

## CHAPTER 921

### H.B. No. 1867

An Act relating to the regulatory authority of the Railroad Commission of Texas with respect to the management of wastes, the prevention of pollution, and brine mining; providing a penalty.

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

**SECTION 1.** Section 26.131, Water Code, is amended to read as follows:

*Text of section effective until delegation of RCRA authority to Railroad Commission of Texas*

**Sec. 26.131. DUTIES OF RAILROAD COMMISSION.** (a) The Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from:

(1) activities associated with the exploration, development, and production of oil or gas or geothermal resources, *including:*

(A) *activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;*

(B) *activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Railroad Commission of Texas;*

(C) *activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;*

(D) *activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;*

(E) *activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and*

(F) *activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;*

(2) ~~and,~~ except to the extent the activities are regulated by the Texas Department of Health under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), ~~from~~ activities associated with uranium exploration consisting of the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of uranium ore; *and*

(3) any other activities regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code.

(b) The Railroad Commission of Texas may issue permits for the discharge of waste resulting from these activities, and the discharge of waste into water in this state resulting from these activities shall meet the water quality standards established by the board.

(c) The term "waste" as used in this section does not include any waste that results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

*Text of section effective upon delegation of RCRA authority to Railroad Commission of Texas*

Sec. 26.131. DUTIES OF RAILROAD COMMISSION. (a) The Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from:

(1) activities associated with the exploration, development, and production of oil or gas or geothermal resources, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Railroad Commission of Texas;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(2) ~~and~~ except to the extent the activities are regulated by the Texas Department of Health under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), ~~from~~ activities associated with uranium exploration consisting of the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of uranium ore; and

(3) any other activities regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code.

(b) The Railroad Commission of Texas may issue permits for the discharge of waste resulting from these activities, and the discharge of waste into water in this state resulting from these activities shall meet the water quality standards established by the board.

SECTION 2. Chapter 27, Water Code, is amended by adding a new Section 27.036 to read as follows:

Sec. 27.036. JURISDICTION OVER BRINE MINING. (a) The railroad commission has jurisdiction over brine mining and may issue permits for injection wells used for brine mining.

(b) A person may not begin to drill an injection well to be used for brine mining unless that person has a valid permit for the well issued by the railroad commission under this chapter.

(c) The railroad commission shall adopt rules that are necessary to administer and regulate brine mining.

(d) For purposes of regulation by the railroad commission, an injection well for brine mining is designated as a Class III well under the underground injection control program administered by the railroad commission.

(e) This section takes effect September 1, 1985.

(f) This section does not invalidate any permit for an injection well used for brine mining that was issued by the Texas Water Commission before the effective date of this section. Within 90 days after the effective date of this section, the Railroad Commission of Texas shall issue a substitute permit under the name and authority of the railroad commission to each person who on the effective date of this section holds a valid permit issued by the Texas Water Commission for an injection well used for brine mining.

(g) Application for injection well permits covering brine mining submitted to the Texas Department of Water Resources before the effective date of this section for which permits have not been issued by the Texas Water Commission shall be transmitted to the Railroad Commission of Texas.

**SECTION 3.** Section 2(24), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

*Text of section effective until delegation of RCRA authority to Railroad Commission of Texas*

(24) "Solid waste" means any garbage, refuse [~~rubbish~~], sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended [~~and are subject to control by the Texas Railroad Commission~~].

*Text of section effective upon delegation of RCRA authority to Railroad Commission of Texas*

(24) "Solid waste" means any garbage, refuse [~~rubbish~~], sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code [~~and are subject to control by the Texas Railroad Commission~~].

**SECTION 4.** Sections 91.101 and 91.1011, Natural Resources Code, are amended to read as follows:

*Text of section effective until delegation of RCRA authority to Railroad Commission of Texas*

Sec. 91.101. RULES AND ORDERS. (a) To prevent pollution of surface water or [~~in the state, and of~~] subsurface water in the state [~~suitable for domestic or livestock use, irrigation of crops, or industrial use, that would or might result from the escape or release of oil, salt water, other mineralized water, or other oil and gas waste from any well or operations in connection with any well~~], the commission shall adopt and enforce rules and orders and may issue permits relating to:

(1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;

(2) the production of oil and gas, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(3) the operation, abandonment, and proper plugging of ~~these~~ wells subject to the jurisdiction of the commission; and

(4) the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste as defined in Section 91.1011 of this subchapter, or of any other substance or material associated with any operation or activity regulated by the commission under Subdivisions (1), (2), and (3) of this subsection.

(b) Notwithstanding the provisions of Subsection (a) of this section, the authority granted to the commission by this section does not include the authority to adopt and enforce rules and orders or issue permits regarding the collection, storage, handling, transportation, processing, or disposal of waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

Text of section effective upon delegation of RCRA authority to Railroad Commission of Texas

Sec. 91.101. RULES AND ORDERS. To prevent pollution of surface water or ~~in the state; and of~~ subsurface water in the state ~~[suitable for domestic or livestock use, irrigation of crops, or industrial use; that would or might result from the escape or release of oil, salt water, other mineralized water, or other oil and gas waste from any well or operations in connection with any well]~~, the commission shall adopt and enforce rules and orders and may issue permits relating to:

(1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;

(2) the production of oil and gas, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(3) the operation, abandonment, and proper plugging of ~~these~~ wells subject to the jurisdiction of the commission; and

(4) the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste as defined in Section 91.1011 of this subchapter, or of any other substance or material associated with any operation or activity regulated by the commission under Subdivisions (1), (2), and (3) of this section.

Text of section effective until delegation of RCRA authority to Railroad Commission of Texas

Sec. 91.1011. OIL AND GAS WASTE. (a) In this subchapter, "oil and gas waste" means waste that arises out of or incidental to the drilling for or producing of oil or gas, including ~~or~~ waste arising out of or incidental to:

(1) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(2) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(3) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(4) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(5) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(6) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel.

(b) "Oil and gas waste" [~~the underground storage of hydrocarbons other than the storage in artificial tanks or containers and~~] includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material, but does not include waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

Text of section effective upon delegation of RCRA authority to Railroad Commission of Texas

Sec. 91.1011. OIL AND GAS WASTE. (a) In this subchapter, "oil and gas waste" means waste that arises out of or incidental to the drilling for or producing of oil or gas, including ~~or~~ waste arising out of or incidental to:

(1) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(2) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(3) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(4) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(5) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(6) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel.

(b) "Oil and gas waste" [~~the underground storage of hydrocarbons other than the storage in artificial tanks or containers and~~] includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material.

SECTION 5. Subdivision (10) of Section 131.004, Natural Resources Code, is amended to read as follows:

(10) "Surface mining permit" or "permit" means the written certification by the commission that the named operator may conduct the surface mining operations described in the certification during the term of the surface mining permit and in the manner established in the certification. *These terms do not include a discharge permit issued by the commission pursuant to Subchapter H of this chapter.*

SECTION 6. Subdivision (16) of Section 131.004, Natural Resources Code, is amended to read as follows:

(16) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, government or governmental subdivision or agency, business trust, estate, trust, ~~or any~~ organization or association of citizens, or any other legal entity.

SECTION 7. Chapter 131, Natural Resources Code, is amended by adding Subchapter H to read as follows:

#### SUBCHAPTER H. DISCHARGES

Sec. 131.301. DISCHARGE RULES, ORDERS, AND PERMITS. *To prevent the pollution of surface and subsurface water in the state, the commission shall adopt rules and may issue orders and permits relating to the discharge of waste or any other substance or material from any uranium exploration activity. Notwithstanding any provision of any other section of this chapter, a rule, order, or permit issuable by the commission under this subchapter shall be issued, administered, and enforced solely in the manner provided in this subchapter, in such rule, order, or permit, or in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

*Sec. 131.302. ACCESS TO PROPERTY AND RECORDS. Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions associated with any uranium exploration activity and related to the quality of water in the state, to inspect and investigate conditions related to the development of rules, orders, or permits issuable by the commission under this subchapter, to monitor compliance with any rule, order, or permit issued by the commission under this subchapter, or to examine and copy, during reasonable working hours, any records required to be maintained under any rule, order, or permit issued by the commission under this subchapter. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.*

*Sec. 131.303. INJUNCTIVE RELIEF AND CIVIL PENALTY. If a person violates or threatens to violate a rule, order, or permit issued by the commission under this subchapter, the commission may request the attorney general to institute an action to obtain a permanent or temporary injunction, temporary restraining order, or other appropriate order enjoining the violation or threatened violation, or to recover a civil penalty of not more than \$10,000 a day for each violation or threatened violation, or for both injunctive relief and civil penalty. The action shall be brought in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of residence of any defendant.*

*Sec. 131.304. ADMINISTRATIVE PENALTY. A person who violates a rule, order, or permit issued by the commission under this subchapter may be assessed a civil penalty by the commission. The penalty may not exceed \$10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments. In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. The penalty shall be assessed, recovered, and contested in accordance with the procedures provided in Sections 131.2662-131.2664 of Subchapter G of this chapter.*

*Sec. 131.305. CRIMINAL PENALTY. A person who knowingly, willfully, or with criminal negligence violates a rule, order, or permit issued by the commission under this subchapter commits an offense that is punishable by a fine of not more than \$10,000 a day for each violation. Venue for prosecution of an alleged violation is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.*

**SECTION 8.** 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 15, 1985, by the following vote: Yeas 132, Nays 0, 1 present, not voting; House concurred in Senate amendments to H.B. No. 1867 on May 26, 1985, by the following vote: Yeas 135, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on May 25, 1985, by the following vote: Yeas 25, Nays 4.

Approved: June 15, 1985

Effective: Immediately