

## **BILL ANALYSIS**

S.B. 1037  
By: Duncan  
Natural Resources  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Brine evaporation pits in Borden County have the potential to send water with more than 100,000 parts per million chlorides along with other minerals a few miles down the watershed to Lake J.B. Thomas. Lake J.B. Thomas is the Colorado River Municipal Water District's lowest chloride source of water. Although the pits pose a serious pollution threat in the event of a flood, no state or federal agency has authority to take action that will protect public waters from those pits.

The brine operations pump water from brine wells into evaporation ponds and use the highly mineralized pond contents to make products like antifreeze or compounds to melt ice from sidewalks and roads.

Under current law, waste management companies are subject to strict construction rules and are required to have bonds and plans in place to properly close and mitigate any surface damage resulting from their operations. There should be similar regulatory process for brine pits.

S.B. 1037 requires the Texas Commission on Environmental Quality to adopt rules requiring standards for the construction of evaporation pits. The bill also requires bonding and other safeguards to ensure that public waters are protected from this potential hazard.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 and 2 of this bill.

### **ANALYSIS**

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

SECTION 1. Amends Subchapter D, Chapter 26, Water Code, by adding Section 26.132, as follows:

Sec. 26.132. EVAPORATION PITS REQUIREMENTS. (a) Defines "evaporation pit."

(b) Provides that this section applies only to evaporation pits operated for the commercial production of minerals, salts, or other substances that naturally occur in groundwater and that are not regulated by the Railroad Commission of Texas.

(c) Requires the owner or operator of an evaporation pit to ensure that the pit is lined as provided by this subsection and rules adopted under this subsection. Requires the evaporation pit to have a liner designed by an engineer who holds a license issued under Chapter 1001 (Engineers), Occupations Code, to minimize surface water and groundwater pollution risks. Requires the liner to meet standards at least as stringent as those adopted by the Texas Natural Resource Conservation Commission (commission) for a Type I landfill managing industrial solid waste.

(d) Prohibits an owner or operator from placing or permitting the placement of groundwater into an evaporation pit if the pit does not comply with this section or with rules adopted or orders issued under this section.

(e) Requires the owner or operator of an evaporation pit to ensure that the storm water runoff is diverted away from or otherwise prevented from entering the evaporation pit, and that all berms and other structures used to manage storm water are properly constructed and maintained in a manner to prevent the threat of water pollution from the evaporation pit.

(f) Prohibits the owner or operator of an evaporation pit from causing, by act or omission, water pollution from the evaporation pit or a discharge from the evaporation pit into or adjacent to water in the state.

(g) Requires the owner or operator of an evaporation pit to ensure that the pit is located so that a failure of the pit or a discharge from the pit does not result in an adverse effect on water in the state.

(h) Requires the owner or operator of an evaporation pit to provide the commission with proof that the owner or operator has financial assurance adequate to ensure satisfactory closure of the pit.

(i) Requires the owner or operator of an evaporation pit to provide the commission with proof that the owner or operator of the pit has a third party pollution liability insurance policy that is issued by an insurance company authorized to do business in this state that has a rating by the A.M. Best Company of "A-" or better; covers bodily injury and property damage to third parties caused by accidental sudden or nonsudden occurrences arising from operations at the pit; and is in an amount of not less than \$3 million.

(j) Requires the commission to adopt rules as necessary to protect surface water and groundwater quality from the risks presented by commercial evaporation pits and as necessary to administer and enforce this section. Requires the rules to include rules governing the location, design, construction, capacity, operations, maintenance, and closure of evaporation pits; ensuring that the owner or operator of an evaporation pit has adequate financial assurance; and requiring an owner or operator of an evaporation pit to obtain a permit for the operation of the pit.

(k) Requires the commission to impose against the owners of evaporation pits fees in amounts necessary to recover the costs of administering this section.

SECTION 2. (a) Provides that Section 26.132, Water Code, as added by this Act, applies to the owner or operator of an evaporation pit only after the effective date of rules adopted by the Texas Commission on Environmental Quality (TCEQ) under that section.

(b) Provides that Section 26.132, Water Code, as added by this Act, applies to an evaporation pit in operation on or after the effective date of rules adopted by TCEQ under that section regardless of the date the pit entered operation.

(c) Requires TCEQ to adopt rules under Section 26.132, Water code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 3. Effective date: September 1, 2007.

#### **EFFECTIVE DATE**

September 1, 2007.

