

CHAPTER 615

H.B. No. 1586

AN ACT

relating to the regulation of subsurface excavations by the Texas Water Commission; providing penalties.

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

SECTION 1. DEFINITIONS. In this Act:

- (1) "Commission" means the Texas Water Commission.
- (2) "Executive director" means the executive director of the Texas Water Commission.
- (3) "Ground movement" means any horizontal or vertical displacement of the strata, including the earth surface, resulting from or related to activities of subsurface construction, operation, or use including subsidence, uplift, shear along shaft walls, or other disturbance of the natural strata or land surface.
- (4) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business, including runoff water from mined materials and associated solids storage or disposal areas.
- (5) "Permit" means a subsurface excavation permit issued by the commission.
- (6) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.
- (7) "Pollution" means alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, water in the state that:
 - (A) makes the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare; or
 - (B) impairs the usefulness or the public enjoyment of the water for a lawful or reasonable purpose.
- (8) "Spoils" means material removed from subsurface excavations and brought to the land surface for storage or disposal.
- (9) "Subsurface excavation" means shafts and underground workings but does not include excavations associated with the exploration, development, and production of oil, gas, or geothermal sources, and does not include excavations designed to serve as permanent tunnels.
- (10) "Underground workings" means an excavation below the land surface connected to and associated with shafts, including adits, raises or inclines, tunnels, rooms, drifts, shaft stations, and chambers, that:
 - (A) penetrate into, through, or below the uppermost water-bearing strata; and
 - (B) are used for access, transportation of persons and materials, ventilation, storage, or removal of materials.
- (11) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of natural and artificial surface water that are inland or coastal, fresh or salt, and navigable or nonnavigable, and includes the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.
- (12) "Water inflow" means water movement into subsurface excavations from surface or subsurface sources, including:
 - (A) inrushes from underground isolated water pockets and from fault conduits; and
 - (B) flow from:
 - (i) primary and natural or induced secondary permeability;

(ii) man-made conduits such as shafts, adjacent underground workings, subsidence fractures, and open, plugged, or abandoned boreholes; and

(iii) surface flooding.

SECTION 2. **APPLICABILITY.** This Act does not apply to subsurface excavations conducted under Chapters 52 and 53 of the Natural Resources Code if the commissioner of the General Land Office determines that the subsurface excavation does not adversely affect water as defined by this Act nor to facilities or activities covered by Chapter 26 or 27 of the Water Code or the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes).

SECTION 3. **PERMIT FROM COMMISSION.** A person desiring to drill, excavate, or otherwise construct a subsurface excavation may not begin construction without first obtaining a permit for the work from the commission.

SECTION 4. **APPLICATION FOR PERMIT.** The commission shall prescribe forms for a permit application and shall make the forms available on request without charge.

SECTION 5. **INFORMATION REQUIRED OF APPLICANT.** An applicant shall furnish any information the commission considers necessary to discharge its duties under this Act and the rules of the commission.

SECTION 6. **CONTENTS OF PERMIT APPLICATION.** (a) The executive director shall set the requirements for the permit application after determining the local conditions and potential or probable effect of the subsurface excavations on water in the state.

(b) The permit application must include plans for:

(1) setting of any casing, liners, and seals for the shaft and underground workings;

(2) ground movement control, including subsidence, strata and roof control, and shaft pillar dimensions;

(3) water inflow management;

(4) spoils and industrial waste management, including plans for the management of the surface storage of spoils or industrial waste in a manner that will not harm adjacent surface property if the adjacent property is used for agricultural purposes;

(5) mitigation and monitoring of water pollution; and

(6) restoration, closure, and decommissioning of the subsurface excavations.

(c) The permit application may include additional requirements as determined by the executive director.

SECTION 7. **APPLICATION FEE.** With each application for a permit, the commission shall collect a fee as set by the executive director to reasonably offset the costs to the commission for processing the application. The fee may not be less than \$1,000.

SECTION 8. **HEARING ON PERMIT APPLICATION.** (a) The commission may hold an adjudicatory hearing on the application.

(b) The commission by rule shall provide for giving notice of a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and interested persons.

(c) A hearing held under Subsection (a) of this section shall be conducted in accordance with rules for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). A person shall be allowed to participate in a hearing as a party under this section on a showing of sufficient interest or of an ability to contribute to the resolution of relevant issues.

SECTION 9. **DELEGATION OF HEARING POWERS.** (a) The commission may authorize the chief hearing examiner to call and hold hearings on any subject on which the commission may hold a hearing.

(b) The commission may also authorize the chief hearing examiner to delegate to one or more hearing examiners the authority to hold a hearing called by the chief hearing examiner.

(c) At a hearing called by the chief hearing examiner, the chief hearing examiner or the person delegated the authority by him to hold the hearing may administer oaths and receive evidence.

(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the commission.

SECTION 10. RULES, ETC. (a) The commission shall adopt rules reasonably required for the performance of the powers, duties, and functions of the commission under this Act.

(b) Rules adopted under this section shall be published as proposed rules, as prescribed by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) A permit may not be issued by the commission under this Act and a permit hearing may not be held on a permit application until the commission has adopted rules for the issuance of permits.

(d) The commission may refuse to accept a permit application or hold a permit application hearing if any aspect of the siting, construction, use, or decommissioning of the subsurface excavation is the subject of litigation.

SECTION 11. ISSUANCE OF PERMIT. (a) The commission may grant an application in whole or part and may issue the permit if it finds that:

(1) the construction or use of the subsurface excavation is in the public interest and that after consideration of all alternative sites there is a public need for construction of the subsurface excavation at the location for which the application is made;

(2) existing rights, including mineral rights, water rights, and adjacent surface rights, are not impaired;

(3) any surface storage of spoils or industrial waste will not harm adjacent surface property used for agricultural purposes;

(4) with proper safeguards, both groundwater and surface water can be adequately protected from pollution; and

(5) the applicant has made a satisfactory showing of financial responsibility if required by Subsection (b) of Section 17 of this Act.

(b) In the permit the commission shall impose terms and conditions reasonably necessary to protect all water from pollution.

(c) In the permit the commission shall impose terms and conditions for final closure of surface facilities, plugging and sealing of the subsurface excavations, management of spoils and industrial waste, and ground movement control measures reasonably necessary to protect all water penetrated from pollution.

(d) The use of a subsurface excavation for a purpose other than one stated in the permit is prohibited.

SECTION 12. PERFORMANCE STANDARDS. (a) The commission shall adopt rules and performance standards to govern the granting of permits under this Act and may impose additional requirements it considers necessary.

(b) A permit issued under this Act must require that the subsurface construction and operations meet all applicable performance standards of this Act and performance standards adopted by the commission relating to:

(1) construction, operation, closure, and decommissioning;

(2) casings, liners, and seals for subsurface excavations;

(3) water inflow management and disposal;

(4) ground movement control;

(5) roof control and shaft pillar dimensions; and

(6) spoils and industrial waste management and disposal.

(c) The permittee shall provide records as required by the executive director to indicate compliance with Subsection (a) of this section.

SECTION 13. ADDITIONAL PERMIT CONSIDERATIONS. When determining the terms and conditions of the permit, the commission shall consider:

- (1) known and expected geological and hydrological conditions and relationships;
- (2) present and future economic development in the area; and
- (3) present and future demand for the use of fresh water in the locality.

SECTION 14. ENVIRONMENTAL REPORT. If an environmental report, environmental assessment, or environmental impact statement of any kind that includes an analysis of the environmental impacts of the subsurface excavation construction, operation, closure, or decommissioning is required by any federal or state agency before approval to construct the subsurface excavation, the environmental document, along with evidence of the needed approvals that have been granted, must be submitted to the commission as part of the permit application, and the commission shall make the environmental document available for public review and comment for a period of not less than 30 days before the application for the permit is considered.

SECTION 15. POWER TO ENTER PROPERTY. Members of the commission, employees and agents of the commission, and authorized agents or employees of local governments may enter public or private property at any time to inspect and investigate conditions relating to subsurface excavation activities or to monitor compliance with a rule, permit, or other order of the commission. Members, employees, or agents acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules and shall give notice before entering the property to the person in charge of the property in the manner, form, and time provided by commission rule.

SECTION 16. POWER TO EXAMINE RECORDS. Members of the commission, employees and agents of the commission, and authorized agents or employees of local governments may examine and copy those records or memoranda of a permittee or his contractors they are investigating or monitoring as provided by Section 15 of this Act that relate to the construction and operation of a subsurface excavation or any other records required to be maintained by law.

SECTION 17. FINANCIAL RESPONSIBILITY. (a) The commission may require in a permit that the permittee reimburse the commission for reasonable costs of monitoring and on-site, full-time surveillance to determine compliance with a rule, permit, or other order of the commission.

(b) A person to whom a permit is issued may be required by the commission to maintain a performance bond or other form of financial security to ensure payment of costs that may become due in accordance with Subsection (a) of this section or to ensure that an abandoned subsurface excavation is safely and properly sealed and that the land surface affected by any subsurface construction and operation is restored to conditions as stated in the permit.

SECTION 18. ENFORCEMENT. (a) A person who violates this Act, any rule adopted under this Act, or any term, condition, or provision of a permit issued under this Act is subject to the civil penalty provided by Section 28.061, Water Code.

(b) A person who knowingly or intentionally violates this Act, a rule adopted under this Act, or any term, condition, or provision of a permit issued under this Act is subject to the criminal penalties provided by Section 28.065, Water Code.

(c) A person who violates this Act, a rule adopted under this Act, or any term, condition, or provision of a permit issued under this Act is subject to the administrative penalty provided by Section 28.067, Water Code.

(d) Sections 28.062 through 28.064 and Section 28.066, Water Code, apply to any violations under this Act.

SECTION 19. EFFECTIVE DATE. (a) This Act takes effect September 1, 1987, and applies to applications for permits for subsurface excavations submitted to the Texas Water Commission on or after that date.

(b) The initial rules adopted under Section 10 of this Act shall be published as proposed rules not later than the 120th day after the date on which this Act takes effect.

SECTION 20. EMERGENCY. 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, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1586 on May 30, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 28, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective Sept. 1, 1987.