

By: Krusee

H.B. No. 2651

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of the Texas Natural Resource
3 Conservation Commission to regulate a sub-surface area drip
4 dispersal system as a separate category of commercial, industrial,
5 and municipal non-hazardous liquid waste disposal.

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

7 SECTION 1. Water Code, Title 2. Water Administration,
8 Subtitle D. Water Quality Control, Chapter 27. Injection Wells,
9 Subchapter A. General Provisions, Subsection 27.002, is amended to
10 read as follows:

11 § 27.002. DEFINITIONS.

12 (11) "Injection well" means an artificial excavation
13 or opening in the ground made by digging, boring, drilling,
14 jetting, driving, or some other method, and used to inject,
15 transmit, or dispose of industrial and municipal waste or oil and
16 gas waste into a subsurface stratum; or a well initially drilled to
17 produce oil and gas which is used to transmit, inject, or dispose of
18 industrial and municipal waste or oil and gas waste into a
19 subsurface stratum; or a well used for the injection of any other
20 fluid; but the term does not include any surface pit, surface
21 excavation, ~~or~~ natural depression or sub-surface area drip
22 dispersal system used to dispose of industrial and municipal waste
23 or oil and gas waste.

24 SECTION 2. Water Code, Title 2. Water Administration,

1 Subtitle D. Water Quality Control is amended by adding Chapter 32
2 to read as follows:

3 CHAPTER 32. SUB-SURFACE AREA DRIP DISPERSAL SYSTEM

4 SUBCHAPTER A. GENERAL PROVISIONS

5 § 32.001. SHORT TITLE. This chapter may be cited as the
6 Sub-Surface Area Drip Dispersal System Act.

7 § 32.002. DEFINITIONS. In this chapter:

8 (1) "Commission" means the Texas Natural Resource
9 Conservation Commission.

10 (2) "Executive director" means the executive director
11 of the Texas Natural Resource Conservation Commission.

12 (3) "Sub-surface area drip dispersal system" means a
13 waste disposal system that injects processed commercial,
14 industrial, and municipal waste, but not excluded waste or
15 hazardous waste, into the ground at a depth of no more than 48
16 inches with such injection spread over an area such that the soil
17 hydrologic absorption rate and crop/plant root absorption rate is
18 not exceeded.

19 (4) "Processed" means the action of reducing liquid
20 waste to a state that will allow injection by sub-surface drip
21 dispersal into an area without creating pollution.

22 (5) "Pollution" means the alteration of the physical,
23 chemical, or biological quality of, or the contamination of, water
24 that makes it harmful, detrimental, or injurious to humans, animal
25 life, vegetation, or property or to public health, safety, or
26 welfare, or impairs the usefulness or the public enjoyment of the
27 water for any lawful or reasonable purpose.

1 (6) "Hazardous waste" has the meaning assigned to that
2 term by Section 361.003, Health and Safety Code.

3 (7) "Commercial, industrial and municipal waste means
4 any water-dominant liquid waste substance, which may cause or might
5 reasonably be expected to cause pollution of fresh water and which
6 might result from:

7 (a) processes of industry, manufacturing, trade,
8 or business;

9 (b) development or recovery of natural resources
10 other than oil, gas, sulfur, coal tars, or desalinization;

11 (c) disposal of sewage or other wastes of cities,
12 towns, villages, communities, water districts, other municipal
13 corporations, educational facilities, apartment complexes, and
14 other commercial facilities;

15 (8) "Excluded waste" means waste arising out of or
16 incidental to drilling for or producing of oil, gas, geothermal
17 resources, sulfur, tar sands, or brine from desalinization, waste
18 arising out of or incidental to the underground storage of
19 hydrocarbons other than storage in artificial tanks or containers,
20 or waste arising out of or incidental to the operation of gasoline
21 plants, natural gas processing plants, or pressure maintenance or
22 re-pressurizing plants. The term includes but is not limited to
23 salt water, brine, sludge, drilling mud, and other liquid or
24 semi-liquid waste material.

25 (9) "Fresh water" means water having bacteriological,
26 physical, and chemical properties which make it suitable and
27 feasible for beneficial use for any lawful purpose.

1 § 32.003. POLICY AND PURPOSE. It is the policy of this
2 state and the purpose of this chapter to maintain the quality of
3 fresh water in the state to the extent consistent with the public
4 health and welfare and the operation of existing industries, to
5 promote the beneficial reuse of commercial, industrial, and
6 municipal waste for economic development of the state thereby
7 reducing the demand on the state's supply of fresh water, to prevent
8 underground injection that may pollute fresh water, and to require
9 the use of all reasonable methods to implement this policy.

10 SUBCHAPTER B. JURISDICTION OF COMMISSION

11 § 32.011. PERMIT FROM COMMISSION. No person may operate a
12 sub-surface area drip dispersal system without first obtaining a
13 permit from the commission.

14 § 32.012. APPLICATION FOR PERMIT. The commission shall
15 prescribe forms for application for a permit and shall make the make
16 the forms available on request without charge.

17 § 32.013. INFORMATION REQUIRED OF APPLICANT. An applicant
18 shall furnish any information the executive director considers
19 necessary to discharge his duties under this chapter and the rules
20 of commission.

21 §32.014. APPLICATION FEE. With each application for a
22 sub-surface area drip disposal system permit, the commission shall
23 collect a fee in the amount provided by and under the terms of
24 Section 5.235.

25 §32.015. INSPECTION OF DISPERSION AREA. On receiving an
26 application for a permit, the executive director shall have an
27 inspection made of the location of the proposed dispersion area to

1 determine the local conditions and the probable effect of the drip
2 dispersion system.

3 §32.016. RECOMMENDATIONS FROM OTHER ENTITIES. The
4 executive director shall submit to the Texas Department of Health
5 and to other persons which the commission may designate copies of
6 every application received in proper form. These entities may make
7 recommendations to the commission concerning any aspect of the
8 application within 30 days.

9 §32.017. HEARING ON PERMIT APPLICATION.

10 (a) If it is considered necessary and in the public
11 interest, the commission may hold a public hearing on the permit
12 application. The commission shall hold a hearing on a permit
13 application for a sub-surface area drip dispersion system to
14 dispose of processed commercial, industrial, and municipal waste if
15 a hearing is requested by a local government located in the county
16 of the proposed disposal well site or by an affected person. In
17 this subsection, "local government" has the meaning provided for
18 that term by Chapter 26 of this code.

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

24 (c) Before the commission begins to hear the testimony
25 in a contested case as defined by Chapter 2001, Government Code,
26 evidence must be placed in the record to demonstrate that proper
27 notice regarding the hearing was given to affected persons. If

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

12 §32.018. RULES, ETC.

13 (a) The commission shall adopt rules and procedures
14 reasonably required for the performance of its powers, duties, and
15 functions under this chapter by July 31, 2006.

16 (b) Copies of any rules under this chapter proposed by
17 the commission shall, before their adoption, be sent to the Texas
18 Department of Health and any other persons the commission may
19 designate. Any agency or person to whom the copies of proposed
20 rules are sent may submit comments and recommendations to the
21 commission and shall have reasonable time to do so as the commission
22 may prescribe.

23 SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

24 § 32.051. ISSUANCE OF PERMIT.

25 (a) The commission may grant an application in whole
26 or part and may issue the permit if it finds:

27 (1) That the use or installation of the

1 sub-surface area drip dispersal system is in the public interest;

2 (2) That, with proper safeguards, both ground and
3 surface fresh water can be adequately protected from pollution;

4 (3) That the applicant has provided for the
5 proper operation of the proposed sub-surface area drip dispersal
6 system;

7 (b) In the permit, the commission shall impose terms
8 and conditions reasonably necessary to protect fresh water from
9 pollution.

10 (c) The commission, in determining if the use or
11 installation of a sub-surface area drip dispersal system is in the
12 public interest under Subsection (a)(1), shall consider, but shall
13 not be limited to the consideration of:

14 (1) compliance history of the applicant and
15 related entities under the method for evaluating compliance history
16 developed by the commission under Section 5.754 and in accordance
17 with the provisions of Subsection (d);

18 (2) whether there is a practical, economic, and
19 feasible alternative to a sub-surface are a drip dispersal system
20 reasonably available, and

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

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

16 § 32.052. COPIES OF PERMIT FILING REQUIREMENTS.

17 (a) The commission shall furnish the Texas Department of
18 Health with a copy of each permit the commission issues.

19 (b) Before beginning injection operations, a person
20 receiving a permit for a sub-surface area drip dispersal system to
21 inject commercial, industrial, and municipal waste shall file a
22 copy of the permit with the health authorities of the county, city,
23 and town where the system is located.

24 SUBCHAPTER D. GENERAL POWERS

25 § 32.071. POWER TO ENTER PROPERTY. Members of the
26 commission and employees of the commission may enter public or
27 private property to inspect and investigate conditions relating to

1 the sub-surface area drip dispersal system for activities within
2 the commission's jurisdictions or to monitor compliance with a
3 rule, permit, or other order of the commission. Members or
4 employees acting under the authority of this section who enter an
5 establishment on public or private property shall observe the
6 establishment's safety, internal security, and fire protection
7 rules.

8 § 32.072. POWER TO EXAMINE RECORDS. Members of the
9 commission and employees of the commission may examine and copy
10 those records or memoranda of a business they are investigating as
11 provided by Section 32.071 of this code that relate to the operation
12 of a sub-surface area drip dispersal system, or any other records
13 required to be maintained by law.

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