

1-1 By: Lucio S.B. No. 738  
1-2 (In the Senate - Filed February 24, 2005; March 2, 2005,  
1-3 read first time and referred to Committee on Natural Resources;  
1-4 April 11, 2005, reported favorably by the following vote: Yeas 10,  
1-5 Nays 0; April 11, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to emergency order authority of the Texas Commission on  
1-9 Environmental Quality.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 5.515, Water Code, is amended to read as  
1-12 follows:

1-13 Sec. 5.515. EMERGENCY ORDER BECAUSE OF CATASTROPHE.

1-14 (a) The commission may issue an emergency order authorizing  
1-15 immediate action for the addition, replacement, or repair of  
1-16 facilities or control equipment necessitated by a catastrophe  
1-17 occurring in this state and the emission of air contaminants during  
1-18 the addition, replacement, or repair of those facilities if the  
1-19 actions and emissions are otherwise precluded under Chapter 382,  
1-20 Health and Safety Code.

1-21 (b) An order issued under this section:

1-22 (1) may authorize action only ~~on~~:

1-23 (A) on property on which a catastrophe has  
1-24 occurred; ~~or~~

1-25 (B) on other property that is owned by the owner  
1-26 or operator of the damaged facility and that produces the same  
1-27 intermediates, products, or by-products; or

1-28 (C) for public works projects needed to rebuild  
1-29 or repair damaged roads, bridges, or other infrastructure destroyed  
1-30 during a catastrophe; and

1-31 (2) must contain a schedule for submitting a complete  
1-32 application for a permit under Section 382.0518, Health and Safety  
1-33 Code.

1-34 (c) The person applying for an emergency order must  
1-35 demonstrate that there will be no more than a de minimis increase in  
1-36 the predicted concentration of air contaminants at or beyond the  
1-37 property line of the other property on which action is authorized  
1-38 under Subsection (b)(1)(B). The commission shall review and act on  
1-39 an application submitted as provided by Subsection (b)(2) without  
1-40 regard to construction activity under an order under this section.

1-41 (d) An applicant desiring an emergency order under this  
1-42 section must submit an application under Section 5.502 that, in  
1-43 addition to complying with that section:

1-44 (1) describes the catastrophe;

1-45 (2) states that:

1-46 (A) the construction and emissions are essential  
1-47 to prevent loss of life, serious injury, severe property damage,  
1-48 loss of a critical transportation thoroughfare, or severe economic  
1-49 loss not attributable to the applicant's actions and are necessary  
1-50 for the addition, replacement, or repair of a facility or control  
1-51 equipment, or repair or replacement of roads, bridges, or other  
1-52 infrastructure, necessitated by the catastrophe;

1-53 (B) there is no practicable alternative to the  
1-54 proposed construction and emissions; and

1-55 (C) the emissions will not cause or contribute to  
1-56 air pollution;

1-57 (3) estimates the dates on which the proposed  
1-58 construction or emissions, or both, will begin and end;

1-59 (4) estimates the date on which the facility will  
1-60 begin operation; and

1-61 (5) describes the quantity and type of air  
1-62 contaminants proposed to be emitted.

1-63 (e) In this section, "catastrophe" means an unforeseen  
1-64 event, including an act of God, an act of war, severe weather,

2-1 explosions, fire, or similar occurrences beyond the reasonable  
2-2 control of the applicant [~~operator~~], that makes a facility or its  
2-3 related appurtenances, or a road, bridge, or other infrastructure,  
2-4 inoperable.

2-5 SECTION 2. This Act takes effect immediately if it receives  
2-6 a vote of two-thirds of all the members elected to each house, as  
2-7 provided by Section 39, Article III, Texas Constitution. If this  
2-8 Act does not receive the vote necessary for immediate effect, this  
2-9 Act takes effect September 1, 2005.

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