

## **BILL ANALYSIS**

C.S.S.B. 1134  
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Energy Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Commission on Environmental Quality (TCEQ), other state and local governmental entities, and private interests have been conducting, and plan to conduct, 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 not typically 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 areas of the state such as the Barnett Shale area. The purpose of C.S.S.B. 1134 is to address this issue by making changes to TCEQ's permitting processes for oil and gas production facilities.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 1134 amends the Health and Safety Code to make its provisions relating to air permitting requirements for certain oil and gas facilities applicable 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). The bill prohibits the Texas Commission on Environmental Quality (TCEQ) 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 the bill's provisions apply unless TCEQ performs the following actions:

- conducts a regulatory analysis of a major environmental rule under the Government Code;
- 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 the Texas Clean Air Act is not contravened, including the protection of the public's health and physical property;
- establishes emissions limits or other requirements based on the evaluation of credible air quality monitoring data and credible air quality modeling that is not based on the 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 other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and
- 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.S.S.B. 1134 requires the air quality monitoring data and the evaluation of that data to be relevant and technically and scientifically credible, as determined by TCEQ, and authorizes the air quality monitoring data and the evaluation of that data to be generated by an ambient air quality monitoring program conducted by or on behalf of TCEQ in any part of the state or by another governmental entity of this state, a local or federal governmental entity, or a private organization.

C.S.S.B. 1134 authorizes TCEQ to adopt one or more permits by rule or one or more standard permits and amend one or more existing permits by rule or standard permits to authorize planned maintenance, start-up, or shutdown activities for facilities that belong to certain Standard Industrial Classification Codes identified by the bill's provisions. The bill requires the adoption or amendment of a permit to comply with the bill's requirements for adopting or amending permits for certain oil and gas facilities. The bill establishes 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 TCEQ rules as those rules exist on the bill's effective date if the emission or opacity event occurs at a facility that belongs to certain Standard Industrial Classification Codes; if an application for a permit or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to TCEQ 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 TCEQ; and if the affirmative defense criteria in the rules are met. The bill establishes that such an affirmative defense 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.

C.S.S.B. 1134 authorizes a permit by rule or standard permit that has been adopted by TCEQ and is in effect on the bill's effective date to be amended to require the permit holder to provide to TCEQ information about a facility authorized by the permit, including the location of the facility, and any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or used solely by the operator of the facility or by the owner of the property upon which the facility is located. The bill specifies the amendment of a permit under these provisions is not subject to the bill's requirements for adopting or amending permits for certain oil and gas facilities. The bill defines "planned maintenance, start-up, or shutdown activity" for purposes of activities relating to certain oil and gas facilities.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1134 differs from the original by prohibiting TCEQ from adopting or amending certain permits unless, among other conditions, TCEQ 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 the Texas Clean Air Act is not contravened, including the protection of the public's health and physical property, whereas the original bases that determination on the necessity to protect public health and physical property.

C.S.S.B. 1134 differs from the original by establishing 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 TCEQ rules if an application for a permit or registration authorizing the planned maintenance, start-up, or shutdown activities of the facility is submitted to TCEQ on or before the earlier of January 5, 2014, or the 120th day after the effective date of a new or amended permit, whereas the original establishes that such an unauthorized emission or opacity event is subject to the affirmative defense criteria established by TCEQ rules if an application for a permit or permit amendment is submitted to TCEQ on or before the earlier of January 5, 2014,

or the 30th day after the effective date of a new or amended permit.

C.S.S.B. 1134 differs from the original by authorizing a permit by rule or standard permit to require any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or used solely by the operator of the facility or by the owner of the property upon which the facility is located, whereas the original specifies that the permit may require a facility to be a minimum distance from a recreational area, a residence, or another structure unless the structure is not occupied or is used solely by such persons.