

CHAPTER 770

H.B. No. 2537

AN ACT

relating to the development and use of land over a closed municipal solid waste landfill unit; providing civil and criminal penalties.

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

SECTION 1. Chapter 361, Health and Safety Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. USE OF LAND OVER MUNICIPAL SOLID WASTE LANDFILLS

Sec. 361.531. DEFINITIONS. *In this subchapter:*

(1) "Develop" or "development" means an activity on or related to real property that is intended to lead to the construction or alteration of an enclosed structure for the use or occupation of people for a commercial or public purpose or to the construction of residences for three or more families.

(2) "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives municipal solid waste or other solid wastes approved under this chapter and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 C.F.R. Section 257.2.

Sec. 361.532. PERMIT REQUIRED FOR DEVELOPMENT OF CERTAIN LAND. (a) The owner or lessee of land located over any part of a closed municipal solid waste landfill unit may not develop the land unless the owner or lessee holds a permit for the development issued under this subchapter.

(b) This subchapter does not apply to an activity associated with solid waste disposal that is approved by the commission.

(c) The Texas Natural Resource Conservation Commission shall charge any applicant for a permit under this subchapter the actual cost of reviewing any application prior to the issuance of a permit.

Sec. 361.533. APPLICATION FOR DEVELOPMENT PERMIT. (a) The owner or lessee of land located over any part of a closed municipal solid waste landfill facility may apply for a permit to develop the land. The owner or lessee shall submit to the executive director an application for a permit on forms prescribed by the commission not later than 45 days before the development begins. The application must include a registered professional engineer's verified certification that the proposed development is necessary to reduce a potential threat to public health or the environment or that the proposed development will not increase or create a potential threat to public health or the environment. The certification must indicate the registered professional engineer's determination of whether the proposed development will damage the integrity or function of any component of the landfill's:

- (1) final cover;
- (2) containment systems;
- (3) monitoring systems; or
- (4) liners.

(b) The engineer's certification required under Subsection (a) must include documentation of all studies or data on which the engineer relied.

Sec. 361.534. PERMIT HEARING. (a) The commission shall set a hearing to be held not later than the 30th day after the date that the commission receives an application under this subchapter.

(b) The commission by mail shall notify the applicant of the date, time, and place of the hearing not later than the 15th day before the date of the hearing. The commission shall publish notice of the hearing in a newspaper that is generally circulated in each county in

which the property proposed for development is located. The published notice must appear at least once a week for the two weeks before the date of the hearing.

Sec. 361.535. ISSUANCE OF PERMIT; PERMIT CONDITIONS. (a) The commission may issue a permit for the development of land over a closed municipal solid waste landfill facility only if the commission finds that the proposed development will not increase or create a potential threat to public health or the environment.

(b) The commission may impose conditions on a permit that are designed to prevent a threat to public health or the environment. Conditions may include:

- (1) restrictions on building types, construction methods, pilings, boring, or digging;
- (2) requiring ventilation, emissions or water quality monitoring devices, soil testing, warnings to subsequent owners or lessees, maintenance of structures or landfill containment, or the placement of additional soil layers or building pads; or
- (3) any other conditions the commission finds to be reasonable and necessary to protect the public health or the environment or to ensure compliance with rules or conditions adopted or imposed under this subchapter.

Sec. 361.536. REQUIREMENTS FOR STRUCTURES ON CLOSED MUNICIPAL SOLID WASTE LANDFILL FACILITY. (a) The owner or lessee of an existing or new structure that overlies a closed municipal solid waste landfill facility shall install automatic methane gas sensors approved by the commission and designed to trigger an audible alarm if the volumetric concentration of methane in the sampled air is greater than one percent.

(b) In the development of land that overlies a closed municipal solid waste landfill facility, a person may not, unless approved by the commission:

- (1) drive piling into or through the final cover or a liner;
- (2) bore through or otherwise penetrate the final cover or a liner; or
- (3) construct an enclosed area under the natural grade of the land or under the grade of the final cover of the closed landfill.

(c) The owner or lessee of a structure built over a closed municipal solid waste landfill facility shall modify the structure as is necessary to comply with commission rules for a new structure that overlies a landfill to minimize the effects of, or to prevent, gas accumulation. The commission shall adopt rules to allow the owner or lessee of a structure a reasonable amount of time to make required modifications.

(d) The commission by rule shall require plans for a new structure over a closed municipal solid waste landfill facility to prevent or minimize the effects of harmful gas accumulation. At a minimum, the commission shall require:

- (1) ventilation or active gas collection systems;
- (2) a low gas-permeable membrane and a vented, permeable layer of an open-graded, clean aggregate material installed between the area below the slab for the structure and the soil of the final cover; and
- (3) automatic methane gas sensors that will sound an audible alarm if the sensor detects a methane gas volumetric concentration of greater than one percent installed:
 - (A) within the venting pipe or permeable layer; and
 - (B) inside the structure.

Sec. 361.537. LEASE RESTRICTION; NOTICE TO LESSEE. A person may not lease or offer for lease land that overlies a closed municipal solid waste landfill facility unless:

- (1) existing development on the land is in compliance with this subchapter; or
- (2) the person gives notice to the prospective lessee of what is required to bring the land and any development on the land into compliance with this subchapter and the prohibitions or requirements for future development imposed by this subchapter and by any permit issued for the land under this subchapter.

Sec. 361.538. SOIL TEST REQUIRED BEFORE DEVELOPMENT OF CERTAIN LAND. (a) A person may not undertake the development of a tract of land that is greater than one acre in area unless the person has conducted soil tests, in accordance with

commission rules, to determine whether any part of the tract overlies a closed municipal solid waste landfill facility.

(b) Tests under this section must be conducted by a registered professional engineer.

(c) If an engineer who conducts a test under this section determines that part of the tract overlies a closed municipal solid waste landfill facility, the engineer shall notify the following persons of the determination:

(1) each owner and each lessee of the tract;

(2) the commission; and

(3) any local governmental official with the authority to disapprove an application for development.

(d) A local government official who receives a notice under this section shall prepare a written notice stating the legal description of the portion of the tract that overlies a closed municipal solid waste landfill facility, the current owner of the tract, notice of the tract's former use, and notice of the restrictions on the development or lease of the land imposed by this subchapter. The official shall file for record the notice in the real property records in the county where the tract is located.

(e) The owner or lessee of land for which a test is done under this section shall send the test results to the executive director not later than the 30th day before the development begins.

Sec. 361.539. NOTICE TO BUYERS, LESSEES, AND OCCUPANTS. *(a) An owner of land that overlies a closed municipal solid waste landfill facility shall prepare a written notice stating the former use of the facility, the legal description of the pertinent part of the land, notice of the restrictions on the development or lease of the land imposed by this subchapter, and the name of the owner. The owner shall file for record the notice in the real property records in the county where the land is located.*

(b) An owner of land that overlies a closed municipal solid waste landfill facility shall notify each lessee and each occupant of a structure that overlies the site of:

(1) the land's former use as a landfill; and

(2) the structural controls in place to minimize potential future danger posed by the landfill.

Sec. 361.540. CIVIL PENALTY. *(a) A person who violates this subchapter is liable for a civil penalty not to exceed \$10,000 for each violation.*

(b) The attorney general or the prosecuting attorney in a county in which the closed municipal solid waste landfill facility is located may bring suit to recover the penalty imposed by Subsection (a).

(c) A penalty collected under this section shall be deposited to the credit of the general revenue fund.

SECTION 2. Section 363.064, Health and Safety Code, as amended by Chapters 238 and 303, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. *(a) A regional or local solid waste management plan must:*

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(4) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(5) encourage cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(6) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area; [and]

(7) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;[-]

(8) [~~7~~] establish recycling rate goals appropriate to the area covered by the plan; [and]

(9) [~~8~~] recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;

(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch; and

(10) include an inventory of municipal solid waste landfill units, including landfill units no longer in operation, the location of such units, the current owners of the land on which the former landfill units were located, and the current use of the land.

(b) Each council of governments shall notify the owner of land that overlies a former municipal solid waste unit within the council of government's jurisdiction of the former use of the land and shall notify the county clerk of the county or counties in which the former landfill unit is located of the former use. The county clerk shall record on the deed records of land formerly used as a municipal solid waste landfill a description of the pertinent part of the land, notice of its former use, and notice of the restrictions on the development or lease of the land imposed by this subchapter.

(c) The municipalities and counties within each council of governments shall cooperate fully in compiling the inventory of landfill units.

(d) Each council of governments shall provide a copy of the inventory of municipal solid waste landfill units to the Texas Natural Resource Conservation Commission.

(e) The Texas Natural Resource Conservation Commission may grant money from fees collected under Section 361.013 to a municipality or association of municipalities for the purpose of conducting the inventory required by this section.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. 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 11, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2537 on May 26, 1993, by a non-record vote; passed by the Senate, with amendments, on May 22, 1993, by a viva-voce vote.

Approved June 18, 1993.

Effective Sept. 1, 1993.