

By: Krusee

H.B. No. 2651

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Water Code, is amended by adding Chapter 32 to read as follows:

CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. SHORT TITLE. This chapter may be cited as the Subsurface Area Drip Dispersal System Act.

Sec. 32.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Commercial, industrial, or municipal waste":

(A) means any water-dominant liquid waste substance that may cause or might reasonably be expected to cause pollution of fresh water and that may result from:

(i) processes of industry, manufacturing, trade, or business;

(ii) development or recovery of natural resources, except as provided by Paragraph (B); or

(iii) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, other municipal corporations, educational facilities, apartment

1 complexes, and other commercial facilities; and

2 (B) does not include:

3 (i) oil and gas waste, as defined by Section
4 27.002;

5 (ii) tar sands;

6 (iii) sulfur;

7 (iv) brine from desalination; or

8 (v) hazardous waste, as defined by Section
9 361.003, Health and Safety Code.

10 (3) "Department" means the Department of State Health
11 Services.

12 (4) "Executive director" means the executive director
13 of the commission.

14 (5) "Fresh water" has the meaning assigned by Section
15 27.002.

16 (6) "Pollution" has the meaning assigned by Section
17 27.002.

18 (7) "Processed" means the action of reducing liquid
19 waste to a state that will allow injection by subsurface drip
20 dispersal into an area without creating pollution.

21 (8) "Subsurface area drip dispersal system" means a
22 waste disposal system that injects processed commercial,
23 industrial, or municipal waste into the ground at a depth of not
24 more than 48 inches and spreads the waste over a large enough area
25 that the soil hydrologic absorption rate and crop/plant root
26 absorption rate are not exceeded.

27 Sec. 32.003. POLICY AND PURPOSE. It is the policy of this

1 state and the purpose of this chapter to:

2 (1) maintain the quality of fresh water in the state to
3 the extent consistent with the public health and welfare and the
4 operation of existing industries;

5 (2) promote the beneficial reuse of commercial,
6 industrial, and municipal waste for the economic development of the
7 state, thereby reducing the demand on the state's supply of fresh
8 water;

9 (3) prevent underground injection that may pollute
10 fresh water; and

11 (4) require the use of all reasonable methods to
12 implement this policy.

13 [Sections 32.004-32.050 reserved for expansion]

14 SUBCHAPTER B. JURISDICTION OF COMMISSION

15 Sec. 32.051. PERMIT FROM COMMISSION. A person may not
16 operate a subsurface area drip dispersal system without first
17 obtaining a permit from the commission.

18 Sec. 32.052. APPLICATION FOR PERMIT. The commission shall
19 prescribe forms for application for a permit and shall make the
20 forms available on request without charge.

21 Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. An
22 applicant shall furnish any information the executive director
23 considers necessary to discharge the executive director's duties
24 under this chapter and the rules of the commission.

25 Sec. 32.054. INSPECTION OF DISPERSION AREA. On receiving
26 an application for a permit, the executive director shall inspect
27 the location of the proposed dispersion area to determine the local

1 conditions and the probable effect of the subsurface area drip
2 dispersal system.

3 Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. The
4 executive director shall submit to the department and to other
5 persons designated by the commission copies of each permit
6 application received in proper form. A person to whom an
7 application is submitted may make recommendations to the commission
8 concerning any aspect of the application not later than the 30th day
9 after the date the application is submitted.

10 Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) In this
11 section, "local government" has the meaning assigned by Section
12 26.001.

13 (b) The commission may hold a public hearing on a permit
14 application for a subsurface area drip dispersal system if the
15 commission determines that a hearing is necessary and in the public
16 interest.

17 (c) The commission shall hold a public hearing on a permit
18 application for a subsurface area drip dispersal system if a
19 hearing is requested by a local government located in the county of
20 the proposed disposal site or by an affected person.

21 (d) The commission by rule shall provide for giving notice
22 of the opportunity to request a public hearing on a permit
23 application. The rules for notice shall include provisions for
24 giving notice to local governments and affected persons.

25 (e) Before the commission begins to hear the testimony in a
26 contested case as defined by Chapter 2001, Government Code,
27 evidence must be placed in the record to demonstrate that proper

1 notice regarding the hearing was given to affected persons. If
2 mailed notice to an affected person is required, the commission or
3 other party to the hearing shall place evidence in the record that
4 notice was mailed to the address of the affected person included in
5 the appropriate county tax rolls at the time of mailing. For the
6 purposes of this subsection, the affidavit of the commission
7 employee responsible for the mailing of the notice, attesting to
8 the fact that notice was mailed to the address included in the tax
9 rolls at the time of mailing, shall be prima facie evidence of
10 proper mailing. The commission may not proceed with receipt of
11 testimony in a contested case until the requirements of this
12 subsection are complied with.

13 Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. The
14 commission shall send copies of proposed rules under this chapter
15 to the department and any other persons designated by the
16 commission. A person to whom the copies of proposed rules are sent
17 may submit comments and recommendations to the commission and shall
18 have a reasonable time to do so as determined by the commission.

19 [Sections 32.058-32.100 reserved for expansion]

20 SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

21 Sec. 32.101. ISSUANCE OF PERMIT. (a) The commission may
22 grant an application for a permit for a subsurface area drip
23 dispersal system in whole or part and may issue the permit if it
24 finds that:

25 (1) the use or installation of the system is in the
26 public interest;

27 (2) with proper safeguards, both subsurface and

1 surface fresh water can be adequately protected from pollution; and

2 (3) the applicant has provided for the proper
3 operation of the system.

4 (b) In the permit, the commission shall impose terms and
5 conditions reasonably necessary to protect fresh water from
6 pollution.

7 (c) The commission, in determining if the use or
8 installation of a subsurface area drip dispersal system is in the
9 public interest under Subsection (a)(1), shall consider:

10 (1) compliance history of the applicant and related
11 entities under the method for evaluating compliance history
12 developed by the commission under Section 5.754 and in accordance
13 with the provisions of Subsection (d) of this section;

14 (2) whether there is a practical, economic, and
15 feasible alternative to a subsurface area drip dispersal system
16 reasonably available; and

17 (3) any other factor the commission considers
18 relevant.

19 (d) The commission shall establish a procedure for the
20 preparation of comprehensive summaries of the applicant's
21 compliance history, including the compliance history of any
22 corporation or other business entity managed, owned, or otherwise
23 closely related to the applicant. The summaries shall be made
24 available to the applicant and any interested person after the
25 commission has completed its technical review of the permit
26 application and prior to giving public notice relating to the
27 issuance of the permit. Evidence of compliance or noncompliance by

1 an applicant for a subsurface area drip dispersal system permit
2 with environmental statutes and the rules adopted or orders or
3 permits issued by the commission may be offered by any party at a
4 hearing on the applicant's application and admitted into evidence
5 subject to applicable rules of evidence. Evidence of the
6 compliance history of an applicant for a subsurface area drip
7 dispersal system permit may be offered by the executive director at
8 a hearing on the application and admitted into evidence subject to
9 the rules of evidence. The commission shall consider all evidence
10 admitted, including compliance history, in determining whether to
11 issue, amend, extend, or renew a permit. If the commission
12 concludes that the applicant's compliance history is unacceptable,
13 the commission shall deny the permit.

14 Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) The
15 commission shall send to the department a copy of each permit issued
16 under this chapter.

17 (b) Before beginning injection operations, a person
18 receiving a permit for a subsurface area drip dispersal system
19 shall file a copy of the permit with the applicable local health
20 authorities of the area in which the system is located.

21 [Sections 32.103-32.150 reserved for expansion]

22 SUBCHAPTER D. GENERAL POWERS

23 Sec. 32.151. POWER TO ENTER PROPERTY. A member or employee
24 of the commission or an authorized agent or employee of a local
25 government may enter public or private property to inspect and
26 investigate conditions relating to a subsurface area drip dispersal
27 system in connection with subsurface drip dispersal activities or

1 to monitor compliance with a rule, permit, or order of the
2 commission. A member or employee acting under the authority of this
3 section who enters an establishment on public or private property
4 shall observe the establishment's safety, internal security, and
5 fire protection rules.

6 Sec. 32.152. POWER TO EXAMINE RECORDS. A member or employee
7 of the commission or an authorized agent or employee of a local
8 government may examine and copy any record or memorandum of a
9 business the member, employee, or agent is investigating as
10 provided by Section 32.151 that relates to the operation of a
11 subsurface area drip dispersal system or any other record the
12 commission requires the business to maintain.

13 SECTION 2. (a) The Texas Commission on Environmental
14 Quality shall adopt rules and be prepared to accept applications
15 for permits under Chapter 32, Water Code, as added by this Act, not
16 later than July 31, 2006.

17 (b) A person is not required to hold a permit under Chapter
18 32, Water Code, as added by this Act, before November 1, 2006.

19 SECTION 3. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2005.