

- SUBJECT:** Handling of ammonium nitrate; Tier II hazardous chemical reporting
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 8 ayes — Morrison, E. Rodriguez, Isaac, Kacal, P. King, Lozano, Reynolds, E. Thompson
- 0 nays
- 1 absent — K. King
- WITNESSES:** For — Jim Farley, Farley Farm Supply, Inc; Brad Johnson, Northeast Texas Farmers Co-op; Tom “Smitty” Smith, Public Citizen; Richard Szecsy, Texas Aggregate and Concrete Association; Elizabeth Riebschlaeger; (*Registered, but did not testify:* Adrian Shelley, Air Alliance Houston; Tommy Muska, City of West; Luke Metzger, Environment Texas; Donna Warndorf, Harris County; Cyrus Reed, Lone Star Chapter Sierra Club; Jimmy Schulz, Donnie Dippel, and Chris Pepper, Texas Ag Industries Association; Robin Schneider, Texas Campaign for the Environment; Marissa Patton, Texas Farm Bureau; David Weinberg, Texas League of Conservation Voters; Chesley Blevins, Texas Mining and Reclamation Association; Jim Reaves, Texas Nursery and Landscape Association; Patricia Gonzales, Texas Organizing Project; Ware Wendell, Texas Watch)
- Against — None
- On — (*Registered, but did not testify:* Hoyt Henry, Department of State Health Services Tier 2 Program; Tim Herrman, Office of the Texas State Chemist; Kelly Cook, Texas Commission on Environmental Quality; Chris Coneally, Texas Department of Insurance, State Fire Marshal’s Office)
- BACKGROUND:** The Tier II Chemical Reporting Program is administered by the Department of State Health Services (DSHS). Facilities that store substantial amounts of hazardous substances must make an annual Tier II

report to DSHS on those chemicals. The Tier II reports currently are outlined in three chapters of the Health and Safety Code, also known as the community right-to-know acts:

- the Manufacturing Facility Community Right-to-Know Act under Chapter 505 applies to manufacturing plants using raw materials to make a final product, such as plastic;
- the Public Employer Community Right-to-Know Act under Chapter 506 applies to cities, water districts, and school districts using chlorine gas for treating water, fuel, and propane for bus fleets; and
- the Nonmanufacturing Facilities Community Right-to-Know Act under Chapter 507 applies to oil production and agribusiness.

When hazardous chemicals or extremely hazardous substances are present at a facility in certain threshold amounts, these laws require the facility to compile and maintain a Tier II report containing information about the chemicals and substances. Tier II reports must be filed annually as well as within 90 days of beginning operation or of receiving a reportable addition of a hazardous chemical. The facility must give a copy of the report to the fire chief of the fire department with jurisdiction over the facility and to the appropriate local emergency planning committee.

DIGEST:

CSHB 942 would transfer Tier II reporting requirements from the Department of State Health Services (DSHS) to the Texas Commission on Environmental Quality (TCEQ) on September 1, 2015. The transfer would include all resources used for reporting as well as the civil, criminal, and administrative penalties in the Health and Safety Code used in reporting compliance.

The bill would allow a state fire marshal to enter ammonium nitrate facilities in order to complete an inspection for hazardous conditions and would grant the facility owner up to 10 days to correct the hazard. Local fire departments would be allowed to do pre-fire planning assessments of the facilities.

The bill would adjust the reporting requirements timeline for ammonium nitrate storage facilities to give notice to the state and local emergency entities.

Fire prevention at ammonium nitrate storage facilities. The owner or operator of an ammonium nitrate storage facility would have to, on request, at a reasonable time:

- allow a fire marshal to enter the facility to make a thorough examination of the facility; and
- allow the local fire department access to the facility to perform a pre-fire planning assessment.

A fire marshal who determined the presence of hazardous conditions that endangered the safety of a structure or its occupants by promoting or causing fire or combustion would have to notify the owner or operator of the facility.

On request by a fire marshal or the Texas Feed and Fertilizer Control Service, the owner or operator of the facility would have to provide evidence of compliance of Tier II reporting requirements and U.S. Department of Homeland Security registration requirements.

A fire marshal who identified a hazardous condition or a violation would have to notify the Texas Feed and Fertilizer Control Service. If directed by the Texas Feed and Fertilizer Control Service to correct a hazardous condition or a violation, an owner or operator would have to remedy the condition or violation within 10 days. If the Texas Feed and Fertilizer Control Service determined that the condition or violation had not been remedied, appropriate enforcement action would be taken.

The bill would require that ammonium nitrate or ammonium nitrate material be stored in a fertilizer storage compartment or bin constructed of wood, metal, or concrete protected against impregnation by the ammonium nitrate or ammonium nitrate material and separately from any non-fertilizer materials. Ammonium nitrate or ammonium nitrate material

also would have to be separated from combustible or flammable material by at least 30 feet. Warning placards would have to be placed on the outside of the storage area.

Reporting requirements. The operator of a facility storing ammonium nitrate used in fertilizer would have to file a Tier II form with TCEQ within 72 hours, instead of 90 days, of beginning operations or receiving a reportable addition of ammonium nitrate. The operator also would have to file an updated Tier II form within 72 hours of a change in the chemical weight range of previously reported ammonium nitrate.

Within 72 hours of receiving a Tier II form, TCEQ would have to provide a copy to the state fire marshal and the Texas Division of Emergency Management. The state fire marshal would have to provide a copy to the chief of the fire department with jurisdiction over the facility. The Texas Division of Emergency Management would have to provide a copy to the appropriate local emergency planning committee.

Fees. The bill would provide that up to 20 percent of fees collected for the Tier II program could continue to be used to provide grants to local emergency planning committees to assist them in fulfilling responsibilities related to chemical storage. TCEQ would be authorized to use up to 15 percent of fees collected for the Tier II program for DSHS administrative costs under Health and Safety Code, ch. 502.

Violations and penalties. The bill would prohibit a facility operator from violating the community right-to-know laws.

Administrative penalties. The maximum administrative penalty for a violation of a manufacturing facility community right-to-know law would be up to \$500 a day and up to \$5,000 for each violation. The penalty against a facility operator in violation of a non-manufacturing and public employer community right-to-know law would be up to \$50 a day and up to \$1,000 for each violation.

Civil penalties. A person who knowingly disclosed false information or

negligently failed to disclose a hazard under the public employer community right-to-know law or the manufacturing facility community right-to-know law would be subject to a civil penalty of up to \$5,000 for each violation.

Criminal penalties. A person who proximately caused an occupational disease or injury by knowingly disclosing false information or knowingly failing to disclose hazard information as required by the public employer community right-to-know law or the manufacturing facility community right-to-know law would commit a criminal offense punishable by a fine of up to \$25,000.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 942 would improve public safety by clarifying the oversight and regulation of ammonium nitrate storage facilities. Ammonium nitrate is a commonly used fertilizer due to its high nitrogen content. It is also a hazardous chemical with strict guidelines for handling and storage. On April 17, 2013, an explosion at an ammonium nitrate facility in the community of West, Texas, killed 15 individuals, injured multiple others, and leveled parts of the town. This bill is the result of interim Homeland Security and Public Safety Committee hearings as well as investigations that took place following the disaster in West. A product of much stakeholder input, this bill would strike a careful balance between public safety regulations and the agriculture industry that is so crucial to Texas.

Currently, fire marshals do not have the legal authority to enter a property to conduct an inspection. Had the appropriate emergency authorities been aware of the contents of the West facility before the fire occurred, the tragedy might have been avoided. There are currently 83 ammonium nitrate facilities operating in Texas, 45 of which are fertilizer companies similar to the facility in West. The bill would take common-sense steps to reduce the likelihood of another disaster while avoiding cost-prohibitive provisions that would burden industry compliance.

While there is an existing Tier II reporting requirement that should keep state and local emergency entities aware of hazardous chemicals such as ammonium nitrate, reporting is not consistent, and some smaller facilities were not even aware of the reporting requirement. The Tier II report is an annual report that requires an update within 90 days of a reportable change. Any reportable quantity of fertilizer could be sold by the time it would have to be reported. The bill would adjust the reporting timeline for ammonium nitrate storage facilities to hasten the notice to state and local emergency entities.

The bill would allow the state fire marshal to enter ammonium nitrate facilities in order to complete inspections as well as allow local fire departments to do pre-fire planning assessments of the facilities. While there are concerns that this bill could place an additional regulatory burden on private facilities, many of the requirements of the bill, including the storage requirements, already are enforceable by the Texas state chemist's office. This bill would simply codify existing rule. Also, the bill would not make any change to the existing penalty structure.

**OPPONENTS
SAY:**

CSHB 942 would impose additional regulations on private facilities that could hinder business. While intended in the interest of safety, the expedited reporting requirements as well as some of the corrective actions the facilities might be required to make could be cost-prohibitive and burdensome to smaller businesses.