

SUBJECT: TNRCC general permits for wastewater dischargers

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Counts, Walker, Cook, Corte, King, R. Lewis, Moffat, Puente
0 nays
1 absent — Culberson

WITNESSES: For — Richard Lowerre
Against — None
On — Thomas Weber and Ken Petersen, Texas Natural Resource Conservation Commission; Dwayne Anderson, Clean Water Action; Ken Kramer, Sierra Club

BACKGROUND : Texas Natural Resource Conservation Commission (TNRCC) currently requires significant wastewater discharges to be permitted only by individual permit, but discharge of small volumes of wastewater are regulated by rules adopted on a statewide basis for various categories of facilities.

DIGEST: CSHB 1542 would eliminate current provisions in the Water Code that allow TNRCC to regulate certain categories of facilities that discharge small amounts of wastewater by rule and would establish a general permit system for certain qualifying wastewater discharges.

The bill would allow TNRCC to issue a general permit to authorize wastewater discharges for categories of dischargers in a particular area of the state or the entire state. For a group of dischargers to be eligible for a general permit, they would have to have similar operations, discharge the same types of waste, be subject to the same types of operating conditions and monitoring requirements, and, in the commission's opinion, be more appropriately regulated under a general permit than an individual one.

A general permit could only be issued for up to five years, and could be amended, revoked or cancelled by the commission that could impose a

reasonable and necessary waste treatment inspection fee on a permit holder. The commission could add or delete requirements or limitations to a general permit, but would be required to give the permit holder a reasonable time to comply with additional requirements.

A general permit could only be issued if the commission found that the permit was drafted so it could be readily enforced, compliance of its terms could be adequately monitored and it would not include a discharge of pollutants which would cause significant adverse effects to water quality.

TNRCC would be required to publish notice of a proposed permit in a newspaper and the *Texas Register*, and written comments would be accepted and published by TNRCC least 30 days before adoption of a general permit. The commission could adopt rules and hold a public hearing, require additional notice by rule, and would be required to respond in writing to comments before issuing a general permit. TNRCC would also be required to mail a response at the time the permit was issued or denied to each person who made a comment. The permit process would not be subject to the Administrative Procedures Act.

To obtain a general wastewater discharge permit, an applicant who was not covered by an individual permit could submit a written notice of intent to the commission and begin discharging 30 days after the commission received the notice, unless the executive director found the applicant ineligible for a general permit. Authorization to discharge under a general permit would not confer a vested right, and a general permit could be suspended under certain conditions.

The bill would take effect September 1, 1997. Rules authorized before the effective date of the bill would not be affected by the bill and would remain in effect until amended, modified or repealed by TNRCC. Changes to those rules would be governed by the Texas Administrative Procedures Act.

**SUPPORTERS
SAY:**

CSHB 1542 would give the state a better chance at obtaining National Pollutant Discharge Elimination System (NPDES) program delegation, which would free wastewater discharge permit holders from having to obtain both federal and state permits. Texas is currently seeking NPDES delegation from the federal Environmental Protection Agency, (EPA) which

has identified permitting by rule as an impediment to obtaining federal delegation for state programs. Because strict conditions would have to be met in order to qualify for a general permit under CSHB 1542, significant discharges that would have a potential for endangering water quality would continue to be permitted individually. There would be no danger that a general permit system would be used to supersede or eliminate individual permitting. The EPA uses general permits at this time for some categories of discharges, and this has posed no threat to their individual permit system.

It is unwise to allow potential polluters to discharge based on a general rule rather than a permit. CSHB 1542 would replace permits by rule with a general permitting system and shift certain categories of small-volume dischargers to a general permit system. These would include facilities that discharge small amounts of wastewater now permitted by rule on a statewide basis, like car washes, cattle trailer washing operations, and petroleum-contaminated groundwater produced by remediation activities. Since a general permitting system, CSHB 1542 would provide increased protection for the public against potential water pollution.

Allowing TNRCC to review general permits every five years would give TNRCC the flexibility to update the permit which could benefit both the regulated community and the public. Additional requirements could be added, for example, if it was necessary to protect water quality.

**OPPONENTS
SAY:**

Although it may be beneficial to switch from regulation by rule to a general permit process, as CSHB 1542 proposes, the current permitting by rule process applies only to those who discharge small volumes of waste, while the general permitting being proposed by the bill could be issued to cover major discharges. The bill would allow TNRCC to use general permits for major discharges from large factories, refineries, and feedlots if the commission found, among other things, that such a permit would not “include pollutants which cause significant adverse effects to water quality,” a rather subjective criteria.

General permits offer less rigorous regulation than individual permits which require each site to be evaluated individually and allow contested case hearings. General permits, therefore, should be limited to small volume discharges, while large volume discharges should always be individually

permitted. There is a danger that the general permitting system would be expanded and the individual permitting system gradually eliminated until only general permitting remained.

OTHER
OPPONENTS
SAY:

To ensure that permit holders would comply with requirements issued under a general permit system, the bill should provide for an established inspection schedule to ensure all discharges would be inspected at least every three years.

NOTES:

The committee substitute added language governing conditions that would have to be met before the commission could issue a permit that would cause significant adverse effects to water quality, provided that the commission would be required to respond in writing to all public comments, clarified that a permit could be renewed for another five-year term, and added a provision allowing the commission to add and delete requirements from general permits and allowing dischargers a reasonable time to comply with those changes.

The companion bill, SB 1436 by Wentworth was reported favorably from the Senate Natural Resources Committee on April 25 and sent to the Local and Uncontested calendar.