

## **BILL ANALYSIS**

Senate Research Center  
78R11528 SMH-F

C.S.S.B. 1272  
By: Ambrister  
Natural Resources  
4/17/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

C.S.S.B. 1272 exempts certain concrete batch plants from the contested case hearings process if they are constructed using more enhanced environmental standards as required by the Texas Commission on Environmental Quality (TCEQ). The more protective environmental requirements for these plants could reduce the fugitive emissions from these types of facilities by 50 percent. In lieu of the contested case hearings process, a public meeting would be required and administered by TCEQ to invite public testimony from the neighboring public. Those facilities that do not meet the enhanced environmental regulations set forth by this statute would be subject to the contested hearings process as required by Section 382.058 of the Texas Health and Safety Code.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 382.05101, Health and Safety Code, to authorize the Texas Commission on Environmental Quality (TCEQ) to develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which a permit under Section 382.0518 or 382.0519, a standard permit under Section 382.05195 or 382.05198, or a permit by rule under Section 382.05196 is not required.

SECTION 2. Amends Section 382.0511(c), Health and Safety Code, to make a conforming change regarding Section number 382.05198.

SECTION 3. Amends Subchapter C, Chapter 382C, Health and Safety Code, by adding Sections 382.05198 and 382.05199, as follows:

Sec. 382.05198. STANDARD PERMIT FOR CERTAIN CONCRETE PLANTS. (a) Requires TCEQ to issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and that meets certain requirements.

(b) Requires TCEQ, notwithstanding Subsection (a)(18), to issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and does not meet the requirements of that subdivision if the plant meets the other requirements of Subsection (a) and:

(1) each road, parking lot, and other traffic area located within the distance of a property line provided by Subsection (a)(18) is bordered by dust-suppressing fencing or another barrier at least 12 feet high; and

(2) each stockpile located within the applicable distance of a property line is contained within a three-walled bunker that extends at least two feet above the top of the stockpile.

Sec. 382.05199. STANDARD PERMIT FOR CERTAIN CONCRETE BATCH PLANTS: NOTICE AND HEARING. (a) Prohibits a person from beginning construction of a permanent concrete plant that performs wet batching, dry batching, or central mixing under a standard permit issued under Section 382.05198 unless the commission authorizes the person to use the permit as provided by this section. Provides that the notice and hearing requirements of Subsections (b)-(g) apply only to an applicant for authorization to use a standard permit issued under Section 382.05198. Requires an applicant for a permit for a concrete plant that does not meet the requirements of a standard permit issued under Section 382.05198 to comply with certain sections.

(b) Requires an applicant for an authorization to use a standard permit under Section 382.05198 to publish notice under this section not later than the earlier of certain dates.

(c) Requires the applicant to publish notice at least once in a newspaper of general circulation in the municipality in which the plant is proposed to be located or in the municipality nearest to the proposed location of the plant. Provides that if the elementary or middle school nearest to the proposed plant provides a bilingual education program as required by Chapter 29B, Education Code, the applicant is required to also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the plant is proposed to be located that is published in the language taught in the bilingual education program. Provides that this requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice.

(d) Requires the notice to include certain information.

(e) Provides that the public comment period begins on the first date notice is published under Subsection (b) and extends to the close of the public hearing.

(f) Provides that Section 382.056 of this code and Chapter 2001, Government Code, do not apply to a public hearing held under this section. Provides that a public hearing held under this section is not an evidentiary proceeding. Authorizes any person to submit an oral or written statement concerning the application at the public hearing. Authorizes the applicant to set reasonable limits on the time allowed for oral statements at the public hearing.

(g) Requires the applicant, in cooperation with the executive director, to hold the public hearing not less than 30 days and not more than 45 days after the first date notice is published under Subsection (b). Requires the public hearing to be held in the county in which the plant is proposed to be located.

(h) Requires the executive director not later than the 35th day after the date the public hearing is held, to approve or deny the application for authorization to use the standard permit. Requires the executive director to base the decision on whether the application meets the requirements of Section 382.05198. Requires the executive director to consider all comments received during the public comment period and at the public hearing in determining whether to approve the application. Requires the executive director, if the executive director denies the application, to state the reasons for the denial and any modifications to the application that are necessary for the proposed plant to qualify for the authorization.

(i) Requires the executive director to issue a written response to any public comments received related to the issuance of an authorization to use the standard permit at the same time as or as soon as practicable after the executive director grants or denies the application. Provides that issuance of the response after the granting or denial of the application does not affect the validity of the executive director's decision to grant or deny the application. Requires the executive

director to mail the response to each person who filed a comment and make the response available to the public.

SECTION 4. Effective date: September 1, 2003.