

By: Keffer of Dallas

H.B. No. 2881

A BILL TO BE ENTITLED

1 AN ACT

2 relating to remedies for environmental injuries caused by oil- and
3 gas-related activities under the jurisdiction of the Railroad
4 Commission of Texas.

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

6 SECTION 1. Section 81.116(a), Natural Resources Code, is
7 amended to read as follows:

8 (a) An oil-field cleanup regulatory fee is imposed on crude
9 petroleum produced in this state in the amount of 0.656 cents
10 [~~five-eighths of one cent~~] on each barrel of 42 standard gallons.

11 SECTION 2. Section 81.117(a), Natural Resources Code, is
12 amended to read as follows:

13 (a) An oil-field cleanup regulatory fee is imposed on gas
14 initially produced and saved in this state in the amount of 0.07
15 cents [~~one-fifteenth of one cent~~] for each thousand cubic feet.

16 SECTION 3. Section 91.112(a), Natural Resources Code, is
17 amended to read as follows:

18 (a) Money in the fund may be used by the commission or its
19 employees or agents for:

20 (1) conducting a site investigation or environmental
21 assessment to determine:

22 (A) the nature and extent of contamination caused
23 by oil and gas wastes or other substances or materials regulated by
24 the commission under Section 91.101; and

1 (B) the measures that should be taken to control
2 or clean up the wastes, substances, or materials described in
3 Paragraph (A);

4 (2) controlling or cleaning up oil and gas wastes or
5 other substances or materials regulated by the commission under
6 Section 91.101 that are causing or are likely to cause the pollution
7 of surface or subsurface water, consistent with Section 91.113;

8 (3) plugging abandoned wells and administering or
9 enforcing permits, orders, and rules relating to the commission's
10 authority to prevent pollution under this chapter, Chapter 89, or
11 any other law administered or enforced by the commission under
12 Title 3;

13 (4) implementing Subchapter N and enforcing rules,
14 orders, and permits adopted or issued under that subchapter;

15 (5) implementing the voluntary cleanup program under
16 Subchapter O; ~~and~~

17 (6) preparing the report required under Subsection
18 (b); and

19 (7) implementing Subchapter P and enforcing rules and
20 orders adopted or issued under that subchapter.

21 SECTION 4. Chapter 91, Natural Resources Code, is amended
22 by adding Subchapter P to read as follows:

23 SUBCHAPTER P. REMEDY FOR ENVIRONMENTAL INJURY CAUSED

24 BY OIL- AND GAS-RELATED ACTIVITIES

25 Sec. 91.701. DEFINITION. In this subchapter,
26 "environmental injury":

27 (1) means:

1 (A) pollution, as defined by Section 26.001,
2 Water Code; or

3 (B) contamination of soil that renders the soil
4 unfit for growing crops, grazing livestock, or engaging in other
5 activities for which land in the area in which the contamination
6 occurs is generally used; and

7 (2) includes pollution or contamination caused by oil
8 and gas NORM waste as defined by Section 401.003, Health and Safety
9 Code.

10 Sec. 91.702. COMMISSION'S AUTHORITY TO AWARD RELIEF NOT
11 AFFECTED. This subchapter does not grant the commission the
12 authority to award any relief other than that otherwise authorized
13 by this subtitle or Section 401.415, Health and Safety Code.

14 Sec. 91.703. COMMISSION RULES AND ORDERS. (a) The
15 commission may adopt and enforce rules and issue and enforce orders
16 in the exercise of its jurisdiction under this subchapter.

17 (b) An order issued by the commission under this subchapter
18 must be signed by the commission.

19 Sec. 91.704. JURISDICTION OF COMMISSION AND COURTS. (a) A
20 person may not bring an original action in a court for a court order
21 requiring remediation, payment of damages, or another remedy for an
22 environmental injury caused by oil- and gas-related activities that
23 are under the jurisdiction of the commission unless the person has
24 previously filed with the commission a complaint under this
25 subchapter and the condition for bringing the action provided by
26 Section 91.714 is met. This subsection does not affect the
27 jurisdiction of a court to enforce a settlement agreement entered

1 into under Section 91.716.

2 (b) A person who has suffered an environmental injury may
3 file a written complaint as provided by commission rules requesting
4 an order for a remedy under this subchapter. A person may not file a
5 complaint with the commission under this subchapter unless the
6 person:

7 (1) owns a fee simple or leasehold interest in the real
8 property on which the environmental injury is alleged to have
9 occurred; and

10 (2) has attempted to settle the claim.

11 (c) A complainant may withdraw a complaint at any time. If a
12 complainant withdraws a complaint, the commission shall enter an
13 order stating that the complaint was withdrawn.

14 (d) The statute of limitations applying to a cause of action
15 for which a complaint is filed with the commission under this
16 subchapter is tolled while the complaint is pending with the
17 commission.

18 Sec. 91.705. CONTRACT WITH INDEPENDENT ENTITY. The
19 commission may contract with one or more independent public or
20 private entities with pertinent technical expertise to investigate
21 complaints, make recommendations to the commission, and monitor and
22 report to the commission on the performance of remediation
23 operations and other responses as provided by this subchapter.

24 Sec. 91.706. RELATIONSHIP TO OTHER LAW. If a complaint
25 alleges that the complainant suffered an environmental injury as
26 the result of the failure of an operator to properly plug a well,
27 the commission may process the complaint under this subchapter or

1 may take action under Chapter 89.

2 Sec. 91.707. ADMINISTRATIVE PROCEDURE. A proceeding under
3 this subchapter is a contested case under Chapter 2001, Government
4 Code. If the commission holds a contested case hearing under this
5 subchapter, the commission must make reasonably diligent efforts to
6 give notice of the hearing to each potentially responsible party
7 and to any other person entitled to notice under due process of law.

8 Sec. 91.708. COMPLAINT INVESTIGATION; FINDINGS; REPORT.

9 (a) On the filing of a complaint under Section 91.704, the
10 commission shall have a field inspector examine the affected real
11 property to determine whether the commission has jurisdiction over
12 the complaint.

13 (b) If the field inspector determines that the commission
14 does not have jurisdiction over the complaint, the commission shall
15 dismiss the complaint.

16 (c) If the field inspector determines that the commission
17 has jurisdiction over the complaint, the commission shall direct
18 the commission staff to investigate the complaint or refer the
19 complaint to an independent entity with which the commission has
20 entered into a contract under Section 91.705 for investigation.
21 The commission staff or independent entity shall complete its
22 investigation in a timely manner.

23 (d) On completion of its investigation, the commission
24 staff or independent entity shall make findings regarding whether
25 an environmental injury caused by oil- and gas-related activities
26 under the jurisdiction of the commission occurred and, if the
27 injury occurred:

1 (1) whether remediation or another response is
2 required;

3 (2) the level of remediation, if any, that is
4 required; and

5 (3) the person, if any, responsible for the
6 remediation or other response.

7 (e) In making a finding under Subsection (d)(1) or (2), the
8 commission staff or independent entity shall consider:

9 (1) the need to protect human health and safety and the
10 environment from any unacceptable risks arising from the
11 environmental injury;

12 (2) if applicable, the time necessary to achieve the
13 required level of remediation;

14 (3) whether the proposed remediation operation or
15 process or other response is the most cost-effective and
16 technologically and economically feasible option to remedy the
17 environmental injury, taking into account the present use and value
18 of the property;

19 (4) the effectiveness of alternative responses,
20 including bioremediation, containment, institutional controls,
21 naturally occurring dilution and attenuation, and the provision of
22 alternative water supplies; and

23 (5) whether the level of remediation or the response
24 action recommended by the commission staff or independent entity
25 will prevent any unacceptable risk to human health and safety and
26 the environment.

27 (f) The commission staff or independent entity shall report

1 to the commission the staff's or entity's findings under Subsection
2 (d).

3 (g) The commission shall:

4 (1) provide a copy of the report to the complainant and
5 to each person, if any, the commission staff or independent entity
6 finds to be responsible for the remediation or other response; and

7 (2) provide the complainant and each responsible
8 person an opportunity to meet with one or more staff members of the
9 commission to discuss the report.

10 Sec. 91.709. COMMISSION ORDER. (a) After complying with
11 Section 91.708(g) and providing notice and an opportunity for a
12 hearing, the commission shall enter an order stating whether an
13 environmental injury caused by oil- and gas-related activities
14 under the jurisdiction of the commission occurred and, if the
15 injury occurred:

16 (1) whether remediation or another response is
17 required;

18 (2) the level of remediation, if any, that is
19 required;

20 (3) the portion, if any, of the environmental injury
21 that is reasonably attributable to each person named in or
22 otherwise given notice of the complaint;

23 (4) which person or persons, if any, are responsible
24 for the remediation or other response that is required;

25 (5) whether any person is responsible for achieving a
26 specified level of remediation;

27 (6) whether any person not named in or otherwise given

1 notice of the complaint contributed to or exacerbated the
2 environmental injury; and

3 (7) if a contested case hearing was held, whether
4 notice was given to or reasonably diligent efforts were made to give
5 notice to each potentially responsible party and to any other
6 person entitled to notice under due process of law.

7 (b) A remediation operation or process or other response
8 required by an order issued under Subsection (a) must be an
9 operation, process, or other response the commission finds to be a
10 cost-effective and technologically and economically feasible means
11 of remedying the environmental injury, taking into account the
12 present use and value of the property.

13 Sec. 91.710. PERFORMANCE OF REMEDIATION OR OTHER RESPONSE
14 OPERATIONS. (a) If the commission issues an order under Section
15 91.709 requiring a person to remediate or otherwise respond to an
16 environmental injury, the person shall remediate or respond to the
17 injury in accordance with the commission's order.

18 (b) If the person responsible for remediating or responding
19 to the injury cannot be found or does not have assets with which to
20 remediate or respond to the injury, the commission, through its
21 employees or through a person acting as agent for the commission,
22 may remediate or respond to the injury.

23 (c) The commission staff or independent entity that
24 submitted the report that was the basis for the commission's order
25 shall:

26 (1) monitor the performance of remediation or response
27 operations to ensure that the operations comply with the order; and

1 (2) report to the commission on the status of the
2 remediation or response operations.

3 Sec. 91.711. REIMBURSEMENT OF INDEPENDENT ENTITY FOR COSTS.

4 The costs incurred by the independent entity in performing its
5 duties under this subchapter shall be paid by:

6 (1) the complainant if:

7 (A) the commission determines that an
8 environmental injury caused by oil- and gas-related activities
9 under the jurisdiction of the commission did not occur; or

10 (B) remediation or another response is not
11 required;

12 (2) the person the commission determines to be
13 responsible for the remediation or other response that is required;
14 or

15 (3) the commission if Subdivision (1) does not apply
16 and the person responsible for remediating or responding to the
17 injury cannot be found or does not have assets with which to
18 remediate or respond to the injury.

19 Sec. 91.712. RECOVERY BY COMMISSION OF COSTS. If the
20 commission issues an order under Section 91.709 requiring a person
21 to remediate or respond to an environmental injury caused by oil-
22 and gas-related activities under the jurisdiction of the
23 commission, the commission may recover its costs incurred in
24 performing its duties under this subchapter in the same manner as
25 the commission may recover its costs in connection with action
26 taken by the commission under Subchapter D, Chapter 89.

27 Sec. 91.713. LIABILITY FOR BAD FAITH COMPLAINT. (a) If the

1 commission determines that a complaint is groundless and brought in
2 bad faith or brought for the purpose of harassment, the commission
3 may include that determination in the commission's order under
4 Section 91.709.

5 (b) If the commission makes a determination described by
6 Subsection (a), a person named in or otherwise given notice of the
7 complaint who makes an appearance as a respondent in a contested
8 case hearing before the commission in connection with the complaint
9 or is otherwise subject to the commission's order may recover the
10 actual costs incurred by the person as a result of the complaint,
11 including reasonable attorney's fees and court costs, in a civil
12 action against the person filing the complaint.

13 Sec. 91.714. ORIGINAL ACTION IN COURT FOR RELIEF FOLLOWING
14 COMPLAINT DISMISSAL OR COMMISSION ORDER. If the commission
15 dismisses the complaint under Section 91.708(b) or the commission
16 determines in the order under Section 91.709 that the commission
17 does not have jurisdiction over the complaint, including
18 jurisdiction to order a remedy for the alleged environmental
19 injury, the complainant may bring an original action in a court for
20 an order imposing a remedy for the injury.

21 Sec. 91.715. JUDICIAL REVIEW OF COMMISSION ORDER. (a) If
22 the commission determines in the order under Section 91.709 that
23 the commission has jurisdiction over the complaint, including
24 jurisdiction to order a remedy for the alleged environmental
25 injury, and the complainant is dissatisfied with the order, the
26 complainant may seek judicial review of the order.

27 (b) Judicial review of an order issued by the commission

1 under Section 91.709 is under the substantial evidence rule and is
2 instituted by filing a petition with a district court in Travis
3 County as provided by Subchapter G, Chapter 2001, Government Code.

4 Sec. 91.716. VOLUNTARY SETTLEMENT AGREEMENTS. (a) A
5 person may enter into a voluntary settlement of a claim described by
6 Section 91.704 without commission participation if the settlement
7 provides only for remediation of the alleged injury.

8 (b) A voluntary settlement agreement without commission
9 participation is void if the agreement provides for the payment of
10 damages for an alleged injury.

11 (c) A voluntary settlement agreement must comply with the
12 laws of this state and commission rules in effect at the time the
13 agreement is entered into.

14 SECTION 5. The change in law made by this Act applies only
15 to a suit or administrative proceeding commenced on or after the
16 effective date of this Act. A suit or administrative proceeding
17 commenced before the effective date of this Act is governed by the
18 law as it existed immediately before the effective date of this Act,
19 and that law is continued in effect for that purpose.

20 SECTION 6. This Act takes effect September 1, 2005.