

By: Lewis

H.B. No. 3154

A BILL TO BE ENTITLED

1 AN ACT

2 relating to environmental or health and safety audits under the  
3 Texas Environmental, Health, and Safety Audit Privilege Act.

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

5 SECTION 1. Section 3(a), Texas Environmental, Health, and  
6 Safety Audit Privilege Act (Article 4447cc, Vernon's Texas Civil  
7 Statutes), is amended to read as follows:

8 (a) In this Act:

9 (1) "Acquisition closing date" means the date on which  
10 ownership of, or a direct or indirect majority interest in the  
11 ownership of, a regulated facility is acquired in an asset  
12 purchase, equity purchase, merger, or similar transaction.

13 (2) "Audit report" means an audit report described by  
14 Section 4 of this Act.

15 (3) [~~(2)~~] "Environmental or health and safety law"  
16 means:

17 (A) a federal or state environmental or  
18 occupational health and safety law; or

19 (B) a rule, regulation, or regional or local law  
20 adopted in conjunction with a law described by Paragraph (A) of this  
21 subdivision.

22 (4) [~~(3)~~] "Environmental or health and safety audit"  
23 means a systematic voluntary evaluation, review, or assessment of  
24 compliance with environmental or health and safety laws or with any

1 permit issued under an environmental or health and safety law:

2                   (A) [~~those laws~~] conducted by an owner or  
3 operator, an employee of an [~~the~~] owner or operator, or an  
4 independent contractor of:

5                   (i) [~~(A)~~] a regulated facility or  
6 operation; or

7                   (ii) [~~(B)~~] an activity at a regulated  
8 facility or operation; or

9                   (B) conducted by a prospective purchaser of a  
10 facility, activity, or operation described by Paragraph (A) of this  
11 subdivision beginning before the acquisition closing date as part  
12 of the prospective purchaser's investigation concerning whether to  
13 complete the purchase of the facility, activity, or operation.

14                   (5) [~~(4)~~] "Owner or operator" means a person who owns  
15 or operates a regulated facility or operation.

16                   (6) [~~(5)~~] "Penalty" means an administrative, civil,  
17 or criminal sanction imposed by the state to punish a person for a  
18 violation of a statute or rule. The term does not include a  
19 technical or remedial provision ordered by a regulatory authority.

20                   (7) [~~(6)~~] "Person" means an individual, corporation,  
21 business trust, partnership, association, and any other legal  
22 entity.

23                   (8) [~~(7)~~] "Regulated facility or operation" means a  
24 facility or operation that is regulated under an environmental or  
25 health and safety law.

26                   SECTION 2. Section 4, Texas Environmental, Health, and  
27 Safety Audit Privilege Act (Article 4447cc, Vernon's Texas Civil

1 Statutes), is amended by amending Subsection (e) and adding  
2 Subsection (f) to read as follows:

3 (e) Once initiated, an audit, as defined by Section  
4 3(a)(4)(A) of this Act, must [~~shall~~] be completed within a  
5 reasonable time not to exceed six months unless an extension is  
6 approved by the governmental entity with regulatory authority over  
7 the regulated facility or operation based on reasonable grounds.

8 (f) If a prospective purchaser becomes an owner of a  
9 regulated facility or operation or an activity at a regulated  
10 facility or operation and continues an ongoing audit, as defined by  
11 Section 3(a)(4)(B) of this Act, after the acquisition closing date,  
12 the audit must be completed within a reasonable time not to exceed  
13 six months after the acquisition closing date unless an extension  
14 is approved by the governmental entity with regulatory authority  
15 over the regulated facility or operation based on reasonable  
16 grounds.

17 SECTION 3. Section 6(b), Texas Environmental, Health, and  
18 Safety Audit Privilege Act (Article 4447cc, Vernon's Texas Civil  
19 Statutes), is amended to read as follows:

20 (b) Disclosure of an audit report or any information  
21 generated by an environmental or health and safety audit does not  
22 waive the privilege established by Section 5 of this Act if the  
23 disclosure:

24 (1) is made to address or correct a matter raised by  
25 the environmental or health and safety audit and is made only to:

26 (A) a person employed by the owner or operator,  
27 including temporary and contract employees;

1 (B) a legal representative of the owner or  
2 operator;

3 (C) an officer or director of the regulated  
4 facility or operation or a partner of the owner or operator; ~~[or]~~

5 (D) an independent contractor retained by the  
6 owner or operator;

7 (E) a person who acquires the regulated facility  
8 or operation or the activity at a regulated facility or operation  
9 after beginning an audit as defined by Section 3(a)(4)(B) of this  
10 Act; or

11 (F) an employee, temporary employee, contract  
12 employee, legal representative, officer, director, partner, or  
13 independent contractor or a person described by Paragraph (E) of  
14 this subdivision;

15 (2) is made under the terms of a confidentiality  
16 agreement between the person for whom the audit report was prepared  
17 or the owner or operator of the audited facility or operation and:

18 (A) a partner or potential partner of the owner  
19 or operator of the facility or operation;

20 (B) a transferee or potential transferee of the  
21 facility or operation;

22 (C) a lender or potential lender for the facility  
23 or operation;

24 (D) a governmental official of a state; ~~[or]~~

25 (E) a person or entity engaged in the business of  
26 insuring, underwriting, or indemnifying the facility or operation;

27 or

1                   (F) a person described by Subdivision (1)(E) of  
2 this subsection; or

3                   (3) is made under a claim of confidentiality to a  
4 governmental official or agency by the person for whom the audit  
5 report was prepared or by the owner or operator.

6                   SECTION 4. Section 10, Texas Environmental, Health, and  
7 Safety Audit Privilege Act (Article 4447cc, Vernon's Texas Civil  
8 Statutes), is amended by adding Subsection (b-1) and amending  
9 Subsection (g) to read as follows:

10                  (b-1) A person who has owned a regulated facility or  
11 operation for a period of not more than six months after the  
12 acquisition closing date is immune from an administrative or civil  
13 penalty for a violation voluntarily disclosed as provided by  
14 Subsections (a) and (b) of this section only if:

15                  (1) for a violation the person discovered after the  
16 acquisition closing date, the environmental or health and safety  
17 audit out of which the disclosure arises was an audit as defined by  
18 Section 3(a)(4)(B) of this Act and, not later than the 45th day  
19 after the acquisition closing date, the person notifies the  
20 governmental entity with regulatory authority over the regulated  
21 facility or operation that the audit is being conducted;

22                  (2) for a violation the person discovered before the  
23 acquisition closing date, the disclosure is made not later than the  
24 45th day after the acquisition closing date; and

25                  (3) for a violation described by Subdivision (1) or  
26 (2) of this subsection, before the acquisition closing date:

27                         (A) the person was not responsible for compliance

1 at the regulated facility or operation with the environmental,  
2 health, or safety law violated;

3 (B) the person was not the person with the  
4 largest ownership share of the seller;

5 (C) the seller was not the person with the  
6 largest ownership share of the person; and

7 (D) the person and the seller did not have a  
8 common corporate parent or a common majority interest owner.

9 (g) In order to receive immunity under this section, a  
10 facility conducting an environmental or health and safety audit  
11 under this Act must give notice to an appropriate regulatory agency  
12 of the fact that it is planning to commence the audit. The notice  
13 shall specify the facility or portion of the facility to be audited,  
14 the anticipated time the audit will begin, and the general scope of  
15 the audit. The notice may provide notification of more than one  
16 scheduled environmental or health and safety audit at a time. This  
17 subsection does not apply to an audit defined by Section 3(a)(4)(B)  
18 of this Act.

19 SECTION 5. The change in law made by this Act applies only  
20 to an environmental or health and safety audit initiated on or after  
21 the effective date of this Act. An audit initiated before the  
22 effective date of this Act is governed by the law in effect on the  
23 date the audit was initiated, and the former law is continued in  
24 effect for that purpose.

25 SECTION 6. This Act takes effect September 1, 2013.