

SUBJECT:           Allowing the discharge of certain amounts of used oil into water.

COMMITTEE:       Environmental Regulation —favorable, without amendment

VOTE:             5 ayes — Howard, Homer, T. King, Kuempel, W. Smith

0 nays

2 absent — Bonnen, Driver

SENATE VOTE:     On final passage, April 19 — 28-1 (Barrientos)

WITNESSES:       *(On House companion bill, HB 2455 by Talton:)*

For — Dudley Smith, Harris Co. Auto Recyclers Association and Pick A Part Auto Wrecking, Inc.; Ron Sucheki, Texas On Site Wastewater Association.

Against — Cyrus Reed, Lone Star Chapter, Sierra Club.

On — Paul Sarahan, Texas Commission on Environmental Quality.

BACKGROUND:     Under the Water Code, sec. 7.147, unless a water or pollutant is discharged in strict compliance with all required permits or with a valid and effective order issued or rule adopted by the appropriate regulatory agency, a person commits an offense of unauthorized discharge if the person discharges or allows the discharge of any waste or pollutant into any water in the state that cause or threatens to cause water pollution.

The punishment for this offense for an individual is a fine between \$1,000 and \$50,000 and/or up to one year in jail. The punishment for an entity other than an individual is a fine of \$1,000 to \$100,000.

Water Code, sec. 7.176, which governs the handling of used oil, states that it is an offense to discharge oil intentionally into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water. A person who commits this offense may be punished with a fine of \$1,000 to \$50,000 and/or up to five years in jail. If the defendant has previously

been convicted of an offense, the offense is punishable by a fine of \$1,000 to \$100,000 and/or up to 15 years in jail.

DIGEST: SB 1297 would amend the Water Code, secs. 7.147 and 7.176, to allow the discharge of used oil into a drainage system, surface water or groundwater, a watercourse, or marine water if:

- the concentration of used oil in the waste stream resulting from discharge as it entered water was less than 15 parts per million; and
- the person was authorized to discharge storm water under a general permit issued by the Texas Commission on Environmental Quality (TCEQ).

The bill would take effect on September 1, 2005, and would apply to offenses committed on or after the effective date.

SUPPORTERS SAY: Under current law, any amount of used oil that is discharged or spilled can be a criminal violation. This law is inconsistent with federal Environmental Protection Agency (EPA) standards which state that discharge into the water in an amount below 15 parts per million does not threaten water quality. SB 1297 would bring Texas into compliance with the EPA guidelines by establishing an objective, measurable level of discharge considered to be a violation, as determined by EPA standards.

The bill would have no impact on illegal dumping because this change would apply only to those who had a general storm water runoff permit issued by the TCEQ.

OPPONENTS SAY: This bill would measure the concentration of oil "as it enters" the water. In order to be clear that the concentration of oil in the runoff is less than 15 parts per million, the measurement should take place *before* it enters the water because the concentration of oil is diluted once it reaches water. As written, the bill would let offenders off the hook if the water sufficiently diluted the contents.

The amount of discharge determined to be harmful changes as environmental agencies continue to study its effects. Therefore, rather than setting strict limitations in the bill on the concentration of oil, it should allow for variation depending on agency guidelines.

The exception to prosecution created by the bill instead should be in the form of an affirmative defense. It is difficult for the environmental enforcer to prove that at the point of discharge the concentration of oil was less than 15 parts per million. Placing the burden of proof on the state would make enforcing the statute difficult, particularly for intermittent discharges.

NOTES: The companion bill, HB 2455 by Talton, was reported favorably by the Environmental Regulation Committee on April 25.