By: Eltife, Hegar S.B. No. 1300

(In the Senate - Filed March 7, 2013; March 13, 2013, read first time and referred to Committee on Natural Resources; April 2, 2013, reported adversely, with favorable Committee Substitute by the following vote: Yeas 10, Nays 0; April 2, 2013, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	Absent	PNV
Fraser	X			
Estes	X			
Deuell	X			
Duncan	X			
Ellis	X			
Eltife	X			
Hegar	X			
Hinojosa	X			
Nichols	X			
Seliger	X			
Uresti			X	

COMMITTEE SUBSTITUTE FOR S.B. No. 1300 By: Eltife

A BILL TO BE ENTITLED
AN ACT

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

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

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

(a) In this Act:

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

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

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

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

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

(4) [~~(3)~~] "Environmental or health and safety audit" or "audit" means a systematic voluntary evaluation, review, or assessment of compliance with environmental or health and safety laws or with any permit issued under an environmental or health and safety law [~~those laws~~] conducted by an owner or operator, an employee of an [~~the~~] owner or operator, a person, including an employee or independent contractor of the person, that is considering the acquisition of a regulated facility or operation, or an independent contractor of:

(A) a regulated facility or operation; or

(B) an activity at a regulated facility or operation.

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

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

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

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

SECTION 2. Section 4, Texas Environmental, Health, and Safety Audit Privilege Act (Article 4447cc, Vernon's Texas Civil Statutes), is amended by adding Subsections (d-1) and (f) and amending Subsection (e) to read as follows:

(d-1) A person that begins an audit before becoming the owner of a regulated facility or operation may continue the audit after the acquisition closing date if the person gives notice under Section 10(g-1).

(e) Unless [~~Once initiated, an audit shall be completed within a reasonable time not to exceed six months unless~~] an extension is approved by the governmental entity with regulatory authority over the regulated facility or operation based on reasonable grounds, an audit must be completed within a reasonable time not to exceed six months after:

(1) the date the audit is initiated; or

(2) the acquisition closing date, if the person continues the audit under Subsection (d-1).

(f) Subsection (e)(1) does not apply to an audit conducted before the acquisition closing date by a person that is considering the acquisition of the regulated facility or operation.

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

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

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

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

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

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

(D) an independent contractor of [~~retained by~~] the owner or operator;

(E) a person considering the acquisition of the regulated facility or operation that is the subject of the audit; or

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

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

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

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

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

(D) a governmental official of a state; or

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

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

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

(b) A disclosure is voluntary only if:

(1) the disclosure was made:

(A) promptly after knowledge of the information disclosed is obtained by the person; or

(B) not more than the 45th day after the acquisition closing date, if the violation was discovered during an audit conducted before the acquisition closing date by a person considering the acquisition of the regulated facility or operation;

(2) the disclosure was made in writing by certified mail to an agency that has regulatory authority with regard to the violation disclosed;

(3) an investigation of the violation was not initiated or the violation was not independently detected by an agency with enforcement jurisdiction before the disclosure was made using certified mail;

(4) the disclosure arises out of a voluntary environmental or health and safety audit;

(5) the person who makes the disclosure initiates an appropriate effort to achieve compliance, pursues that effort with due diligence, and corrects the noncompliance within a reasonable time;

(6) the person making the disclosure cooperates with the appropriate agency in connection with an investigation of the issues identified in the disclosure; and

(7) the violation did not result in injury or imminent and substantial risk of serious injury to one or more persons at the site or off-site substantial actual harm or imminent and substantial risk of harm to persons, property, or the environment.

(b-1) For a disclosure described by Subsection (b)(1)(B), the person making the disclosure must certify in the disclosure that before the acquisition closing date:

(1) the person was not responsible for the environmental, health, or safety compliance at the regulated facility or operation that is subject to the disclosure;

(2) the person did not have the largest ownership share of the seller;

(3) the seller did not have the largest ownership share of the person; and

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

(e) A penalty that is imposed under Subsection (d) of this section should, to the extent appropriate, be mitigated by factors such as:

(1) the voluntariness of the disclosure;

(2) efforts by the disclosing party to conduct environmental or health and safety audits;

(3) remediation;

(4) cooperation with government officials investigating the disclosed violation; [~~or~~]

(5) the period of ownership of the regulated facility or operation; or

(6) other relevant considerations.

(g) In order to receive immunity under this section, a facility conducting an environmental or health and safety audit under this Act must provide [~~give~~] notice to an appropriate regulatory agency of the fact that it is planning to commence the audit. The notice shall specify the facility or portion of the facility to be audited, the anticipated time the audit will begin, and the general scope of the audit. The notice may provide notification of more than one scheduled environmental or health and safety audit at a time. This subsection does not apply to an audit conducted before the acquisition closing date by a person considering the acquisition of the regulated facility or operation that is the subject of the audit.

(g-1) A person that begins an audit before becoming the owner of the regulated facility or operation may continue the audit after the acquisition closing date if, not more than the 45th day after the acquisition closing date, the person provides notice to an appropriate regulatory agency of the fact that the person

intends to continue an ongoing audit. The notice shall specify the facility or portion of the facility being audited, the date the audit began, and the general scope of the audit. The person must certify in the notice that before the acquisition closing date:

(1) the person was not responsible for the scope of the environmental, health, or safety compliance being audited at the regulated facility or operation;

(2) the person did not have the largest ownership share of the seller;

(3) the seller did not have the largest ownership share of the person; and

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

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

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

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