

CHAPTER 879

H.B. No. 2622

AN ACT

relating to regulation of natural gas underground storage facilities; providing penalties.

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

SECTION 1. Title 102, Revised Statutes, is amended by adding Article 6053-3 to read as follows:

*Art. 6053-3. UNDERGROUND STORAGE FACILITIES FOR NATURAL GAS*

*Sec. 1. DEFINITIONS. In this article:*

- (1) "Commission" means the Railroad Commission of Texas.*
- (2) "Natural gas" means any gaseous material composed primarily of methane in either its original or manufactured state.*
- (3) "Natural gas underground storage" means the storage of natural gas beneath the surface in a formation, strata, or reservoir.*
- (4) "Storage facility" has the meaning assigned by Section 91.173, Natural Resources Code, and its subsequent amendments.*

*Sec. 2. APPLICABILITY. This article does not apply to a storage facility that is part of an interstate pipeline facility as defined by the United States Department of Transportation*

and that is subject to federal minimum standards adopted under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. Section 1671 et seq.) and its subsequent amendments.

**Sec. 3. JURISDICTION.** *Except as provided by Section 2 of this article, the commission has jurisdiction over natural gas underground storage and over surface and subsurface equipment and facilities used for natural gas underground storage.*

**Sec. 4. SAFETY STANDARDS AND PRACTICES.** (a) *The commission by rule shall adopt safety standards and practices for natural gas underground storage and storage facilities. The standards and practices must:*

- (1) *require the installation and periodic testing of safety devices;*
- (2) *establish 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) *establish fire prevention and response procedures;*
- (4) *require employee safety training with respect to the operation of a storage facility for the employees of the storage facility; and*
- (5) *establish other safety standards and practices that the commission finds are reasonable and necessary for underground natural gas storage and the safe construction, operation, and maintenance of storage facilities.*

(b) *The commission shall require that records of tests of a safety device required by Subsection (a)(1) of this section be:*

- (1) *filed with the commission; or*
- (2) *maintained by the owner or operator and made available for inspection by the commission.*

(c) *The commission may adopt different standards and practices for different types of storage facilities and may distinguish between natural gas underground storage in salt dome caverns, depleted reservoirs, and embedded salt formations.*

(d) *The commission may grant an exception in a permit or amended permit issued to a storage facility to standards and practices adopted under this section if granting the exception does not constitute an unreasonable danger to the public. The commission may impose additional standards and practices in a permit or amended permit issued to a storage facility.*

(e) *The commission may require the owner or operator of a storage facility to prepare a safety procedure manual for each storage facility and file a copy of the manual with the commission or make the manual available for inspection under Section 6 of this article.*

(f) *Safety standards and practices adopted by the commission for a storage facility that is part of an intrastate pipeline facility as defined by the United States Department of Transportation under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. Section 1671 et seq.) and its subsequent amendments must be compatible with federal minimum standards.*

**Sec. 5. RECORDS AND REPORTS.** (a) *An owner or operator of a storage facility shall:*

- (1) *maintain records and make reports relating to construction, operation, or maintenance of the facility as required by commission rule; and*
- (2) *provide any other information required by the commission relating to construction, operation, or maintenance of the facility.*

(b) *The commission may provide forms for reports required under this section.*

**Sec. 6. INSPECTION AND EXAMINATION OF FACILITY AND RECORDS.** (a) *The commission may inspect a storage facility for compliance with the safety standards and practices adopted under Section 4 of this article and the record-keeping requirements adopted under Section 5 of this article. To conduct the inspection, a commissioner or a designated employee or agent of the commission may enter property on which a storage facility is located at a reasonable time and in a reasonable manner to examine:*

- (1) *the facility and any related buildings or equipment; and*
- (2) *the records required to be maintained at the storage facility under Section 5 of this article.*

(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.

Sec. 7. **DAMAGE TO STORAGE FACILITY; DISABLING A SAFETY DEVICE.** A person may not intentionally damage or destroy a storage facility and may not disable a safety device in a storage facility except to repair, maintain, test, or replace the device or to conduct other activities that are reasonably necessary to the safe operation of the storage facility.

Sec. 8. **INJUNCTION; CIVIL PENALTY.** (a) The attorney general, at the request of the commission, shall institute a civil suit against a person who has violated or is violating this article or a rule adopted or order or permit issued under this article for:

- (1) injunctive relief to restrain the person from the violation;
- (2) the assessment and recovery of a civil penalty for a violation; or
- (3) both injunctive relief and a civil penalty.

(b) The penalty may not exceed \$25,000 for each violation.

(c) Each day of a continuing violation may be considered a separate violation for the purpose of penalty assessment.

(d) The maximum penalty assessed for a related series of violations may not exceed \$500,000.

Sec. 9. **ADMINISTRATIVE PENALTY.** (a) The commission may assess as provided by this section an administrative penalty against a person who violates this article or a rule adopted or order or permit issued under this article.

(b) Except as provided by Subsection (c) of this section, the penalty for each violation may be in an amount not to exceed \$10,000. Each day a violation continues or occurs may be considered a separate violation for the purpose of penalty assessment. The maximum penalty assessed for a related series of violations under this subsection may not exceed \$200,000.

(c) The penalty for each violation of Section 7 of this article may be in an amount not to exceed \$25,000. Each day a violation continues or occurs may be considered a separate violation for the purpose of penalty assessment. The total penalty assessed under this subsection for a continuing violation may not exceed \$300,000.

(d) 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 the prohibited acts, and the hazard or potential hazard created to the health, safety, or economic 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.

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

(f) 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, if appropriate, an order requiring that the penalty be paid.

(g) If appropriate, the commission shall consolidate the hearing with other proceedings.

(h) 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.

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

(j) 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) and its

subsequent amendments must include a statement of the right of the person to judicial review of the order.

(k) Not later than the 30th day after the date on which the commission's order becomes final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person charged with the violation shall:

(1) pay the amount of the penalty;

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

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

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

(1) stay the 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 in a form approved by the court that is effective until all judicial review of the order or decision 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) delivering a copy of the affidavit to the commission.

(m) If the commission receives a copy of an affidavit under Subsection (l) of this section the commission may file with the court not later than the fifth day 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. 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.

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

(o) Judicial review of the order of the commission is:

(1) 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 its subsequent amendments; and

(2) under the substantial evidence rule.

(p) If the person paid the amount of the penalty and if that amount is reduced or is not assessed by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond, the court shall order the release of the bond:

(1) without further action by the person if the penalty is not assessed by the court; or

(2) on payment of the penalty in the amount determined by the court.

(q) A penalty collected under this section shall be deposited to the credit of the oil-field cleanup fund.

Sec. 10. NOTICE OF NONCOMPLIANCE. In addition to other authority specifically granted to the commission under this article, the commission may enforce this article or any rule adopted or order or permit issued under this article as provided by Section 91.207, Natural Resources Code.

*Sec. 11. LIMITATION ON POWERS OF MUNICIPALITIES AND COUNTIES. A municipality or county may not adopt or enforce an ordinance that establishes safety standards or practices applicable to storage facilities that are subject to regulation under this article or another state or federal law.*

SECTION 2. (a) This Act takes effect September 1, 1993.

(b) Not later than January 1, 1994, the Railroad Commission of Texas shall adopt rules and safety standards and practices required by Article 6053-3, Revised Statutes, as added by this Act.

(c) This Act applies only to natural gas underground storage in storage facilities on or after January 1, 1994, including storage in facilities that commenced before January 1, 1994. Natural gas underground storage in storage facilities before January 1, 1994, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

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 May 4, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2622 on May 27, 1993, by a non-record vote; the House adopted H.C.R. No. 177 authorizing certain corrections in H.B. No. 2622 on May 28, 1993, by a non-record vote; passed by the Senate, with amendments, on May 25, 1993, by a viva-voce vote; the Senate adopted H.C.R. No. 177 authorizing certain corrections in H.B. No. 2622 on May 29, 1993.

Approved June 18, 1993.

Effective Sept. 1, 1993.