

CHAPTER 379

S.B. No. 1201

AN ACT

relating to industrial solid waste and hazardous waste fee revenues; recovery of regulatory and remediation costs.

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

SECTION 1. Section 361.131, Health and Safety Code, is amended to read as follows:  
Sec. 361.131. DEFINITIONS. In this subchapter:

(1) "Captured facility" means a manufacturing or production facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed, or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

(2) "Commercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for a charge.

(3) "Dry weight" means the weight of constituents other than water.

(4) "Generator" means a person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

(5) "Hazardous waste" means solid waste not otherwise exempt that is identified or listed as hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6901 et seq.).

(6) "Land disposal" does not include the normal application of agricultural chemicals or fertilizers.

(7) "Land disposal facility" includes:

(A) a landfill;

(B) a surface impoundment, excluding an impoundment treating or storing waste that is disposed of under Chapter 26 or 27, Water Code;

(C) a waste pile;

(D) a facility at which land treatment, land farming, or a land application process is used; and

(E) an injection well.

(8) "Noncommercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for no charge or that stores, processes, or disposes of waste generated on site.

~~[(9) "Primary metals high volume, low-hazard waste" is hazardous waste from the extraction, beneficiation, and processing of ores, minerals, or scrap metal and whose constituents are subject to the criteria for the identification or listing as a hazardous waste under Section 3001(a) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and account for 10 percent or less of its total dry weight volume.]~~

SECTION 2. Section 361.132, Health and Safety Code, is amended to read as follows:

Sec. 361.132. HAZARDOUS AND SOLID WASTE FEES FUND. (a) The hazardous and solid waste fees fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

(1) fees imposed on generators of industrial solid waste or hazardous waste under Section 361.134;

(2) fees imposed on owners or operators of permitted industrial solid waste or hazardous waste facilities, or owners or operators of industrial solid waste or hazardous waste facilities subject to the requirement of permit authorization, under Section 361.135;

(3) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for noncommercial and commercial management or disposal of hazardous waste *or commercial disposal of industrial solid waste* under Section 361.136;

(4) fees imposed on applicants for industrial solid waste and hazardous waste permits under Section 361.137; and

(5) interest and penalties imposed under Section 361.140 for late payment of industrial solid waste and hazardous waste fees authorized under this subchapter.

(c) Except as provided by Section 361.136(l)(1), the commission may use the money in the fund only for regulation of industrial solid and hazardous waste under this chapter, including payment to other state agencies for services provided under contract concerning enforcement of this chapter.

~~(d) [The total amount of generation fees and facility fees collected and deposited to the credit of the hazardous and solid waste fees fund in a fiscal year may not be less than \$4.5 million or more than \$6.0 million.]~~

~~[(e) Any unobligated balance in the fund [in excess of \$1 million] at the end of the state fiscal year may, at the discretion of the commission, [shall] be transferred to the hazardous and solid waste remediation fee fund.]~~

SECTION 3. Section 361.133, Health and Safety Code, is amended to read as follows:

Sec. 361.133. HAZARDOUS AND SOLID WASTE REMEDIATION FEE FUND. (a) The hazardous and solid waste remediation fee fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

(1) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for commercial and noncommercial management or disposal of hazardous waste *or commercial disposal of industrial solid waste* under Section 361.136 and fees imposed under Section 361.138;

(2) interest and penalties imposed under Section 361.140 for late payment of a fee or late filing of a report;

(3) money paid by a person liable for facility cleanup and maintenance under Section 361.197;

(4) the interest received from the investment of this fund, in accounts under the charge of the treasurer, to be credited pro rata to the hazardous and solid waste remediation fee fund; and

(5) monies transferred from other agencies under provisions of this code or grants *or other payments* from any person made for the purpose of remediation of facilities under

this chapter or the investigation, cleanup, or removal of a spill or release of a hazardous substance.

(c) The commission may use the money collected and deposited to the credit of the fund under this section, including interest credited under Subsection (b)(4), only for:

(1) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable person, independent third person, or the federal government are not sufficient for the removal or remedial action;

(2) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if:

(A) funds from a liable person have been collected and deposited to the credit of the fund for that purpose; or

(B) funds from a liable person, independent third person, or the federal government are not sufficient for the maintenance;

(3) expenses concerning compliance with:

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) as amended;

(B) the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(C) Subchapters F and I;

(4) expenses concerning the regulation and management of household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances; and

(5) expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment.

(d) The commission shall establish the fee rates for waste management under Section 361.136 and revise them as necessary. ~~The [so that the]~~ amount collected each year shall not exceed ~~[equals between \$12 million and]~~ \$16 million after making payments to counties under Section 361.136(l)(1).

(e) The commission shall monitor the unobligated balance in the hazardous and solid waste remediation fee fund and all sources of revenue to the fund and may adjust the amount of fees collected under Subsection (d) of this section and Section 361.138 of this chapter, within prescribed limits, to maintain an unobligated balance of ~~[at least \$5 million and]~~ no more than \$25 million at the end of each fiscal year.

(f) For the purpose of Subsection (e) of this section, the unobligated balance in the hazardous and solid waste remediation fee fund shall be determined by subtracting from the cash balance of the fund at the end of each quarter:

(1) the total of all operating expenses encumbered by the commission from the fund;

(2) the sum of the total balances remaining on all contracts entered into by the commission to be paid from the fund; and

(3) the estimated total cost of investigation and remedial action at any site eligible for funding under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or Subchapters F or I and not currently under contract.

SECTION 4. Section 361.134, Health and Safety Code, is amended to read as follows:

Sec. 361.134. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION FEE. (a) The annual generation fee prescribed by this section is imposed on each generator who generates Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission shall:

(1) require each generator of industrial solid waste or hazardous waste to register its activities; and

(2) collect the annual generation fee imposed under this section.

(c) The commission by rule shall adopt a generation fee schedule for use in determining the amount of fees to be charged. The annual generation fee may not be less than \$50 and may not be [or] more than \$50,000 for generation of hazardous waste or more than \$10,000 [~~\$25,000, except that the fee~~] for generation of nonhazardous waste [~~shall not be more than \$1,000~~].

(d) The commission by rule may exempt generators of small quantities of Class I industrial solid waste or hazardous waste from the payment of a generation fee under this section.

(e) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(f) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations, Part 261, Subpart C, relating to characteristics of hazardous waste, and are rendered nonhazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under this chapter are exempt from the assessment of hazardous waste generation fees. By rule, the commission may authorize additional exemptions if consistent with state waste management policy. An exemption from fee assessment does not limit a generator's obligation to report waste generation or waste management activity under any applicable regulation of the commission.

SECTION 5. Section 361.136, Health and Safety Code, is amended to read as follows:

Sec. 361.136. **INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT FEE.** (a) Except as provided by Subsections (e) through (i), a fee shall be imposed on the owner or operator of a waste storage, processing, or disposal facility for *industrial solid waste and hazardous waste* that is managed on site. This fee is in addition to any other fee that may be imposed under this chapter.

(b) The commission by rule shall establish fee rates for *management* [~~both commercial and noncommercial storage, processing, and disposal~~] of hazardous waste *and commercial disposal of industrial solid waste*, as well as the manner of collection, and shall revise the fee amounts as necessary.

(1) *Fees under this section may apply only to the following:*

(A) *commercial and noncommercial storage, processing, or disposal of hazardous waste; or*

(B) *commercial disposal of Class I nonhazardous industrial solid waste.*

(2) *A fee established for the commercial disposal of a nonhazardous industrial solid waste shall not exceed 20 percent of the fee established for the disposal of a hazardous waste by the same method of disposal.*

(3) *A fee under this section shall not be assessed for the disposal of a waste subject to an assessment under Section 361.013.*

(c) The [~~hazardous~~] waste management fee shall be based on the total weight or volume of a [~~hazardous~~] waste other than wastes that are disposed of in an underground injection well. The fee for those wastes shall be based on the dry weight of the waste.

(d) The [~~hazardous~~] waste management fee for wastes generated in this state may not exceed \$40 [~~\$20~~] per ton for wastes that are landfilled. The commission by rule shall establish the amount of the fee for all other waste management methods at a lesser amount and shall base the amount on the factors specified in Section 361.139.

(e) A fee, which must be the same for wastes generated both in state and out of state and consistent with fees assessed for the management of other hazardous wastes, shall be established by the commission for the storage, processing, incineration, and disposal of hazardous waste fuels that the commission by rule shall define considering:

- (1) Btu content;
- (2) metals content;
- (3) chlorinated hydrocarbon content; and

(4) the degree to which the waste fuel is used for energy recovery.

(f) A fee imposed on the owner or operator of a commercial *industrial solid waste* or hazardous waste storage, processing, or disposal facility, for [hazardous] wastes that are generated in this state and received from an affiliate or wholly-owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this subsection, an affiliate of a commercial *industrial solid waste* or hazardous waste facility must have a controlling interest in common with that facility.

(g) A fee may not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes for fewer than 90 days.

(h) A fee may not be imposed under this section on the operation of a facility permitted under Chapter 26, Water Code, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface water of the state.

(i) The storage, processing, or disposal of *industrial solid wastes* or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(j) The owner or operator of a waste storage, processing, or disposal facility receiving *industrial solid waste* or hazardous waste from out-of-state generators shall be assessed a fee amount required on wastes generated in state plus an additional increment that the commission by rule shall establish. In establishing an incremental fee for out-of-state wastes, the commission shall consider:

(1) factors specified by Section 361.139;

(2) added costs to the state of regulating the interstate transport and subsequent management and disposal of imported *industrial solid wastes and hazardous wastes and their [its] associated risks*;

(3) similar fees that may be imposed in a generator's state of origin for the storage, processing, or disposal of hazardous waste; and

(4) contributions in both fees and taxes paid by generators in this state to the support of the state's *industrial solid waste and hazardous waste regulatory programs*.

(k) A fee for *industrial solid wastes* or hazardous wastes that are legitimately reclaimed, reused, or recycled at a waste storage, processing, or disposal facility must be the same for wastes generated in state and out of state.

(l) Fees collected under this section shall be credited as follows:

(1) 25 percent of the [~~commercial hazardous~~] waste *management fees* [fee] collected from each commercial waste storage, processing, or disposal facility *under this section* shall be credited to the hazardous and solid waste fees fund to be distributed to the county in which the facility is located to assist that county in defraying the costs associated with commercial *industrial solid waste and hazardous waste management facilities*; and

(2) of the remaining amount of the commercial [~~hazardous~~] waste *management fees* [fee] and of the total amount of the noncommercial [~~hazardous~~] waste *management fees* [fee] collected from each waste storage, processing, or disposal facility:

(A) 50 percent of each amount shall be credited to the hazardous and solid waste remediation fee fund; and

(B) 50 percent of each amount shall be credited to the hazardous and solid waste fees fund.

(m) Funds due an affected county under Subsection (l)(1) shall be paid by the commission not later than the 60th day after the receipt and verification of the payments from commercial facilities in the county.

(n) The commission by rule shall provide:

(1) for methods of computing the dry weight of *industrial solid waste and hazardous waste*; and

(2) for a method to determine or estimate the dry weight of small volumes of [hazardous] waste delivered to [hazardous] waste disposal facilities for which the costs of a dry weight analysis are disproportionate to the costs of disposal.

(o) A generator of *industrial solid waste* or hazardous waste shall provide to the operator of a land disposal facility certification of the computation of the dry weight of a [hazardous] waste to be disposed.

SECTION 6. Section 361.138, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsection (k) to read as follows:

(a) In this section, "lead-acid battery" means any battery ~~[with a capacity of six or more volts]~~ which contains lead and sulfuric acid.

(b) A wholesale or retail battery dealer who sells or offers to sell lead-acid batteries not for resale shall collect at the time and place of sale a fee for each *nonexempt* lead-acid battery sold, according to the following schedule:

(1) for a lead-acid battery with a capacity of less than 12 volts, a fee of \$2;

(2) for a lead-acid battery with a capacity of 12 or more volts, a fee of \$3.

(k) A battery is exempt from this section if it meets all of the following criteria:

(1) the ampere-hour rating of the battery is less than 10 ampere-hours;

(2) the sum of the dimensions of the battery (height, width, and length) is less than 15 inches; and

(3) the battery is sealed so that no access to the interior of the battery is possible without destroying the battery.

SECTION 7. Section 361.139, Health and Safety Code, is amended to read as follows:

Sec. 361.139. FACTORS TO BE CONSIDERED IN SETTING FEES. (a) To promote the public policy of preferred waste management methods under Section 361.023 and to provide for an equitable fee rate structure, the commission shall consider the following in establishing the fees authorized under this subchapter:

(1) the variation in risks to the public associated with different waste management methods, including storage, specifically:

(A) promoting the establishment and maintenance of industrial solid waste and hazardous waste reclamation, reuse, and recycling facilities;

(B) promoting the public policy of preferred waste management methods for waste streams that are amenable to multiple waste management methods; and

(C) considering whether the waste is ultimately disposed of in the state;

(2) the funding needed to adequately and equitably support the regulation of industrial solid waste and hazardous waste generation, storage, processing, and disposal activities and the remediation of contaminated disposal sites, considering:

(A) the nature and extent of regulated activities and the variation in the cost of regulating different types of facilities;

(B) the cost to the state of operating an effective program for the regulation of industrial solid waste and hazardous waste which protects human health and the environment and is consistent with state and federal authority;

(C) the higher costs of regulation and oversight that may be required for commercial [hazardous] waste management facilities;

(D) the sources and causes of contamination at sites in need of remediation; and

(E) the benefits and beneficiaries of the regulatory programs and activities supported through fees assessed under this subchapter;

(3) promoting the efficient and effective use of existing industrial solid waste and hazardous waste storage, processing, and disposal facilities within the state;

(4) whether a volume of waste received by a facility has been or will be assessed a [hazardous] waste *management* fee at other facilities under Section 361.136; and

(5) the prevailing rates of similar fees for *industrial solid waste and hazardous waste* activities charged in other states to which wastes from this state may be exported or from which wastes may be imported for storage, processing, or disposal.

(b) In addition to the factors prescribed in Subsection (a), the commission, in establishing fees for the management of hazardous waste under Section 361.136, shall also consider:

(1) the amount of state matching funds necessary for remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act; and

(2) the costs of state-funded remedial actions under Subchapter F.

SECTION 8. Section 361.140, Health and Safety Code, is amended to read as follows:

Sec. 361.140. INTEREST AND PENALTIES. (a) *The commission by rule shall establish requirements for the assessment of penalties and interest for late payment of fees owed the state [Interest at an annual rate of 15 percent of the amount of a fee due] under Sections 361.134 through 361.137 [and unpaid accrues from the date on which the fee is due]. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.*

(b) A person is subject to a civil penalty of up to \$100 for each day the violation continues for failure to timely submit a properly completed report as required by commission rule under Section 361.035.

(c) Interest collected under this section for late payment of a fee shall be deposited in the state treasury to the credit of the respective fund to which the late fee is credited.

(d) Any penalty collected under this section for late filing of reports shall be deposited in the state treasury to the credit of the hazardous and solid waste remediation fee fund.

SECTION 9. 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 the Senate on May 6, 1993: Yeas 31, Nays 0; passed the House on May 22, 1993, by a non-record vote.

Approved June 2, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.