous health effects that exceeds a hazard index of one for daily, chronic exposure for individuals residing three miles or less from the facility; or

(2) a lifetime risk of cancer greater than one in one million for individuals residing three miles or less from the facility.

(b) Requires operations to remain ceased under this section until corrective action has been taken and TCEQ has approved, after hearing, the operation of the facility.

(c) Provides that this section expires September 1, 2017.

Sec. 428.002. CONTROLS FOR AIR CONTAMINANT EMISSIONS. (a) Requires the owner or operator of a facility to have installed at the facility emissions controls as prescribed by TCEQ rule. Requires that emissions controls include:

- (1) electrostatic precipitators;
- (2) thermal oxidizers;
- (3) enhanced filtration systems; and
- (4) negative pressure and enhanced filtration systems for materials handling and processing areas.

(b) Requires the owner or operator of a facility semiannually to demonstrate by means of a performance test that the facility's installed emissions controls are effective at achieving a 95 percent reduction in the facility's emissions air contaminants in the form of metals and organic chemicals as particulates and vapors associated with known or suspected carcinogens. Requires the owner or operator to submit the performance test report in a form prescribed by TCEQ to TCEQ and to each municipality within the boundaries or extraterritorial jurisdiction of which the facility operates.

(c) Requires the owner or operator of a facility to take corrective action as necessary to bring the emissions controls into compliance with this section not later than the 30th day after the date a performance test or other information available to the owner or operator, including information from air monitoring, indicates a deficiency in the effectiveness of the controls.

Sec. 428.003. AIR MONITORING AND REPORTING. (a) Requires the owner or operator of a facility at which lead-acid battery recycling activities are conducted to:

- (1) have installed and continuously operate at the northern, southern, eastern, and western boundaries of the facility property air monitors to detect speciated metals and speciated volatile organic compounds; and
- (2) have installed and continuously operate continuous opacity monitors and continuous emissions monitors for particulate matter emissions and volatile organic compounds emissions from the facility's process stacks and vents.

(b) Requires the emissions information generated by the monitors described by Subsection (a)(2) to be posted in real time to a publicly accessible Internet website if such a website is provided by a municipality within the boundaries or extraterritorial jurisdiction of which the facility operates.

(c) Requires the owner or operator of the facility, in addition to the monitors required by Subsection (a)(1), to install and continuously operate air monitors for the same purpose at other locations as required by TCEQ rule and at locations specified by a municipality within the boundaries or extraterritorial jurisdiction of which the facility operates.

Sec. 428.004. SOLID WASTE MANAGEMENT UNITS. Requires the owner or operator of a facility to install:

- (1) impervious and wear-resistant caps on the facility's closed or inactive waste management units; and
- (2) negative pressure and enhanced filtration systems in active solid waste management units.

Sec. 428.005. ENFORCEMENT. (a) Requires TCEQ, in addition to any other enforcement means available to TCEQ under Chapter 7 (Enforcement), Water Code, to enforce this chapter, to revoke any permit TCEQ has issued to a facility on a finding by

TCEQ, after notice and opportunity for hearing, that the owner or operator of the facility has violated this chapter or a rule adopted or order issued under this chapter two or more times in a period of 36 months or less.

(b) Authorizes a municipality within the boundaries or extraterritorial jurisdiction of which the facility operates to revoke any permit or other authorization the municipality has issued to the facility on a finding by the governing body of the municipality, after notice and opportunity for hearing, that the owner or operator of the facility has violated this chapter or a rule adopted or order issued under this chapter two or more times in a period of 36 months or less.

SECTION 3. Requires TCEQ to adopt rules as necessary to implement Chapter 428, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 4. (a) Requires the owner or operator of a smelter facility at which lead-acid battery recycling activities are being conducted on the effective date of this Act to install all equipment or devices required by Sections 428.002-428.004, Health and Safety Code, as added by this Act, not later than September 1, 2012.

(b) Requires the owner or operator of a smelter facility at which lead-acid battery recycling activities are being conducted on the effective date of this Act to conduct the first semiannual performance test required by Section 428.002, Health and Safety Code, as added by this Act, not later than December 1, 2012.

SECTION 5. Effective date: September 1, 2011.