

CHAPTER 279

S.B. No. 1446

AN ACT

relating to the regulation of solid waste disposal.

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

SECTION 1. (a) Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by Section 1, Chapter 566, Acts of the 69th Legislature, Regular Session, 1985, and by Section 1.160, Chapter 795, Acts of the 69th Legislature, Regular Session, 1985, and by Section 3, Chapter 921, Acts of the 69th Legislature, Regular Session, 1985, is repealed.

(b) The Solid Waste Disposal Act, as amended (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Section 2 to read as follows:

*Sec. 2. DEFINITIONS. As used in this Act, unless the context requires a different definition:*

(1) *"Administratively complete" means that a complete permit application form, as well as the report and fees required to be submitted with a permit application, have been submitted to the department or the commission and the permit application is ready for technical review in accordance with the rules of the department or commission.*

(2) *"Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.*

(3) *"Board of health" means the Texas Board of Health.*

(4) *“Class I industrial solid waste” means any industrial solid waste or mixture of industrial solid wastes which because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste.*

(5) *“Commission” means the Texas Water Commission.*

(6) *“Commissioner” means the Commissioner of Health.*

(7) *“Composting” means the controlled biological decomposition of organic solid waste under aerobic conditions.*

(8) *“Department” means the Texas Department of Health.*

(9) *“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.*

(10) *“Environmental response law” means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Pub. L. No. 96-510).*

(11) *“Executive director” means the Executive Director of the Texas Water Commission.*

(12) *“Garbage” means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.*

(13) *“Hazardous waste” means any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.*

(14) *“Industrial solid waste” means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.*

(15) *“Local government” means a county, an incorporated city or town, or a political subdivision exercising the authority granted under Section 6 of this Act.*

(16) *“Management” means the systematic control of any or all of the following activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.*

(17) *“Municipal solid waste” means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.*

(18) *“Notice of intent to file an application” means that notice filed pursuant to Section 4(e)(12) of this Act.*

(19) *“Person” means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.*

(20) *“Person affected” means any person who is a resident of a county or any county adjacent or contiguous to the county in which a solid waste facility is to be located including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage.*

(21) *“Processing” means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to*

*change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. Unless the state agency determines that regulation of such activity under this Act is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.*

(22) "Radioactive waste" means that waste which requires specific licensing under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), and the rules adopted by the Texas Board of Health under that law.

(23) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, or disposing into the environment, but excludes:

(A) a release that results in exposure to persons solely within a workplace, with respect to a claim which those persons may assert against the employer of those persons;

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act, or, for the purposes of Section 104 of the environmental response law or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7912 and 7942); and

(D) the normal application of fertilizer.

(24) "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous wastes so that they do not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous wastes or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the administrator of the United States Environmental Protection Agency or the executive director determines that alone or in combination with other measures this relocation is more cost effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off site of hazardous wastes or may otherwise be necessary to protect the public health or safety.

(25) "Removal" means the cleanup or removal of released hazardous wastes from the environment; the actions necessary to be taken in the event of the threat of release of hazardous wastes into the environment; the actions necessary to monitor, assess, and evaluate the release or threat of release of hazardous wastes; the disposal of removed material; or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release. The term also includes

security fencing or other measures to limit access, provision of alternate water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under Section 104(b) of the environmental response law, and any emergency assistance that may be provided under the federal Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.).

(26) "Rubbish" means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600° F to 1800° F).

(27) "Sanitary landfill" means a controlled area of land upon which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the commission.

(28) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(29)(A) Until the delegation of RCRA authority to the Railroad Commission of Texas: "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(B) On delegation of RCRA authority to the Railroad Commission of Texas: "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code.

(30) "Solid waste facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and consist of several processing, storage, or disposal operational units; e.g., one or more landfills, surface impoundments, or combinations of them.

(31) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the commission or board of health.

(32) "Storage" means the holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere.

SECTION 2. Subsection (f), Section 3, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by Section 1, Article 8, Chapter 931, Acts of the 69th Legislature, Regular Session, 1985, is amended by redesignating it to read as follows:

(i) [(f)] The department shall adopt as a rule any memorandum of understanding between the department and any other state agency. A revision of any memorandum of understanding must be adopted as a rule.

SECTION 3. Subparagraph (i), Paragraph (A), Subdivision (4), Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) The owner or operator of a hazardous waste or solid waste management facility shall not be required to obtain a permit for the storage, processing, treatment, disposal, or destruction of solid waste or hazardous waste from any agency of the state other than the department or the *commission* [~~department of water resources~~] unless a permit is required under the new source review requirements of Part C or D of Title I of the federal Clean Air Act, 42 U.S.C. 7401 et seq., for a major source or a major modification, or unless a permit is required by the Railroad Commission of Texas under Chapter 27, Water Code. *Except* [~~except~~] with respect to major sources or major modifications described above, and except with respect to facilities required to be permitted by the Railroad Commission of Texas under Chapter 27, Water Code, all participation in the review of a permit application shall be through one agency hearing, which shall be the sole permit hearing and which shall be conducted by either the department or the *commission* [~~department of water resources~~] as the lead agency, in accordance with the division of jurisdiction between them established in Section 3 of this Act. The Texas Air Control Board and other agencies which might otherwise have jurisdiction for permitting hazardous or solid waste facilities shall enter into joint rules or memoranda of agreement with the department or the *commission* [~~department of water resources~~]. Such joint rules or memoranda of agreement shall include such criteria as the Texas Air Control Board or other agency which might otherwise have jurisdiction may prescribe for use by the lead agency in addressing the concerns of the Texas Air Control Board or other agency in the permitting process. Such joint rules or memoranda shall at a minimum be consistent with applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended. *Consistent with the intent of this paragraph to require only one administrative hearing for a solid waste or hazardous waste management facility, such joint rules or memoranda of agreement shall also provide for the incorporation of provisions in the permits of the department or the commission for off-site waste management facilities related to units which are not otherwise subject to the permitting requirements of the department or commission but are subject to the permitting requirements of the Texas Air Control Board or other relevant agency.*

SECTION 4. Subparagraph (ii), Paragraph (A), Subdivision (4), Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(ii) It is the intent of the Legislature that to the extent possible in conformance with this subpart (A), the lead agency shall defer to the policies, rules, and interpretations of the Texas Air Control Board on the air quality impact of the proposed hazardous waste or solid waste management activities, and that the Texas Air Control Board remain the principal authority of the state in matters of air pollution control. *Except as otherwise provided in this paragraph, the* [The] Texas Air Control Board shall perform [~~be responsible for performing~~] a technical review of the air quality aspects of an application

for a solid waste or a hazardous waste management facility, which relate to the criteria established under (A)(i). *With the exception of applications for facilities which incinerate or burn solid or hazardous waste, applications for hazardous waste management facilities in existence on September 1, 1987, and applications for expansion of hazardous waste land disposal facilities in existence on September 1, 1987, are not subject to Texas Air Control Board review under this section.* It shall complete such review and shall forward all recommendations or proposed permit provisions to the lead agency within the time limits established in the rules of the lead agency for the completion of technical review of the application. The lead agency shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by the Texas Air Control Board, unless such recommendation or proposed permit provisions are determined by the lead agency to be less stringent than applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended. If the Texas Air Control Board's proposed permit provisions conflict with provisions proposed by the lead agency technical staff, the staffs of the two agencies shall attempt to resolve such conflict prior to the end of the technical review of the application. If no contested case hearing on the permit application is held by the lead agency, the recommendations or proposed permit provisions submitted by the Texas Air Control Board shall be incorporated into any permit issued by the lead agency. If a contested case hearing is held, all evidence and testimony of the state regarding air quality aspects of the application shall be developed and presented by the Texas Air Control Board. All parties, including the lead agency, shall have the right to cross-examine any testifying witnesses of the Texas Air Control Board. At the conclusion of the presentation of testimony, the hearings examiner shall afford the Texas Air Control Board at least thirty (30) days in which to submit a set of proposed findings of fact and conclusions of law and, if applicable, proposed permit language, respecting the air quality aspects of the application which relate to the criteria established under (A)(i), which shall be accepted by the hearings examiner and the final decision-making body of the lead agency unless such body finds that the recommendations of the Texas Air Control Board are not supported by a preponderance of the evidence. The Texas Air Control Board may seek judicial review of the air quality aspects of any final decision of the lead agency. Both the lead agency and the Texas Air Control Board shall have authority to enforce the terms of any permit issued by the lead agency which relate to air quality. Permit applications for hazardous waste or solid waste management facilities for which contested evidentiary hearings have commenced at the Texas Air Control Board prior to the effective date of this provision, or appeals from decisions of the Texas Air Control Board on such applications, shall not be affected by this subpart. An applicant may not withdraw a permit application to circumvent the intent of the preceding sentence. The Texas Air Control Board may delegate to its Executive Director any or all of the duties, responsibilities, or authority conferred by this subpart (A).

SECTION 5. Subdivision (5), Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) Before a permit *may be* ~~is~~ issued, amended, extended, or renewed for a solid waste facility for *storage, processing, or disposal* of hazardous waste, the state agency to which the application is submitted shall *determine the type or types of financial assurance which may be used by the applicant to comply with rules adopted by the agency regarding such financial assurance* ~~require the permittee to execute a bond or give other financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility~~. *Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit has been issued, amended, extended, or renewed, the state agency that has issued, amended, extended, or renewed the permit shall require the permittee to execute the financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility.* A state agency may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility other than a solid waste facility for disposal of hazardous waste on the permittee's executing a bond or giving other financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility. The state agency to which the application is submitted shall require an assurance of financial

responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste. Financial requirements established by the state agency shall at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C., 6901 et seq., as amended. *Each state agency is authorized to receive funds as the beneficiary of a financial assurance mechanism established under this section for the proper closure of a solid waste management facility. Each state agency is authorized to expend such funds from a financial assurance mechanism for the closure of facilities covered by that mechanism.*

SECTION 6. Paragraphs (D) and (J), Subdivision (12), Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(D) Any person, other than the applicant, who has participated in the local review committee process pursuant to this paragraph with respect to an application for a hazardous waste management facility, may be awarded its reasonable costs or any part thereof for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing relating to issues raised by such person in the local review committee process but which are still unresolved at the time of the commencement of the hearing on the permit application if the *commission* [~~department or the department of water resources~~] finds that such an award is appropriate; provided, however, that the total award granted to all such persons by the state agency with respect to such application may not exceed \$25,000. In determining the appropriateness of such an award, the state agency shall consider the following:

(i) whether the evidence or analysis provided through such studies, reports, and witnesses is significant to the evaluation of the application;

(ii) whether the evidence or analysis would otherwise not have been provided in the proceeding; and

(iii) whether the local review committee was established in accordance with the rules of the *commission* [~~department or department of water resources~~].

(J) Paragraph (12) of Section 4(e) shall not apply to a solid waste or hazardous waste management facility for which an application has been filed, or which has otherwise been authorized to operate, as of the effective date of such paragraph. *Subdivision (12) shall also not apply to amendments to pending applications or to changes in waste storage or processing operations at existing sites at which waste management activities are already being conducted.*

SECTION 7. Subsection (k), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Section 3, Chapter 457, Acts of the 69th Legislature, Regular Session, 1985, is amended by redesignating it to read as follows:

(~~k~~) [(m)] Each state agency shall require corrective action for any release of hazardous waste or hazardous waste constituents from any solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of the time at which waste is placed in the unit. The state agency shall establish schedules of compliance for the corrective action, if the corrective action cannot be completed before permit issuance, and assurances of financial responsibility for completing the corrective action.

If, before the issuance of a permit, the state agency determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the state agency may issue an order requiring corrective action or any other response measure considered necessary to protect human health or the environment, or the state agency may institute a civil action under Section 8 of this Act. Any order issued under this subsection may include a suspension or revocation of authorization to operate, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If

any person named in an order fails to comply with the order, the state agency may assess a civil penalty in accordance with this Act.

SECTION 8. Subsection (k), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Section 7, Chapter 566, Acts of the 69th Legislature, Regular Session, 1985, is amended by redesignating it to read as follows:

(n) [(k)] The state agencies shall provide by rule for interested persons to engage in activities which involve the collection and disposal of household materials which could be classified as hazardous wastes. Such rules shall specify any necessary requirements relating to the training of persons involved in the collection and disposal of such household materials. No person shall be liable for damages as a result of actions taken or omitted in the course of advertising, promoting or distributing educational materials relating to the collection or disposal of such household materials in accordance with the rules of the state agency. This shall not preclude liability for damages as a result of gross negligence or intentional misconduct on the part of such a person.

SECTION 9. Subsection (k), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 887, Acts of the 69th Legislature, Regular Session, 1985, is amended by redesignating it to read as follows:

(o) [(k)] Before the department issues a permit for the construction, operation, or maintenance of a solid waste facility for processing, storing, or disposing of solid waste in a county that has a local solid waste management plan approved by the board under the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Article 4477-7c, Vernon's Texas Civil Statutes), the department must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local solid waste management plan. Until a local solid waste management plan is approved by the board and adopted by rule, the plan and its contents shall not be considered by the department in the review of an application for a solid waste facility permit.

SECTION 10. Subsection (g), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Chapter 566, Acts of the 69th Legislature, Regular Session, 1985, is amended by adding Subdivision (6) to read as follows:

(6)(A) *For purposes of Paragraph (C) of Subdivision (3) of this subsection, "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property. A defendant who enters into a contractual relationship as provided by Paragraph (C) of Subdivision (3) of this subsection is not liable under this section if the defendant acquired the real property on which the facility requiring the remedial action is located, after the disposal or placement of the hazardous substance on, in, or at the facility, and the defendant establishes by a preponderance of the evidence that (i) the defendant has satisfied the requirements of Paragraph (C) of Subdivision (3) of this subsection, (ii) at the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility, (iii) the defendant is a governmental entity that acquired the facility by escheat, or through other involuntary transfer or acquisition, or through the exercise of the power of eminent domain authority, and (iv) the defendant acquired the facility by inheritance or bequest.*

(B) *To demonstrate the requirement prescribed by Subparagraph (ii) of Paragraph (A) of this subdivision, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subparagraph the court shall take into account (i) any specialized knowledge or experience of the defendant, (ii) the relationship of the purchase price to the value of the property if the property were uncontaminated, (iii) commonly known or reasonably ascertainable information about the property, (iv) the obvious presence or likely presence of contamination of the property, and (v) the defendant's ability to detect the contamination by appropriate inspection.*

(C) *Nothing in this subsection is intended to decrease the liability of a previous owner or operator of a facility who is liable under this Act. Notwithstanding this*



paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable under Subdivision (3) of this subsection, and a defense under that paragraph is not available to the defendant.

(D) Nothing in this subdivision affects the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility.

SECTION 11. Subsection (g), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 567, Acts of the 69th Legislature, Regular Session, 1985, is amended by redesignating and amending it to read as follows:

(i) [(g)] The penalties imposed under Subsection (a) of this section do not apply to failure to pay a fee under Section 12 of this Act or failure to file a report under Section 13a [13] of this Act. Subsection (a)(9) of this section does not apply to interest and penalties imposed under Section 14a [14] of this Act.

SECTION 12. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Section 8c to read as follows:

*Sec. 8c. If a person violates the provisions of this Act relating to solid waste under the jurisdiction of the commission, a rule or order adopted by the commission relating to solid waste under the jurisdiction of the commission, or a solid waste permit or registration issued by the commission under this Act, the commission may issue an order to the person requiring compliance with this Act and specifying the corrective action that the person must take to achieve compliance. Such an order may be issued in lieu of or in addition to an order under Section 8b of this Act assessing administrative civil penalties. Judicial review of an order issued under this section shall be in the district court of the county in which the alleged violation occurred.*

SECTION 13. Section 9, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

*(h)(1) In appeals of an administrative order issued pursuant to Section 8(g) or Section 13(g)(2) of this Act, in any action to enforce such an administrative order, in civil suits seeking injunctive relief under Section 8(g)(1) of this Act, and in cost recovery suits under Section 13(g)(3) or Section 13(g)(4) of this Act, the state, if it prevails, shall be entitled to recover from parties against whom liability has been established its reasonable attorney's fees, its reasonable costs of preparing and providing witnesses, and its reasonable costs of having investigated and assessed the facility or site. The court shall apportion such costs among liable parties as it determines is equitable and just.*

*(2) Costs recovered by the state under Subdivision (1) of this subsection shall be remitted to the commission and placed in the hazardous waste generation and facility fees fund to be used by the commission for the administration of the hazardous waste management program. All amounts recovered under this subsection shall be placed by the commission in a separate account within the hazardous waste generation and facility fees fund.*

*(3) In the event the state's orders enumerated under Subdivision (1) of this subsection are found by the court to be frivolous, unreasonable, or without foundation as regarding any party named in the order, such party appealing or contesting the order shall be entitled to recover from the state its reasonable attorney's fees, its reasonable costs of preparing and providing witnesses, and its reasonable costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary for the preparation of the party's case.*

SECTION 14. Section 11, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Chapter 405, Acts of the 61st Legislature, Regular Session, 1969, is repealed.

SECTION 15. Section 11, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Chapter 567, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

Sec. 11a [11]. HAZARDOUS WASTE GENERATION AND FACILITY FEES FUND AND HAZARDOUS WASTE DISPOSAL FEE FUND. (a) Two special funds are created in the state treasury to be known as the hazardous waste generation and facility fees fund and the hazardous waste disposal fee fund.

(b) The hazardous waste generation and facility fees fund shall consist of money collected by the *commission* [~~department of water resources and the department~~] from fees imposed on hazardous waste generation and permitted or interim status solid waste facilities for processing, storing, or disposing of hazardous waste under Section 12 of this Act and from interest and penalties imposed under Section 14a [14] of this Act for late payment of hazardous waste generation or facility fees. *The commission may use the money collected and deposited in the fund only for regulation of hazardous waste, including payment to other state agencies for services provided under contract relating to enforcement of this Act.*

(c) The hazardous waste disposal fee fund shall consist of money collected by the *commission* [~~department of water resources~~] from fees imposed on the operator of a solid waste facility for disposal of hazardous waste under Section 12 of this Act, [~~and~~] from interest and penalties imposed under Section 14a [14] of this Act for late payment of a disposal fee or late filing of a report, *and from money paid by a liable party for facility cleanup and maintenance under Subsection (g) of Section 13 of this Act.*

(d) *The commission may use the money collected and deposited in the fund under Subsection (c) of this section only for:*

(1) *necessary and appropriate removal and remedial action at sites at which hazardous waste or hazardous substances have been disposed if funds from a liable party, independent third party, 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 funds from a liable party have been collected and deposited in the fund for that purpose or if funds from a liable party, independent third party, or the federal government are not sufficient for the maintenance; and*

(3) *expenses related to complying with the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), the federal Superfund Amendments and Reauthorization Act of 1986, and Sections 8(g) and 13 of this Act.*

SECTION 16. Section 12, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Section 12, Chapter 566, Acts of the 69th Legislature, Regular Session, 1985, is amended by redesignating it to read as follows:

Sec. 11b [12]. CREATION OF RIGHTS. The provisions of Section 8(g) and the provisions of Section 11(b) and the enforcement by the department or *commission* [~~department of water resources~~] of such provisions shall not create any rights or causes of action on behalf of any person other than those specifically and expressly stated herein or change any common law or rule of decision except as limited in this Act to actions by the department or *commission* [~~department of water resources~~] for the elimination of an actual release or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment.

SECTION 17. Subsections (b), (c), and (d), Section 12, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Chapter 567, Acts of the 69th Legislature, Regular Session, 1985, are amended to read as follows:

(b) The annual hazardous waste generation fees prescribed herein are imposed on generators of hazardous waste. The *commission* [~~department of water resources and the department~~] shall require generators of hazardous waste to register their activities and shall collect the annual hazardous waste generation fees imposed under this subsection. The hazardous waste generation fees shall be deposited in the state treasury to the credit of the hazardous waste generation and facility fees fund. The fee for each year is

imposed on each generator which generates hazardous waste during any part of the year. *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 nor more than \$15,000. A generator of less than 100 kilograms of hazardous waste per month is exempt from the payment of a generation fee under this section*

~~[(1) Generators of hazardous waste who generate more than 100 kilograms or more per month but less than 1,000 kilograms per month—\$50 per annum.~~

~~[(2) Generators of hazardous waste who generate 1,000 kilograms or more per month but less than 10,000 kilograms per month—\$500 per annum.~~

~~[(3) Generators of hazardous waste who generate more than 10,000 kilograms or more per month but less than 1 million kilograms per month—\$2,500 per annum.~~

~~[(4) Generators of hazardous waste who generate 1 million kilograms or more per month—\$5,000 per annum].~~

(c) An annual facility fee is imposed on a facility which holds one or more permits or is operating a hazardous waste management unit subject to permit authorization ~~under interim status pending issuance of a permit for a solid waste facility~~ for processing, storing, or disposing of hazardous waste. The *commission* ~~[board, and the Board of Health]~~, by rule, shall adopt a facility fee schedule for determining the amount of fee to be charged. In adopting the facility fee schedule, the *commission* ~~[board and the Board of Health]~~ shall consider the permitted capacity of facilities and variations in the costs necessary to regulate different types of facilities. The annual facility fee shall not be less than \$250. ~~[The maximum fee for a facility that receives less than 1,000 kilograms per month of hazardous waste shall not exceed \$500.]~~ The maximum fee for any facility *may* ~~[shall]~~ not exceed \$25,000 ~~[\$20,000]~~. The total amount of facility fees and hazardous waste generation fees collected and deposited in the hazardous waste generation and facility fees fund in any fiscal year shall not be less than \$3.5 million nor more than \$4.50 ~~[\$3.75]~~ million. The annual fee to be charged each hazardous waste facility shall be that set by the fee schedule adopted by the *commission* ~~[board and the Board of Health]~~. The fee for each year is imposed on each facility for which a permit or *the requirement to comply with permit authorization* ~~[interim status]~~ is in effect during any part of the year.

(1) The *commission* ~~[department of water resources and the department]~~ shall collect the facility fees imposed under this subsection ~~[for the facilities within their respective jurisdictions]~~ and the fees shall be deposited in the state treasury to the credit of the hazardous waste generation and facility fees fund.

(2) During any year in which a facility subject to ~~[an]~~ interim status requirements ~~[facility]~~ receives a final permit, the facility fee under this subsection may be imposed only on the basis of one of those classifications.

(d) A fee ~~[of \$4]~~ for each dry weight ton of hazardous waste deposited in a land disposal facility ~~[disposed through land disposal]~~ is imposed on the operator of a hazardous waste land disposal facility, except that the fee for primary metals high volume, low-hazard waste shall be assessed at 25 percent of the fee. *The commission by rule shall set the fee for each dry weight ton of hazardous waste, as provided by Subdivision (4) of this subsection.*

(1) The *commission* ~~[department of water resources]~~ shall make rules providing for methods of calculating the dry weight of hazardous waste.

(2) The generator of hazardous waste shall provide certification of the computation to the operator of the dry weight of the hazardous waste to be disposed of, or in the case of primary metals high volume, low-hazard waste, that the composition of the industrial solid waste meets the definition of a primary metals high volume, low-hazard waste. In addition, the *commission* ~~[board]~~, by rule, may provide for a method of determining or estimating the dry weight of small volumes of hazardous waste delivered to commercial hazardous waste disposal facilities for which costs of analyzing the waste to determine dry weight are disproportionate.

(3) The *commission* ~~[department of water resources and the department]~~ shall collect the hazardous waste disposal fee imposed under this subsection quarterly on dates

established by rule, [~~for the facilities within their respective jurisdictions,~~] and the fees shall be deposited in the state treasury to the credit of the hazardous waste disposal fee fund.

(4) *The commission by rule shall set the hazardous waste disposal fee and revise it as necessary so that the amount of money collected each biennium equals between \$10 million and \$12 million or an amount set by legislative appropriation. In setting a different amount by legislative appropriation to be raised in fees during a biennium, the legislature shall consider only the amount necessary to raise the required state matches for remedial actions under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the cost of state-funded remedial actions under Section 13 of this Act. If during the biennium additional funds become necessary to match newly available federal funds under the federal Superfund Amendments and Reauthorization Act of 1986, the commission may increase the fee to collect the necessary matching funds* [~~Following each quarterly reporting date the state treasurer shall certify to the governor and the department of water resources the amount deposited in the hazardous waste disposal fee fund during the quarter and the cumulative amount collected, less expenditures, since the start of the current fiscal year. In the event the state treasurer shall certify that the total amount in the hazardous waste disposal fee fund at the end of any quarter equals or exceeds \$10 million, no hazardous waste disposal fee shall be collected for the remainder of the fiscal year unless the board determines that additional revenue is needed in order to qualify for additional federal funds for remedial action which become available as a result of reauthorization of the Comprehensive Environmental Response, Compensation, and Liability Act or additional funds are needed to match federal funds due to the failure of private parties to provide adequate funds.~~]

[(5) ~~The board shall monitor the state treasurer's certifications as to the cumulative amount of hazardous waste disposal fees being collected and using available data the board shall on or before June 1, 1986, estimate the total amount of hazardous waste disposal fees that will be collected during the biennium. If the estimate is less than \$10.75 million, on or before September 1, 1986, the board, by rule, shall increase the fee for each dry weight ton of hazardous waste disposed through land disposal to an amount that the board estimates will cause a cumulative amount of not less than \$10.75 million nor more than \$12 million to be collected during the 1986-87 biennium. In the event that additional federal funds for remedial action at sites at which hazardous waste has been disposed become available as a result of reauthorization of the Comprehensive Environmental Response, Compensation, and Liability Act, or additional revenue is necessary to match federal funds due to the failure of private parties to provide adequate funds, the board, by rule, may increase the fee to an amount that the board determines to be adequate to raise the money necessary to qualify for available federal funds, and the cumulative amount of money collected during the 1986-87 biennium may exceed \$12 million by an amount necessary to qualify for available federal funds.~~]

SECTION 18. Section 13, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Section 2, Chapter 567, Acts of the 69th Legislature, Regular Session, 1985, is amended by redesignating it to read as follows:

Sec. 13a [13]. RECORDS AND REPORTS. The *commission* [~~department of water resources~~] and the department by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain any records and to submit to the *commission* [~~department of water resources~~] and the department any reports necessary for the *commission* [~~department of water resources~~] to determine the amount of hazardous waste disposal. The board by rule also shall establish the date on which any report required by this section shall be submitted.

SECTION 19. Subdivision (3), Subsection (g), Section 13, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) Whenever the *commission* [~~department of water resources~~], after investigation, finds that there exists a release or threatened release of hazardous wastes at a facility identified in the registry that:

(A) is causing irreversible or irreparable harm to the public health and safety or the environment; and

(B) the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to liable parties pursuant to Paragraph (2) of this subsection or until a judgment can be entered in an appeal of an administrative order; the *commission* [~~department of water resources~~] may, with the funds available to the *commission* [~~department of water resources~~] from the hazardous waste permit and disposal fees, if approved by the Legislature, undertake immediate removal action at the facility to alleviate the harm. After the immediate danger of irreversible or irreparable harm has been alleviated, the *commission* [~~department of water resources~~] shall proceed pursuant to Paragraph (2) of this subsection. Findings required pursuant to this paragraph shall be in writing and may be made by the *commission* [~~department of water resources~~] on an ex parte basis subject to judicial review pursuant to the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(C) *The reasonable expenses of any immediate removal action taken by the Texas Water Commission may be recoverable from the persons described in Section 8(g)(2) and the state may seek to recover such reasonable expenses in any court of appropriate jurisdiction.*

SECTION 20. Section 14, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as added by Section 2, Chapter 567, Acts of the 69th Legislature, Regular Session, 1985, is amended by redesignating it to read as follows:

Sec. 14a [14]. INTEREST AND PENALTIES. (a) If a fee imposed under Section 12 of this Act is not paid when due, interest at an annual rate of 15 percent of the amount of the fee due accrues from the date on which the fee is due.

(b) A person is subject to a civil penalty of \$100 for each day the violation continues for failure to timely submit a report as required by board rule under Section 13a [13] of this Act.

(c) Any interest collected under this section for late payment of generation or facility fees shall be deposited in the state treasury to the credit of the hazardous waste generation and facility fees fund and any interest and penalties collected under this section for late payment of disposal fees and late filing of reports shall be deposited in the state treasury to the credit of the hazardous waste disposal fee fund.

SECTION 21. (a) The annual hazardous waste generation fees, the annual hazardous waste facility fees, and the hazardous waste disposal fee required by the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) remain at the amounts on the effective date of this Act until the date on which the Texas Water Commission by rule adopts different fee rates to comply with the requirements of the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by this Act.

(b) This Act takes effect September 1, 1987.

SECTION 22. 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 8, 1987, by a viva-voce vote. Passed the House on May 29, 1987, by a non-record vote.

Approved June 11, 1987.

Effective Sept. 1, 1987.