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Groups: Amend state permitting law



By Glenn Evans
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The Caddo Lake Institute and an international environmental group are asking the EPA to withdraw a pollution permit policy that gave Texas sole authority over air and water permits within its borders in the 1990s.

The institute in Karnack and the Environmental Defense Fund aren't so much looking to restore a double permitting program Gov. George W. Bush negotiated down to a Texas-only system.

They hope a petition filed with the Environmental Protection Agency on Jan. 10 will push state lawmakers to revisit a 2015 bill the groups say dramatically curbs the public's ability to oppose pending air and water permits.

Jennah Durant, a spokeswoman for the EPA's regional office in Dallas, acknowledged Friday that the agency is mulling the environmentalists' petition. The letter to EPA is not a lawsuit, just an administrative request.

Durant indicated the one-permit process, in which the Texas Commission on Environmental Quality evaluates permit applications, was not on the environmental agency's radar.

"We are not aware of significant deficiencies in TCEQ delegated environmental programs at this time," she said. "We will carefully review and consider claims raised by the environmental groups and respond accordingly."

Caddo Lake Institute Executive Director Rick Lowerre gave a generally favorable ruling to the one-permit protocol Bush worked out, but said the prospect of losing that authority, called delegation, could spur the Legislature to amend a 2015 law that has restricted public participation on pollution permits.

"There was a couple of things they did," Lowerre said of the 84th legislative session in Austin. "One is they basically limited who can participate (in the permitting process) and, two, they basically shifted the burden of proof."

Senate Bill 709 passed in the state Senate by a 22-9 vote May 13. It was opposed by Northeast Texas Sen. Kevin Eltife, R-Tyler.

The measure passed in the House of Representatives by an 83-37 vote May 1. East Texas Republicans David Simpson of Longview, Bryan Hughes of Mineola and Chris Paddie of Marshall voted for the bill. Rep. Travis Clardy, R-Nacogdoches, was on excused absence.

Lowerre said SB 709 limits who can call for a contested hearing on permits by eliminating people who claim recreational, environmental or aesthetic interest in sites proposed for smokestacks and water discharges.

The law also forces permit opponents to show conclusively how proposed discharges will harm them at the outset of hearings, replacing a standard that asked for a "fairly traceable" connection between the pollution and affected parties.

Finally, the bill gives permit applicants the benefit of the doubt, telling the state environmental agency to give greater weight to the "merits of the underlying application."

The flaw in that last facet, Lowerre said, is illustrated in the case of a hazardous waste handler that wrote in a permit application that there are no natural springs at its proposed site north of Athens.

Landowners there, however, said there are springs on the land.

"Now, you can't get in the door to put on your evidence," Lowerre said. "You can say, 'There's springs out there.' And the applicant can say, 'You have to accept our application.' That's what the law says."

Lowerre said "it's unlikely" the petition will result in reinstatement of the old state-federal permitting protocol. Merely the prospect of a return to the two-permit system will prompt officials with energy and other polluting industries to pressure lawmakers, he said.

"If the TCEQ goes to the Legislature and says, 'Fix this law, or we're going to lose delegation (over air and water permits),' ... Texas industries will make sure the law is fixed," Lowerre said. "They do not want EPA as the regulatory agency."

The Environmental Defense Fund is a worldwide, nonprofit environmental advocate counting more than 1 million members and a staff of 500 scientists, economists, policy experts and other professionals. The group's website says it believes "prosperity and environmental stewardship must go hand in hand."

Founded in 1992 by Linden native Don Henley and the late Dwight Shellman, the Caddo Lake Institute describes its mission as "protecting the ecological, cultural and economic integrity of Caddo Lake, its associated wetlands and watershed."

"We're trying to protect resources," Lowerre said. "We need to have a seat at the table when people are preparing things that are going to harm the resources."

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