

CHAPTER 949

H.B. No. 2016

AN ACT

relating to the regulation of the storage of hazardous liquids in salt dome storage facilities; providing civil and administrative penalties.

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

SECTION 1. The Natural Resources Code is amended by adding Title 11 to read as follows:

TITLE 11. MISCELLANEOUS USES OF NATURAL RESOURCES

CHAPTER 211. HAZARDOUS LIQUID SALT DOME STORAGE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 211.001. DEFINITIONS. *In this chapter:*

- (1) "Commission" means the Railroad Commission of Texas.
- (2) "Hazardous liquid" means any liquid which is not defined as a solid or hazardous waste by Section 361.003, Health and Safety Code, and which is:
 - (A) petroleum or any petroleum or liquid natural gas product; or
 - (B) any hydrocarbon in a liquid state, other than liquified natural gas, that has been determined by the United States secretary of transportation to be a hazardous liquid.
- (3) "Salt dome storage of hazardous liquids" means the storage of a hazardous liquid in any salt formation or bedded salt formation storage facility, but does not include a facility

that has been defined by the federal Department of Transportation as part of an interstate pipeline facility and that is subject to federal minimum standards adopted under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. Section 2001 et seq.).

(4) "Salt dome storage facility" includes any new or existing salt formation or bedded salt formation storage cavern and any equipment, facility, or building used or intended for use in the storage of a hazardous liquid in the salt formation cavern.

Sec. 211.002. **POWERS OF LOCAL GOVERNMENTS.** (a) This chapter does not reduce, limit, or impair the authority provided by law to any municipality, except as provided by Subsection (b) of this section.

(b) A municipality or county may not adopt or enforce an ordinance or other regulation that establishes safety standards or practices applicable to hazardous liquid salt formation storage facilities that are subject to regulation by federal or state law.

(c) "Safety standards or practices" means any regulation of an activity or facility covered by this chapter or that is incompatible with the safety standards or practices enacted or adopted by federal or state government pursuant to the Hazardous Liquid Pipeline Safety Act of 1979, as amended.

SUBCHAPTER B. REGULATION OF FACILITIES

Sec. 211.011. **JURISDICTION.** The commission has jurisdiction over all salt dome storage of hazardous liquids and over salt dome storage facilities used for the storage of hazardous liquids.

Sec. 211.012. **RULES AND STANDARDS.** (a) The commission by rule shall adopt safety standards and practices for the salt dome storage of hazardous liquids and the facilities used for that purpose. Safety standards and practices adopted by the commission for a storage facility that is part of an intrastate pipeline facility, as defined by the federal Department of Transportation under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. Section 2001 et seq.), must be compatible with federal minimum standards. The rules shall require:

(1) the installation and periodic testing of safety devices at a salt dome storage facility;

(2) the establishment of emergency notification procedures for the operator of a facility in the event of a release of a hazardous substance that poses a substantial risk to the public;

(3) fire prevention and response procedures;

(4) employee and third-party contractor safety training with respect to the operation of the facility; and

(5) other requirements that the commission finds necessary and reasonable for the safe construction, operation, and maintenance of salt dome storage facilities.

(b) The commission may grant exceptions to its rules or impose additional requirements in any permit or amended permit issued to a facility if the facility, as permitted, will not cause an unreasonable danger to the public.

Sec. 211.013. **RECORDS AND REPORTS.** (a) Each owner or operator of a hazardous liquid salt dome storage facility shall maintain records, make reports, and provide any information the commission may require with respect to the construction, operation, or maintenance of the facility. The operator of a hazardous liquid salt dome storage facility shall report or make available for inspection the results of any commission-required test of a safety device installed at the facility to the commission within 10 days after the day of the test.

(b) The commission by rule shall designate the records required to be maintained and the reports required to be filed by the owner or operator and shall provide forms for reports if necessary.

(c) The commission may require the owner or operator of a hazardous liquid salt dome storage facility to prepare a safety procedural manual for the facility. The commission may

require the owner or operator to file the manual with the commission for approval or to make the manual available for inspection by an employee or agent of the commission.

Sec. 211.014. INSPECTIONS AND EXAMINATIONS. (a) The commission or its employee or designated agent may enter property on which a hazardous liquid salt dome storage facility is located or any other property relating to salt dome storage of a hazardous liquid and may inspect and examine the property and any records located on the property to the extent relevant to determine if a person is acting in compliance with this chapter and any rules adopted by the commission under this chapter.

(b) Before the commission or its employees or agents enter the premises of a storage facility with on-site personnel, proper credentials must be presented to the on-site person in charge of the property.

(c) An entry, examination, or inspection under this section must be made only at a reasonable time and in a reasonable manner.

SUBCHAPTER C. ENFORCEMENT

Sec. 211.031. CIVIL PENALTY. A person who violates this chapter or a rule adopted or order or permit issued under this chapter is subject to a civil penalty of not more than \$25,000 for each act of violation and for each day of violation. The total amount of penalties that may be assessed under this section for a related series of violations may not exceed \$500,000.

Sec. 211.032. ENFORCEMENT BY COMMISSION AND ATTORNEY GENERAL. (a) If it appears that a person has been or is violating this chapter or a rule of the commission adopted under this chapter, the commission may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or for the assessment and recovery of a civil penalty under Section 211.031 of this code, or for both the injunctive relief and the civil penalty.

(b) On application for injunctive relief and a finding that a person has violated or is violating this chapter or a rule of the commission under this chapter, the district court shall grant the injunctive relief that the facts warrant.

(c) At the request of the commission, the attorney general shall institute and conduct a suit under this section in the name of the state.

Sec. 211.033. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty against a person who:

- (1) violates this chapter or a rule adopted or order or permit issued under this chapter;
- (2) intentionally or knowingly destroys or damages or attempts to destroy or damage a hazardous liquid salt dome storage facility; or
- (3) intentionally or knowingly disables a safety device in a hazardous liquid salt dome storage facility, except to facilitate a repair; maintain, repair, or test the device; or conduct an activity reasonably necessary for the safe operation of the facility.

(b) The penalty may be in an amount not to exceed \$25,000. Each day a violation occurs or continues constitutes a separate violation for the purpose of this section.

(c) In determining the amount of the penalty, the commission shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or welfare of the public;
- (2) the economic harm to property or the environment caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter future violations;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(d) A civil penalty may be assessed only after the person charged under this section has been given an opportunity for a public hearing.

(e) If a public hearing has been held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(f) If appropriate, the commission shall consolidate the hearings with other proceedings.

(g) If a person charged under this section fails to take advantage of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation occurred and the amount of the penalty that is warranted.

(h) The commission shall then issue an order requiring the penalty to be paid.

(i) The notice of the commission's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) must include a statement of the right of the person to judicial review of the order.

(j) Not later than the 30th day after the date the commission's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) If the commission receives a copy of an affidavit under Subsection (k)(2) of this section, the commission may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commission:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) *When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.*

(q) *A penalty collected under this section shall be remitted to the comptroller for the deposit to the credit of the oil-field cleanup fund.*

(r) *All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

Sec. 211.034. NOTICES OF NONCOMPLIANCE. In addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule adopted or order or permit issued under this chapter as provided by Section 91.207 of this code.

SECTION 2. (a) This Act takes effect September 1, 1993, except as provided by Subsection (b) of this section.

(b) Subchapter C, Chapter 211, Natural Resources Code, as added by this Act, takes effect January 1, 1994.

(c) The Railroad Commission of Texas shall adopt rules for the administration of Chapter 211, Natural Resources Code, as added by this Act, before December 1, 1993.

SECTION 3. 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 April 30, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2016 on May 28, 1993, by a non-record vote; passed by the Senate, with amendments, on May 26, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993, except §§ 211.031, 211.032, 211.033 and 211.034 of the Natural Resources Code effective Jan. 1, 1994.