

BILL ANALYSIS

Senate Research Center

S.B. 1134
By: Hegar
Natural Resources
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Commission on Environmental Quality (TCEQ), other state and local governmental entities, and private interests have been conducting, and plan to conduct additional, extensive air quality monitoring efforts to determine the real-world impacts of air emissions from increased oil and gas production in Texas. Because monitoring data is usually not available to TCEQ to use when it is developing permits by rule or standard permits for types of facilities in other industries, it is not clear whether TCEQ's current process would have allowed TCEQ to use the real-world, air quality monitoring data when it was developing the new permit by rule and standard permit for facilities at oil and gas production sites in the Barnett Shale area.

S.B. 1134 amends current law to provide that in promulgating any permit by rule or standard permit for oil and gas production facilities, TCEQ must conduct a regulatory analysis regarding costs and alternatives, give special consideration to the extensive air quality monitoring data that is available, utilize modeling that is consistent with the air quality monitoring data, and expressly allow TCEQ to consider whether requirements for permits by rule and standard permits should be developed that are tailored to different parts of the state. The requirements that would apply to promulgation of permits by rule and standard permits for oil and gas production facilities would also apply to permits by rule and standard permits for those types of facilities that are only related to planned maintenance, startup, and shutdown activities.

S.B. 1134 amends current law relating to the issuance of permits for certain facilities regulated by TCEQ.

[**Note:** While the 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 Natural Resource Conservation Commission in SECTION 1 (Section 382.051962, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 382, Health and Safety Code, by adding Sections 382.051961, 382.051962, 382.051963, and 382.051964, as follows:

Sec. 382.051961. PERMIT FOR CERTAIN OIL AND GAS FACILITIES. (a) Provides that this section applies only to new facilities or modifications of existing facilities that belong to Standard Industrial Classification Codes 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), and 4923 (Natural Gas Transmission and Distribution).

(b) Prohibits the Texas Natural Resource Conservation Commission (TNRCC), from adopting a new permit by rule or a new standard permit or amending an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless TNRCC:

(1) conducts a regulatory analysis as provided by Section 2001.0225 (Regulatory Analysis of Major Environmental Rules), Government Code;

(2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(3) establishes any required emissions limits or other emissions-related requirements based on the evaluation of credible air quality monitoring data, and credible air quality modeling that is not based on worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

(c) Provides that the air quality monitoring data and the evaluation of that data under Subsection (b):

(1) is required to be relevant and technically and scientifically credible, as determined by TNRCC; and

(2) is authorized to be generated by an ambient air quality monitoring program conducted by or on behalf of TNRCC in any part of the state or by another governmental entity of this state, a local or federal governmental entity, or a private organization.

Sec. 382.051962. AUTHORIZATION FOR PLANNED MAINTENANCE, START-UP, OR SHUTDOWN ACTIVITIES RELATING TO CERTAIN OIL AND GAS FACILITIES. (a) Defines, in this section, "planned maintenance, start-up, or shutdown activity."

(b) Authorizes TNRCC to adopt one or more permits by rule or one or more standard permits and to amend one or more existing permits by rule or standard permits to authorize planned maintenance, start-up, or shutdown activities for facilities described by Section 382.051961(a). Requires the adoption or amendment of a permit under this subsection to comply with Section 382.051961(b).

(c) Provides that an unauthorized emission or opacity event from a planned maintenance, start-up, or shutdown activity is subject to an affirmative defense as established by TNRCC rules as those rules exist on the effective date of this section if:

(1) the emission or opacity event occurs at a facility described by Section 382.051961(a);

(2) an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to TNRCC on or before the earlier of January 5, 2014, or the 120th day after the effective date of a new or amended permit adopted by TNRCC under Subsection (b); and

(3) the affirmative defense criteria in the rules are met.

(d) Provides that the affirmative defense described by Subsection (c) is not available for a facility on or after the date that an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is approved, denied, or voided.

Sec. 382.051963. AMENDMENT OF CERTAIN PERMITS. (a) Authorizes that a permit by rule or standard permit that has been adopted by TNRCC under this subchapter and is in effect on the effective date of this section be amended to require:

(1) the permit holder to provide to TNRCC information about a facility authorized by the permit, including the location of the facility; and

(2) any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or is used solely by the operator of the facility or by the owner of the property upon which the facility is located.

(b) Provides that the amendment of a permit under this section is not subject to Section 382.051961(b).

Sec. 382.051964. AGGREGATION OF FACILITIES. Prohibits TNRCC, notwithstanding any other provision of this chapter, from aggregating a facility that belongs to a Standard Industrial Classification code identified by Section 382.051961(a) with another facility that belongs to a Standard Industrial Classification code identified by that section for purposes of consideration as an oil and gas site, a stationary source, or another single source in a permit by rule or a standard permit unless the facilities being aggregated:

(1) are under the control of the same person or are under the control of persons under common control;

(2) belong to the same first two-digit major grouping of Standard Industrial Classification codes;

(3) are operationally dependant; and

(4) are located not more than one-quarter mile from a condensate tank, oil tank, produced water storage tank, or combustion facility that:

(A) is under the control of the same person who controls the facilities being aggregated or is under the control of persons under common control;

(B) belongs to the same first two-digit major grouping of Standard Industrial Classification codes as the facilities being aggregated; and

(C) is operationally dependant on the facilities being aggregated.

SECTION 2. (a) Provides that Sections 382.051961, 382.051962, 382.051963, and 382.051964, Health and Safety Code, as added by this Act, apply only to a new permit by rule or a new standard permit, or any amendment to an existing permit by rule or amendment to an existing standard permit, that is adopted by TCEQ on or after the effective date of this Act.

(b) Provides that a permit by rule or standard permit that has been adopted by TCEQ and is in effect on the effective date of this Act is not subject to Sections 382.051961, 382.051962, and 382.051964, Health and Safety Code, as added by this Act.

SECTION 3. Effective date: upon passage or September 1, 2011.