

SUBJECT: Directing TNRCC to encourage environmental management systems

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Chisum, Bonnen, Kuempel, Uher, Geren

0 nays

4 absent — Bosse, Dukes, Howard, Zbranek

WITNESSES: For — Jon Fisher, Texas Chemical Council

Against — Sparky Anderson, Clean Water Action; Susan Curry; Lucille Griffith; Kelly Haragan, Public Citizen; Ken Kramer, Lone Star Chapter of the Sierra Club, Alliance for a Clean Texas; Richard Lowerre, City of Del Rio, Kleberg County, STOP, CARE of Kinney County, CHG&RGA of Denton, MEG of Bexar County, WNHW of Hays County, and STAND; Tamara Maschino; Arlene L. Polewarczyk; Robin Schneider, Texas Campaign for the Environment

On — Charles Bredwell, Comptroller of Public Accounts

BACKGROUND: An environmental management system (EMS) is a set of operating policies, procedures, and methods that incorporate regulatory requirements throughout an entity's business to help the business move beyond simple compliance with regulations to improve significantly environmental performance and pollution prevention. In 1996, the International Standards Organization ("ISO") published ISO 14001, an international EMS standard.

DIGEST: CSHB 2997 would amend TNRCC statutes in the Water Code by adding a section on EMS programs. The bill would define EMS as a documented management system addressing environmental regulatory requirements. An EMS would include organizational structure, planning, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

TNRCC would have to adopt a comprehensive program providing regulatory incentives to encourage EMS use by regulated entities, state agencies, local governments, and other entities. The bill would permit incentives including but not limited to on-site technical assistance and accelerated access to information about programs. To the extent permitted by federal law, the bill also would permit incentives such as inclusion of information regarding EMS in an entity's compliance history and summaries and consideration of an entity's EMS in scheduling and conducting compliance inspections. The bill would require TNRCC to adopt these rules not later than December 1, 2001.

The bill would require the rules to provide the following minimum requirements for entities implementing an EMS:

- ! adopt a written environmental policy;
- ! identify environmental aspects and impacts of activities;
- ! set priorities, goals, and targets for continuous environmental performance improvement;
- ! assign clear responsibilities for implementation, training, monitoring, and corrective action;
- ! document implementation procedures and results; and
- ! evaluate and refine implementation over time to improve attainment of environmental goals and targets and the system itself.

The bill would require TNRCC to integrate the use of EMS into regulatory programs, including permitting, compliance assistance, and enforcement. TNRCC would have to develop model EMS programs for small businesses and local governments as well as establishing indicators to measure EMS performance.

The bill would amend current application procedures for permits, amendments, and renewals to require TNRCC to consider information regarding an applicant's EMS as evidence of compliance at that facility. It also would amend current statutes regarding compliance history related to sewage waste, injection wells, solid waste, and air emissions to require TNRCC to consider information regarding an applicant's EMS as evidence of compliance at that facility.

The bill would take effect September 1, 2001 and would apply only to an application for a permit, modification, revision, reopening, or renewal that was filed with TNRCC on or after the date on which TNRCC published the final rules in the Texas Register.

**SUPPORTERS
SAY:**

The bill would encourage Texas to follow the current business trend toward using EMS programs. Business focus is shifting away from safety programs, which are now well established, to place more emphasis on environmental compliance. Many businesses view EMS programs as an assurance of quality and dependability, because a supplier with environmental compliance problems is less reliable. Some international markets may begin viewing an EMS program, or ISO 14001 certification by a third-party auditor, as a prerequisite for commerce. Several major international corporations, including Ford Motor Company and General Motors Corporation, already require their supplies to adopt ISO 14001. Other states have formed a working group to evaluate ISO 14001 and implementation mechanisms. On the federal level, the U.S. Environmental Protection Agency has implemented the National Environmental Performance Track, a recognition program to encourage entities to adopt EMS programs.

The bill would implement some Sunset Advisory Commission recommendations. The Sunset Commission recommended that TNRCC encourage regulated entities to adopt EMS programs. The commission also recommended a new TNRCC regulatory structure, in which EMS programs would play a key role.

The bill would encourage regulated entities to adopt EMS programs and would recognize the environmental efforts of entities that already have adopted EMS programs.

Encouraging use of EMS programs would allow TNRCC to shift away from the "command and control" model of environmental compliance, which has not been effective. Use of EMS programs as proposed in this bill would place more emphasis on rewarding entities for compliance and less emphasis on penalties for noncompliance. The bill would allow TNRCC to function more effectively by getting regulated entities to use EMS programs to self-audit. Allowing an entity to develop its own EMS, as opposed to subjecting an entity to additional statutory requirements, would make compliance more

likely. Self-audits can uncover environmental violations more quickly, allowing the regulated entity to correct problems. TNRCC still would oversee regulated entity compliance, but EMS programs would allow TNRCC staff to spend more time pursuing bad actors. This would benefit Texans by providing a cleaner environment and the attendant public health benefits. It also would benefit regulated entities, who often face low public esteem when their colleagues ignore environmental regulations.

OPPONENTS
SAY:

There is no clear need for this bill. Better environmental performance can lower costs and reduce liabilities, so regulated entities already have several incentives to adopt an EMS. Major corporations are providing an additional incentive in the form of market access, by beginning to require ISO 14001 certification.

This bill would go beyond most states in offering incentives for entities to adopt EMS programs. While the federal government, as well as other state governments, have supported EMS use and offered assistance to companies desiring EMS implementation, they have not offered regulatory incentives in exchange for adoption of EMS programs.

An EMS plan should not be seen as a substitute for any part of environmental regulatory oversight. While a good EMS may help a facility achieve and maintain compliance, there is no conclusive evidence demonstrating this. In addition, mere adoption of an EMS program would not ensure compliance. Because the bill would credit an entity for existence of an EMS, and not the success of the EMS, entities would have an incentive to adopt a sham EMS program to obtain the benefit of any incentives.

TNRCC would not be able to provide meaningful incentives to adopt EMS programs. Most of the regulations that TNRCC enforces are federal requirements. The best incentive would be some form of additional public recognition.

Adoption of a statewide EMS incentive program is not warranted at this time. If the Legislature was interested in promoting EMS programs, it should require TNRCC to implement a pilot project to study whether adoption of EMS programs resulted in better compliance.

NOTES:

The committee substitute removed a provision that would have allowed regulatory incentives to include expedited permit processing from the bill as filed. The substitute also removed a requirement for TNRCC to establish a mechanism for public participation. The substitute also removed the original bill's provisions regarding a public hearing on an application for the renewal, modification, or amendment of any permit issued by TNRCC for facilities that had implemented a EMS and had no significant unresolved violations.