

CHAPTER 930

H.B. No. 2068

An Act relating to spills of hazardous substances into water in this state.

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

SECTION 1. Section 26.262, Water Code, is amended to read as follows:

Sec. 26.262. **POLICY.** It is the policy of this state to prevent the spill or discharge of hazardous substances into the [surface] waters in [of] the state and to cause the removal of such spills and discharges without undue delay.

SECTION 2. Section 26.263, Water Code, is amended by amending Subdivision (1) and adding Subdivisions (5) and (6) to read as follows:

(1) "Discharge or spill" means an act or omission by which hazardous substances in harmful quantities are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into [surface] waters in [of] this state or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter [surface] water in this state. The term "discharge" or "spill" shall not include any discharge which is authorized by a permit issued pursuant to federal law or any other law of this state or, with the exception of transportation spills and spills in coastal waters, regulated by the Railroad Commission of Texas.

(5) "Person" includes an individual, firm, corporation, association, and partnership.

(6) "Person responsible" or "responsible person" means:

(A) the owner, operator, or demise charterer of a vessel from which a spill emanates;

(B) the owner or operator of a facility from which a spill emanates;

(C) any other person who causes, suffers, allows, or permits a spill or discharge.

SECTION 3. Section 26.264, Water Code, is amended by amending Subsections (e) and (h) and adding Subsection (l) to read as follows:

(e) The executive director shall solicit the assistance of and cooperate with local governments, the federal government, other agencies and departments of this state, and private persons and other entities to develop regional contingency plans for prevention and control of hazardous substance spills and discharges. *The executive director may solicit the assistance of spill cleanup experts in determining appropriate measures to be taken in cleaning up a spill or discharge. The executive director shall develop a list of spill cleanup experts to be consulted, but shall not be limited to that list in seeking assistance. No person providing such assistance shall be held liable for any acts or omissions of the executive director which may result from soliciting such assistance.*

(h)(1) In developing rules and plans under this subchapter and in engaging in cleanup activities, the board shall recognize the authority of the predesignated federal and on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills. The executive director shall place the resources of the state at the disposal of the on-scene coordinator, if he is present, or shall engage in cleanup activities when directed to do so by the on-scene coordinator.

(2) Nothing in this subchapter shall prevent the executive director from appointing a state-designated on-scene coordinator and acting independently if no on-scene federal coordinator is present or ~~and~~ no action is being taken by an agency of the federal government.

(3) The department shall seek reimbursement from the designated agencies of the federal government for the reasonable costs incurred in cleanup operations, including but not limited to costs of personnel, equipment, the use of equipment, and supplies and restoration of land and aquatic resources held in trust or owned by the state.

(l) To the extent practicable and in lieu of the provisions of this subchapter, for facilities permitted under the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) to store, process, or dispose of hazardous waste, the department shall use procedures established under existing hazardous waste permits to abate or remove discharges or spills.

SECTION 4. Section 26.265, Water Code, is amended by amending Subsection (b) and adding Subsections (d) through (g) to read as follows:

(b) The fund shall consist of money appropriated to it by the legislature and any fines, civil penalties, or other reimbursement to the fund provided for under this subchapter. ~~It is the intent of the legislature that the state attempt to recover money spent from the fund according to the following priority:~~

~~(1) direct reimbursement from the federal government as provided by federal law for costs incurred in cleanup operations;~~

~~(2) in the event that federal reimbursement is not available, the state shall seek to recover cleanup costs from the responsible party. If the responsible party refuses to pay, the state shall initiate legal action to collect the actual costs; provided, however, that such recovery may not exceed \$5 million; and~~

~~(3) if federal reimbursement occurs but is insufficient to repay the fund, the state shall take action to collect the remainder from the responsible party as provided in Subdivision (2) of this subsection.]~~

~~(d) The state has a cause of action against any responsible person for recovery, in an amount not exceeding \$5 million, of:~~

~~(1) expenditures out of the fund; and~~

~~(2) costs that would have been incurred or paid by the responsible person if the responsible person had fully carried out the duties under Section 26.266 of this code, including reasonable costs of reasonable and necessary scientific studies to determine impacts of the spill on the environment and natural resources and to determine the manner in which to respond to spill impacts; costs of attorney services; out-of-pocket costs associated with state agency actions; and costs of remediating injuries proximately caused by reasonable cleanup activities.~~

~~(e) The state's right to recover under Subsection (d) of this section arises whether or not expenditures have actually been made out of the fund.~~

~~(f) It is the intent of the legislature that the state attempt to recover the costs of cleanup according to the following priority:~~

~~(1) direct reimbursement from the federal government;~~

~~(2) in the event that federal reimbursement is not available, the state shall seek to recover cleanup costs from the responsible person;~~

~~(3) if federal reimbursement occurs but is insufficient to pay the costs of cleanup, the state shall seek to recover the remainder from the responsible person.~~

(g) In a suit brought under Subsection (d) of this section, any responsible person who, after reasonable notice has been given by the executive director, has failed, after a reasonable period, to carry out his duties under Section 26.266 of this code is liable to the state for twice the costs incurred by the state in cleaning up the spill or discharge. Reasonable notice under this subsection must include a statement as to the basis for finding the person to whom notice is sent to be a responsible person. Any responsible person held liable under this subsection or Subsection (d) of this section has the right to recover indemnity or contribution from any third party who caused, suffered, allowed, or permitted the spill or discharge. Liability arising under this subsection or Subsection (d) of this section does not affect any rights the responsible person has against a third party whose acts caused or contributed to the spill or discharge.

SECTION 5. Section 26.266, Water Code, is amended to read as follows:

Sec. 26.266. **REMOVAL OF SPILL OR [ACCIDENTAL] DISCHARGE.** (a) Any owner, operator, demise charterer, or person in charge of a vessel or of any on-shore facility or off-shore facility [~~Any person discharging or spilling hazardous substances into surface waters~~] shall immediately undertake all reasonable [feasible] actions to abate and remove the discharge or spill subject to applicable federal and state requirements, and subject to the control of the federal on-scene coordinator.

(b) In the event that the responsible party is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of such party is inadequate, the department may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.

(c) Any discharge or spill of a hazardous substance, the source of which is unknown, occurring in waters of the state or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter waters of the state may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the board's approval, from the fund, subject to the authority of the board to seek reimbursement from an agency of the federal government, and from the responsible party if the identity of that party is discovered.

(d) In any activity undertaken pursuant to this section, the department shall act in accordance with the national contingency plan authorized by the Federal Water Pollution Control Act, as amended, and with Section 26.264(h) of this code.

SECTION 6. Section 26.267, Water Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) No person shall be held liable under this subchapter for any *spill or discharge* [~~accident~~] resulting from an act of God, act of war, third party negligence, or an act of government.

(c) *Notwithstanding any other provision of this subchapter, the state or the department shall utilize any and all procedures relating to releases or threatened releases of solid wastes contained in the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) prior to utilizing the provisions of this subchapter with respect to such releases or threatened releases.*

SECTION 7. Sections 26.268(a), (b), and (e) are amended to read as follows:

(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the department, *except that the department may not assess penalties under this section for violations of this subchapter which are also violations of any permit, rule, or order applicable to hazardous waste under the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes).*

(b) Any person who violates any provision of this subchapter or of a department rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than \$100 nor more than \$52,000 for each act of violation and for each day of violation. *The day on which a spill or discharge occurs and each day during which the spill or discharge has not been removed is a day of violation.*

(e) The penalties authorized by this subchapter for discharges and spills shall not apply to any discharge or spill promptly reported and where reasonable precautions to minimize the spill's impacts and reasonable efforts to clean it up were made [~~removed~~] by the responsible person [~~party~~] in accordance with the rules and orders of the department, unless the department finds that the discharge or spill is the result of the negligence of the responsible person [~~party~~].

SECTION 8. This Act applies to a spill or discharge of hazardous substances into the water in this state on or after the effective date of this Act. A spill or discharge before the effective date of this Act is governed by Subchapter G, Chapter 26, Water Code, as that subchapter existed on the date of the spill or discharge, and that law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 1985.

SECTION 10. 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 17, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 2068 on May 27, 1985, by a non-record vote; passed by the Senate, with amendments, on May 26, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 15, 1985

Effective: September 1, 1985