

CHAPTER 457

H.B. No. 1306

An Act relating to the administration and regulation of solid waste management practices and of the storage, processing, or disposal of hazardous waste; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 4(e)(8), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(8) The state agency has the authority, for good cause, to revoke or amend any permit it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or rules controlling the management of solid waste. *Except as provided by Subsection (l) of this section, the [The] state agency using this authority shall notify the governmental entities named in Paragraph (1) of this Subsection (e) and provide an opportunity for a hearing to the permittee and persons affected. The state agency may hold such a hearing upon its own motion. The state agency by rule shall establish procedures for public notice and any public hearing authorized under this paragraph. Hearings under this paragraph shall be conducted in accordance with the hearing rules adopted by the state agency and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).*

SECTION 2. Section 4(f), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(f)(1) This subsection applies to the collection, handling, storage, processing, and disposal of industrial solid waste which is disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial solid waste. This subsection does not apply if the waste is collected, handled, stored, processed, or disposed of with solid waste from any other source or sources or if the waste, which is collected, handled, stored, processed, or disposed of is hazardous waste. The department of water resources may not require a permit under this Act for the disposal of any solid waste to which this subsection applies, but this does not change or limit any authority the department of water resources may have with respect to the requirement of permits, the control of water quality, or otherwise, under Chapter 26, Water Code, or the authority provided by Subsection (k) of this section. However, the department of water resources may adopt rules as provided under Subsection (c) of this section to govern and control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this subsection applies so as to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection. The department of water resources may require a person who disposes or plans to dispose of industrial solid waste under the authority of this subsection to submit to the department of water resources such information as may be reasonably required to enable the department of water resources to determine whether in its judgment the waste disposal activity is one to which this subsection applies.

(2) No person shall process, store, or dispose of hazardous industrial solid wastes under this subsection without having first obtained a hazardous waste permit issued by the commission; provided, however, that any person who has on or before November 19, 1980, commenced on-site processing, storing or disposing of hazardous waste under this subsection and who has filed a hazardous waste permit application in accordance with the rules of the board may continue to process, store, or dispose of hazardous waste until such time as the commission approves or denies the application, *except as provided by Subsection (l) of this section.* Upon its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit. The board by rule shall establish procedures for public notice and any public hearing authorized by this subsection. The commission may include requirements in the permit for any remedial actions by the applicant that are determined by the commission to be necessary to protect the public health and safety and the environment.

SECTION 3. Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsections (k) and (l) to read as follows:

(k) *Each state agency shall require corrective action for any release of hazardous waste or hazardous waste constituents from any solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of the time at which waste is placed in the unit. The state agency shall establish schedules of compliance for the corrective action, if the corrective action cannot be completed before permit issuance, and assurances of financial responsibility for completing the corrective action.*

If, before the issuance of a permit, the state agency determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the state agency

may issue an order requiring corrective action or any other response measure considered necessary to protect human health or the environment, or the state agency may institute a civil action under Section 8 of this Act. Any order issued under this subsection may include a suspension or revocation of authorization to operate, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the state agency may assess a civil penalty in accordance with this Act.

(1) Authorization to store, process, or dispose of hazardous waste under Subsection 4(f)(2) of this Act or under a solid waste permit issued by a state agency under Subsection (e) of this section that has not been reissued by the state agency in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., terminates as follows:

(1) in the case of each land disposal facility, on November 8, 1985, unless the owner or operator of the facility applies for a final determination regarding issuance of a permit before that date and certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements;

(2) in the case of each incinerator facility, on November 8, 1989, unless the owner or operator of the facility applies for a final determination regarding issuance of a permit by November 8, 1986; and

(3) in the case of all other solid waste facilities, on November 8, 1992, unless the owner or operator of the facility applies for a final determination regarding issuance of a permit by November 8, 1988.

SECTION 4. Sections 8(b) and (c), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Criminal Penalties. (1) Any person who knowingly:

(A) transports, or causes to be transported for storage, processing, or disposal, any hazardous waste to any location which does not have a permit as required by a state agency exercising jurisdiction under Section 4 of this Act;

(B) stores, processes, or disposes, or causes to be stored, processed, or disposed, any hazardous waste without ~~having obtained~~ a permit as required by a state agency exercising jurisdiction under Section 4 of this Act, ~~or~~ in knowing violation of any material condition or requirement of a permit, or in knowing violation of any material condition or requirement of an applicable interim status rule or standard;

(C) omits or causes to be omitted material information or makes~~;~~ or causes to be made~~;~~ any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with any requirement of this Act applicable to hazardous waste; ~~or~~

(D) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, any hazardous waste (whether such activity took place before or after the date of enactment of this section) and who knowingly destroys, alters, ~~or~~ conceals, or fails to file or causes to be destroyed, altered, ~~or~~ concealed, or not filed any record, application, manifest, report, or other document required to be maintained or filed to comply with~~under~~ the rules promulgated by the state agency under this Act; or

(E) transports without a manifest or causes to be transported without a manifest any hazardous waste required by rules adopted by a state agency under this Act to be accompanied by a manifest, shall be subject, upon conviction, to a fine of not less than \$100.00 nor more than \$50,000.00 ~~[\$25,000.00]~~ for each act of violation and each day of violation, or to imprisonment not to exceed five years, in the case of a violation under Subdivision (1)(A) or (B) of this subsection, or two years, in the case of any other violation under this subsection ~~[180 days]~~, or both fine and imprisonment. If the conviction is for a violation committed after a first conviction of such person under this Section 8(b), punishment shall be by a fine of not less than \$200.00 nor more than \$100,000.00 ~~[\$50,000.00]~~ for each day of violation, or by imprisonment not to exceed 10 years, in the case of a subsequent violation under Subdivision (1)(A) or (B) of this subsection, or four years, in the case of any other subsequent violation under this subsection ~~[one year]~~, or both fine and imprisonment.

(c) Knowing Endangerment. (1) Any person who knowingly:

~~(A)~~ transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, any hazardous waste in violation of this Act and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury~~;~~ and

~~(B)(i)~~ if his conduct in the circumstances manifests an unjustified and inexcusable disregard for human life; or

~~[(ii) if his conduct in the circumstances manifests an extreme indifference for human life;] shall be subject upon conviction to a fine of not more than \$250,000.00 or imprisonment for not more than 15 [two] years, or both; except that a person that violates Subsections (e)(1)(A) and (e)(1)(B)(ii) of this section shall, upon conviction, be subject to a fine of not more than \$250,000.00 or imprisonment for not more than five years, or both]. A person, other than an individual, shall upon conviction of violating this Section 8(c) be subject to a fine of not more than \$1,000,000.00.~~

(2) It is an affirmative defense to a prosecution under this subsection that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods, if such endangered person had been made aware of the risks involved prior to giving consent.

SECTION 5. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. This Act takes effect September 1, 1985.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 8, 1985, by a non-record vote; passed by the Senate on May 24, 1985, by the following vote: Yeas 29, Nays 0.

Approved: June 11, 1985

Effective: September 1, 1985