

CHAPTER 322

S.B. No. 1130

AN ACT

relating to the authority of the Texas Air Control Board to issue emergency orders allowing addition, replacement, or repair of facilities damaged by a catastrophic event.

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

SECTION 1. The Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes) is amended by adding Section 3.272 to read as follows:

Sec. 3.272. (a) The board or the executive director, on delegation of authority from the board, may issue emergency orders authorizing immediate action for the addition, replacement, or repair of facilities or control equipment necessitated by a catastrophic event occurring in this state, and authorizing the emission of air contaminants during the addition, replacement, or repair, if such action and emissions are otherwise precluded under this Act. An order issued under this section must:

- (1) be limited to a reasonable time specified in the order;*
 - (2) authorize action only at property where the catastrophic event occurred or on other property owned by the owner or operator of the damaged facility and which also produces the same intermediates, products, or by-products, on a demonstration by the applicant that there will be no more than a de minimis increase in the predicted concentration of the air contaminants at or beyond the property line at such other property; and*
 - (3) contain a schedule for submittal of a complete application under Section 3.27 of this Act.*
- (b) The application submitted under Subdivision (3) of Subsection (a) of this section must be reviewed and acted on by the board without regard to construction activity under an order under this section.*

(c) For purposes of this section, "catastrophic event" means any unforeseen event, including but not limited to an act of God, an act of war, severe weather occurrences, explosions, fire, or other similar occurrences beyond the reasonable control of the operator which renders a facility or its functionally related appurtenances inoperable.

(d) A person applying for an emergency order authorizing addition, replacement, or repair of facilities or control equipment necessitated by a catastrophic event and associated air contaminant emissions shall submit a sworn application to the board or executive director containing the following information and any other information the board requires:

- (1) a statement:*
 - (A) describing the catastrophic event;*
 - (B) stating that the construction and emissions are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment that is necessitated by the catastrophic event;*
 - (C) stating that there are no practicable alternatives to the proposed construction and emissions; and*

(D) stating that the emissions will not cause or contribute to a condition of air pollution;

(2) an estimate of the dates on which the proposed construction or emissions, or both, will begin and end;

(3) an estimated date on which the facility will begin operation; and

(4) a statement of the quantity and type of air contaminants proposed to be emitted.

(e) The board or executive director may issue emergency orders authorized by Subsection (a) of this section with such notice and opportunity for hearing as the board or executive director considers practicable under the circumstances. Notice of issuance of any emergency orders shall be provided in accordance with rules adopted by the board.

(f) If the board or executive director issues an emergency order under this authority without a hearing, the order shall fix a time and place for a hearing to be held before the board or its designee which shall be held as soon after the emergency order is issued as is practicable.

(g) At or following the hearing, the board shall affirm, modify, or set aside the emergency order. A hearing on an emergency order shall be conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and board rules.

(h) The requirements of Section 3.17 of this Act relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing on an emergency order, but such general notice of the hearing shall be given as in the judgment of the board or the executive director is practicable under the circumstances.

(i) If the board requires notice and hearing before issuance of the order, it shall give notice not later than the 10th day before the date set for the hearing.

SECTION 2. This Act takes effect September 1, 1987.

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 the Senate on May 14, 1987, by a viva-voce vote. Passed the House on May 27, 1987, by a non-record vote.

Approved June 11, 1987.

Effective Sept. 1, 1987.