

By: Kacal, Morrison, Flynn, Keffer,
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H.B. No. 942

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the storage of certain hazardous chemicals;
3 transferring enforcement of certain reporting requirements,
4 including the imposition of criminal, civil, and administrative
5 penalties, from the Department of State Health Services to the
6 Texas Commission on Environmental Quality; amending provisions
7 subject to a criminal penalty; reenacting a criminal offense.

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

9 SECTION 1. Section 63.151, Agriculture Code, is amended by
10 adding Subdivisions (3), (4), and (5) to read as follows:

11 (3) "Ammonium nitrate storage facility" means a
12 facility that stores ammonium nitrate material or ammonium nitrate
13 to be used in ammonium nitrate material and includes the premises on
14 which a facility is located.

15 (4) "Fire marshal" means the state fire marshal or a
16 local fire marshal, fire chief, or volunteer fire chief having
17 jurisdiction over the area in which an ammonium nitrate storage
18 facility is located.

19 (5) "Operator" means the person who controls the
20 day-to-day operations of an ammonium nitrate storage facility.

21 SECTION 2. Subchapter I, Chapter 63, Agriculture Code, is
22 amended by adding Section 63.158 to read as follows:

23 Sec. 63.158. FIRE PREVENTION AT AMMONIUM NITRATE STORAGE
24 FACILITIES. (a) The owner or operator of an ammonium nitrate

1 storage facility shall, on request, at a reasonable time:

2 (1) allow a fire marshal to enter the facility to make
3 a thorough examination of the facility; and

4 (2) allow the local fire department access to the
5 facility to perform a pre-fire planning assessment.

6 (b) A fire marshal who determines the presence of one or
7 more of the following hazardous conditions that endangers the
8 safety of a structure or its occupants by promoting or causing fire
9 or combustion shall notify the owner or operator of the facility of
10 the need to correct the condition. The hazardous conditions are:

11 (1) the presence of a flammable substance;

12 (2) a dangerous or dilapidated wall, ceiling, or other
13 structural element;

14 (3) improper electrical components, heating, or other
15 building services or facilities;

16 (4) the presence of a dangerous chimney, flue, pipe,
17 main, or stove, or of dangerous wiring;

18 (5) the dangerous storage of substances other than
19 ammonium nitrate or ammonium nitrate material, including storage or
20 use of hazardous substances; or

21 (6) inappropriate means of egress, fire protection, or
22 other fire-related safeguard.

23 (c) The owner or operator of an ammonium nitrate storage
24 facility shall:

25 (1) on request by a fire marshal or the service provide
26 evidence of compliance with:

27 (A) Chapter 505 or 507, Health and Safety Code,

1 as applicable; and

2 (B) United States Department of Homeland
3 Security registration requirements;

4 (2) post National Fire Protection Association 704
5 warning placards on the outside of the storage area;

6 (3) store ammonium nitrate or ammonium nitrate
7 material:

8 (A) in a fertilizer storage compartment or bin
9 constructed of wood, metal, or concrete that is protected against
10 impregnation by the ammonium nitrate or ammonium nitrate material;
11 and

12 (B) separately from any non-fertilizer
13 materials; and

14 (4) separate ammonium nitrate or ammonium nitrate
15 material from combustible or flammable material by 30 feet or more.

16 (d) A fire marshal who identifies the existence of a
17 hazardous condition under Subsection (b) or a violation of
18 Subsection (a) or (c) shall notify the service of the condition or
19 violation.

20 (e) If notified by a fire marshal of a hazardous condition
21 under Subsection (b), the service may direct the owner or operator
22 of the facility to correct the condition.

23 (f) If notified by the fire marshal of a violation of
24 Subsection (a) or (c), the service shall:

25 (1) direct the owner or operator of the facility to
26 correct the violation as provided by Subsection (g); or

27 (2) take appropriate enforcement action as authorized

1 by this chapter.

2 (g) If directed by the service to correct a hazardous
3 condition or a violation, an owner or operator shall remedy the
4 condition or violation before the expiration of a period specified
5 by the service, which may not exceed 10 days. If the service
6 determines that the condition or violation has not been remedied
7 before the expiration of the specified period, the service shall
8 take appropriate enforcement action as authorized by this chapter.

9 (h) Section 419.909(b), Government Code, does not apply to
10 an examination of an ammonium nitrate storage facility by a fire
11 marshal under this section.

12 SECTION 3. Section 505.002(b), Health and Safety Code, as
13 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
14 Session, 2015, is amended to read as follows:

15 (b) It is the intent and purpose of this chapter to ensure
16 that accessibility to information regarding hazardous chemicals is
17 provided to:

18 (1) fire departments responsible for dealing with
19 chemical hazards during an emergency;

20 (2) local emergency planning committees and other
21 emergency planning organizations; and

22 (3) the commission [~~department~~] to make the
23 information available to the public through specific procedures.

24 SECTION 4. Section 505.004, Health and Safety Code, is
25 amended by amending Subdivisions (3-a) and (8-a), as added by S.B.
26 No. 219, Acts of the 84th Legislature, Regular Session, 2015, and
27 amending Subdivisions (12) and (23) to read as follows:

1 (3-a) "Commission" [~~"Commissioner"~~] means the Texas
2 Commission on Environmental Quality [~~commissioner of state health~~
3 ~~services~~].

4 (8-a) "Executive director" [~~"Executive commissioner"~~]
5 means the executive director of the commission [~~executive~~
6 ~~commissioner of the Health and Human Services Commission~~].

7 (12) "Fire chief" means the [~~elected or paid~~]
8 administrative head of a fire department, including a volunteer
9 fire department.

10 (23) "Tier two form" means:

11 (A) a form specified by the commission
12 [~~department~~] under Section 505.006 for listing hazardous chemicals
13 as required by EPCRA; or

14 (B) a form accepted by the EPA under EPCRA for
15 listing hazardous chemicals together with additional information
16 required by the commission [~~department~~] for administering its
17 functions related to EPCRA.

18 SECTION 5. Section 505.005(d), Health and Safety Code, as
19 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
20 Session, 2015, is amended to read as follows:

21 (d) The commission [~~department~~] shall develop and implement
22 an outreach program concerning the public's ability to obtain
23 information under this chapter similar to the outreach program
24 under Section 502.008.

25 SECTION 6. Section 505.006, Health and Safety Code, is
26 amended by amending Subsections (a), (c), and (f), as amended by
27 S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015,

1 amending Subsections (e) and (g), and adding Subsections (e-1) and
2 (e-2) to read as follows:

3 (a) For the purpose of community right-to-know, a facility
4 operator covered by this chapter shall compile and maintain a tier
5 two form that contains information on hazardous chemicals present
6 in the facility in quantities that meet or exceed thresholds
7 determined by the EPA in 40 CFR Part 370, or at any other reporting
8 thresholds as determined by commission [~~department~~] rule for
9 certain highly toxic or extremely hazardous substances.

10 (c) Each tier two form shall be filed annually with the
11 commission, along with the appropriate fee, according to the
12 procedures specified by commission [~~department~~] rules. [~~The~~
13 ~~facility operator shall furnish a copy of each tier two form to the~~
14 ~~fire chief of the fire department having jurisdiction over the~~
15 ~~facility and to the appropriate local emergency planning~~
16 ~~committee.~~]

17 (e) Except as provided by Section 505.0061(c), a [~~A~~]
18 facility operator shall file the tier two form with the commission
19 [~~department~~] not later than the 90th day after the date on which the
20 operator begins operation or has a reportable addition, at the
21 appropriate threshold, of a previously unreported hazardous
22 chemical or extremely hazardous substance.

23 (e-1) Except as provided by Section 505.0061(c), a facility
24 operator shall file an updated tier two form with the commission:

25 (1) not later than the 90th day after the date on which
26 the operator has a change in the chemical weight range, as listed in
27 40 C.F.R. Part 370, of a previously reported hazardous chemical or

1 extremely hazardous substance; and

2 (2) as otherwise required by commission rule.

3 (e-2) A facility operator shall furnish a copy of each tier
4 two form and updated tier two form filed with the commission under
5 this section to the fire chief of the fire department having
6 jurisdiction over the facility and to the appropriate local
7 emergency planning committee. [~~The operator shall furnish a copy~~
8 of each tier two form to the fire chief of the fire department
9 having jurisdiction over the facility and to the appropriate local
10 emergency planning committee.]

11 (f) A facility operator shall file a safety data sheet with
12 the commission [~~department~~] on the commission's [~~department's~~]
13 request.

14 (g) The commission [~~department~~] shall maintain records of
15 the tier two forms and other documents filed under this chapter or
16 EPCRA for at least 30 years.

17 SECTION 7. Chapter 505, Health and Safety Code, is amended
18 by adding Section 505.0061 to read as follows:

19 Sec. 505.0061. REPORTING FOR FACILITIES STORING AMMONIUM
20 NITRATE USED IN FERTILIZER. (a) In this section, "ammonium
21 nitrate" and "ammonium nitrate storage facility" have the meanings
22 assigned by Section 63.151, Agriculture Code.

23 (b) As soon as practicable but not later than 72 hours after
24 the commission receives a tier two form reporting the presence of
25 ammonium nitrate at an ammonium nitrate storage facility, the
26 commission shall furnish a copy of the form to the state fire
27 marshal and the Texas Division of Emergency Management. The state

1 fire marshal shall furnish a copy of the form to the chief of the
2 fire department having jurisdiction over the facility. The Texas
3 Division of Emergency Management shall furnish a copy of the form to
4 the appropriate local emergency planning committee.

5 (c) The operator of an ammonium nitrate storage facility
6 shall file:

7 (1) a tier two form with the commission not later than
8 72 hours after the operator:

9 (A) begins operation; or

10 (B) has a reportable addition, at the appropriate
11 threshold, of previously unreported ammonium nitrate; and

12 (2) an updated tier two form not later than 72 hours
13 after the operator has a change in the chemical weight range, as
14 listed in 40 C.F.R. Part 370, of previously reported ammonium
15 nitrate.

16 SECTION 8. Sections 505.007(c) and (d), Health and Safety
17 Code, are amended to read as follows:

18 (c) Any facility that has received five requests under
19 Subsection (a) in a calendar month, four requests in a calendar
20 month for two or more months in a row, or more than 10 requests in a
21 year may elect to furnish the material to the commission
22 [~~department~~].

23 (d) Any facility electing to furnish the material to the
24 commission [~~department~~] under Subsection (c) may during that same
25 filing period inform persons making requests under Subsection (a)
26 of the availability of the information at the commission
27 [~~department~~] and refer the request to the commission [~~department~~]

1 for that filing period. The notice to persons making requests shall
2 state the address of the commission [~~department~~] and shall be
3 mailed within seven days of the date of receipt of the request, if
4 by mail, and at the time of the request if in person.

5 SECTION 9. Section 505.008(b), Health and Safety Code, as
6 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
7 Session, 2015, is amended to read as follows:

8 (b) A facility operator, on request, shall give the fire
9 chief or the local emergency planning committee such additional
10 information on types and amounts of hazardous chemicals present at
11 a facility as the requestor may need for emergency planning
12 purposes. A facility operator, on request, shall give the
13 executive director [~~commissioner~~], the fire chief, or the local
14 emergency planning committee a copy of the SDS for any chemical on
15 the tier two form furnished under Section 505.006 or for any
16 chemical present at the facility.

17 SECTION 10. Section 505.009, Health and Safety Code, as
18 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
19 Session, 2015, is amended to read as follows:

20 Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On
21 presentation of appropriate credentials, a commission [~~department~~]
22 representative may enter a facility at reasonable times to inspect
23 and investigate complaints.

24 SECTION 11. Section 505.016, Health and Safety Code, as
25 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
26 Session, 2015, is amended to read as follows:

27 Sec. 505.016. RULES; FEES. (a) The commission [~~executive~~

1 ~~commissioner~~] may adopt rules and administrative procedures
2 reasonably necessary to carry out the purposes of this chapter.

3 (b) The commission [~~executive commissioner~~] by rule may
4 authorize the collection of annual fees from facility operators for
5 the filing of tier two forms required by this chapter. Except as
6 provided by Subsection (d), fees may be used only to fund activities
7 under this chapter. The fee for facilities may not exceed:

8 (1) \$100 for each required submission having no more
9 than 25 hazardous chemicals or hazardous chemical categories;

10 (2) \$200 for each required submission having no more
11 than 50 hazardous chemicals or hazardous chemical categories;

12 (3) \$300 for each required submission having no more
13 than 75 hazardous chemicals or hazardous chemical categories;

14 (4) \$400 for each required submission having no more
15 than 100 hazardous chemicals or hazardous chemical categories; or

16 (5) \$500 for each required submission having more than
17 100 hazardous chemicals or chemical categories.

18 (c) To minimize the fees, the commission [~~executive
19 commissioner~~] by rule shall provide for consolidated filings of
20 multiple tier two forms for facility operators covered by
21 Subsection (b) if each of the tier two forms contains fewer than 25
22 items.

23 (d) The commission [~~department~~] may use up to 20 percent of
24 the fees collected under this section as grants to local emergency
25 planning committees to assist them to fulfill their
26 responsibilities under EPCRA. An amount not to exceed [~~The
27 department may use up to~~] 15 percent of the fees collected under

1 this chapter and Chapter 506, or 15 percent of the amount of fees
2 paid by the state and its political subdivisions under Chapter 506,
3 whichever is greater, may be used by the Department of State Health
4 Services to administer Chapter 502.

5 SECTION 12. Chapter 505, Health and Safety Code, is amended
6 by adding Section 505.018 to read as follows:

7 Sec. 505.018. ENFORCEMENT. (a) A facility operator may not
8 violate this chapter, commission rules adopted under this chapter,
9 or an order issued under this chapter.

10 (b) The commission may enforce this chapter under Chapter 7,
11 Water Code, including by issuing an administrative order that
12 assesses a penalty or orders a corrective action.

13 SECTION 13. Section 506.002(b), Health and Safety Code, as
14 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
15 Session, 2015, is amended to read as follows:

16 (b) It is the intent and purpose of this chapter to ensure
17 that accessibility to information regarding hazardous chemicals
18 [~~chemical~~] is provided to:

19 (1) fire departments responsible for dealing with
20 chemical hazards during an emergency;

21 (2) local emergency planning committees and other
22 emergency planning organizations; and

23 (3) the commission [~~department~~] to make the
24 information available to the public through specific procedures.

25 SECTION 14. Section 506.004, Health and Safety Code, is
26 amended by amending Subdivisions (3-a) and (8-a), as added by S.B.
27 No. 219, Acts of the 84th Legislature, Regular Session, 2015, and

1 amending Subdivisions (12) and (24) to read as follows:

2 (3-a) "Commission" [~~"Commissioner"~~] means the Texas
3 Commission on Environmental Quality [~~commissioner of state health~~
4 ~~services~~].

5 (8-a) "Executive director" [~~"Executive commissioner"~~]
6 means the executive director of the commission [~~executive~~
7 ~~commissioner of the Health and Human Services Commission~~].

8 (12) "Fire chief" means the [~~elected or paid~~]
9 administrative head of a fire department, including a volunteer
10 fire department.

11 (24) "Tier two form" means:

12 (A) a form specified by the commission
13 [~~department~~] under Section 506.006 for listing hazardous chemicals
14 as required by EPCRA; or

15 (B) a form accepted by the EPA under EPCRA for
16 listing hazardous chemicals together with additional information
17 required by the commission [~~department~~] for administering its
18 functions related to EPCRA.

19 SECTION 15. Section 506.005(d), Health and Safety Code, as
20 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
21 Session, 2015, is amended to read as follows:

22 (d) The commission [~~department~~] shall develop and implement
23 an outreach program concerning the public's ability to obtain
24 information under this chapter similar to the outreach program
25 under Section 502.008.

26 SECTION 16. Section 506.006, Health and Safety Code, is
27 amended by amending Subsections (a), (c), and (e), as amended by

1 S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015,
2 amending Subsections (d) and (f), and adding Subsections (d-1) and
3 (d-2) to read as follows:

4 (a) For the purpose of community right-to-know, a facility
5 operator covered by this chapter shall compile and maintain a tier
6 two form that contains information on hazardous chemicals present
7 in the facility in quantities that meet or exceed thresholds
8 determined by the EPA in 40 CFR Part 370, or at any other reporting
9 thresholds as determined by commission [~~department~~] rule for
10 certain highly toxic or extremely hazardous substances.

11 (c) Each tier two form shall be filed annually with the
12 commission, along with the appropriate fee, according to the
13 procedures specified by commission [~~department~~] rules. [~~The~~
14 ~~facility operator shall furnish a copy of each tier two form to the~~
15 ~~fire chief of the fire department having jurisdiction over the~~
16 ~~facility and to the appropriate local emergency planning~~
17 ~~committee.~~]

18 (d) A facility operator shall file the tier two form with
19 the commission [~~department~~] not later than the 90th day after the
20 date on which the operator begins operation or has a reportable
21 addition, at the appropriate threshold, of a previously unreported
22 hazardous chemical or extremely hazardous substance, but a fee may
23 not be associated with filing this report.

24 (d-1) A facility operator shall file an updated tier two
25 form with the commission:

26 (1) not later than the 90th day after the date on which
27 the operator has a change in the chemical weight range, as listed in

1 40 C.F.R. Part 370, of a previously reported hazardous chemical or
2 extremely hazardous substance; and

3 (2) as otherwise required by commission rule.

4 (d-2) A facility operator shall furnish a copy of each tier
5 two form and updated tier two form filed with the commission under
6 this section to the fire chief of the fire department having
7 jurisdiction over the facility and to the appropriate local
8 emergency planning committee. [The operator shall furnish a copy
9 of each tier two form to the fire chief of the fire department
10 having jurisdiction over the facility and to the appropriate local
11 emergency planning committee.]

12 (e) A facility operator shall file a safety data sheet with
13 the commission [~~department~~] on the commission's [~~department's~~]
14 request.

15 (f) The commission [~~department~~] shall maintain records of
16 the tier two forms and other documents filed under this chapter or
17 EPCRA for at least 30 years.

18 SECTION 17. Sections [506.007](#)(c) and (d), Health and Safety
19 Code, are amended to read as follows:

20 (c) Any facility that has received five requests under
21 Subsection (a) in a calendar month, four requests in a calendar
22 month for two or more months in a row, or more than 10 requests in a
23 year may elect to furnish the material to the commission
24 [~~department~~].

25 (d) Any facility electing to furnish the material to the
26 commission [~~department~~] under Subsection (c) may during that same
27 filing period inform persons making requests under Subsection (a)

1 of the availability of the information at the commission
2 [~~department~~] and refer the request to the commission [~~department~~]
3 for that filing period. The notice to persons making requests shall
4 state the address of the commission [~~department~~] and shall be
5 mailed within seven days of the date of receipt of the request, if
6 by mail, and at the time of the request if in person.

7 SECTION 18. Section 506.008(b), Health and Safety Code, as
8 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
9 Session, 2015, is amended to read as follows:

10 (b) A facility operator, on request, shall give the fire
11 chief or the local emergency planning committee such additional
12 information on types and amounts of hazardous chemicals present at
13 a facility as the requestor may need for emergency planning
14 purposes. A facility operator, on request, shall give the
15 executive director [~~commissioner~~], the fire chief, or the local
16 emergency planning committee a copy of the SDS for any chemical on
17 the tier two form furnished under Section 506.006 or for any
18 chemical present at the facility.

19 SECTION 19. Section 506.009, Health and Safety Code, as
20 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
21 Session, 2015, is amended to read as follows:

22 Sec. 506.009. COMPLAINTS AND INVESTIGATIONS. On
23 presentation of appropriate credentials, a commission [~~department~~]
24 representative may enter a facility at reasonable times to inspect
25 and investigate complaints.

26 SECTION 20. Section 506.017, Health and Safety Code, as
27 amended by S.B. No. 219, Acts of the 84th Legislature, Regular

1 Session, 2015, is amended to read as follows:

2 Sec. 506.017. RULES; FEES. (a) The commission [~~executive~~
3 ~~commissioner~~] may adopt rules and administrative procedures
4 reasonably necessary to carry out the purposes of this chapter.

5 (b) The commission [~~executive~~~~commissioner~~] by rule may
6 authorize the collection of annual fees from facility operators for
7 the filing of tier two forms required by this chapter. The fee may
8 not exceed:

9 (1) \$50 for each required submission having no more
10 than 75 hazardous chemicals or hazardous chemical categories; or

11 (2) \$100 for each required submission having more than
12 75 hazardous chemicals or chemical categories.

13 (c) To minimize the fees, the commission [~~executive~~
14 ~~commissioner~~] by rule shall provide for consolidated filings of
15 multiple tier two forms for facility operators covered by
16 Subsection (b) if each of the tier two forms contains fewer than 25
17 items.

18 (d) The commission may use up to 20 percent of the fees
19 collected under this section as grants to local emergency planning
20 committees to assist them to fulfill their responsibilities under
21 EPCRA. An amount not to exceed [~~The department may use up to~~ 15
22 percent of the fees collected under Chapter 505 and this chapter, or
23 15 percent of the amount of fees paid by the state and its political
24 subdivisions under this chapter, whichever is greater, may be used
25 by the Department of State Health Services to administer Chapter
26 502.

27 SECTION 21. Chapter 506, Health and Safety Code, is amended

1 by adding Section 506.018 to read as follows:

2 Sec. 506.018. ENFORCEMENT. (a) A facility operator may not
3 violate this chapter, commission rules adopted under this chapter,
4 or an order issued under this chapter.

5 (b) The commission may enforce this chapter under Chapter 7,
6 Water Code, including by issuing an administrative order that
7 assesses a penalty or orders a corrective action.

8 SECTION 22. Section 507.002(b), Health and Safety Code, as
9 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
10 Session, 2015, is amended to read as follows:

11 (b) It is the intent and purpose of this chapter to ensure
12 that accessibility to information regarding hazardous chemicals is
13 provided to:

14 (1) fire departments responsible for dealing with
15 chemical hazards during an emergency;

16 (2) local emergency planning committees and other
17 emergency planning organizations; and

18 (3) the commission [~~department~~] to make the
19 information available to the public through specific procedures.

20 SECTION 23. Section 507.003, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 507.003. FEDERAL LAWS AND REGULATIONS. (a) In this
23 chapter, a reference to a federal law or regulation means a
24 reference to the most current version of that law or regulation.

25 (b) In this chapter, a reference to the North American
26 Industry Classification System (NAICS) means a reference to the
27 most current version of that system.

1 SECTION 24. Section 507.004, Health and Safety Code, is
2 amended by amending Subdivisions (3-a) and (8-a), as added by S.B.
3 No. 219, Acts of the 84th Legislature, Regular Session, 2015, and
4 amending Subdivisions (10), (12), and (23) to read as follows:

5 (3-a) "Commission" [~~"Commissioner"~~] means the Texas
6 Commission on Environmental Quality [~~commissioner of state health~~
7 ~~services~~].

8 (8-a) "Executive director" [~~"Executive commissioner"~~]
9 means the executive director of the commission [~~executive~~
10 ~~commissioner of the Health and Human Services Commission~~].

11 (10) "Facility" means all buildings, equipment,
12 structures, and other stationary items that are located on a single
13 site or on contiguous or adjacent sites and that are owned or
14 operated by the same person or by any person who controls, is
15 controlled by, or is under common control with that person, and that
16 is in North American Industry Classification System (NAICS) Codes
17 11-23 or Codes 42-92. The term does not include a facility subject
18 to Chapter [~~505 or~~] 506.

19 (12) "Fire chief" means the [~~elected or paid~~]
20 administrative head of a fire department, including a volunteer
21 fire department.

22 (23) "Tier two form" means:

23 (A) a form specified by the commission
24 [~~department~~] under Section 507.006 for listing hazardous chemicals
25 as required by EPCRA; or

26 (B) a form accepted by the EPA under EPCRA for
27 listing hazardous chemicals together with additional information

1 required by the commission [~~department~~] for administering its
2 functions related to EPCRA.

3 SECTION 25. Section 507.005, Health and Safety Code, is
4 amended by amending Subsection (a) and amending Subsection (d), as
5 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
6 Session, 2015, to read as follows:

7 (a) Facility operators whose facilities are in North
8 American Industry Classification System (NAICS) Codes 11-23 or
9 NAICS Codes 42-92 and who are not subject to Chapter [~~505 or~~] 506
10 shall comply with this chapter.

11 (d) The commission [~~department~~] shall develop and implement
12 an outreach program concerning the public's ability to obtain
13 information under this chapter similar to the outreach program
14 under Section 502.008.

15 SECTION 26. Section 507.006, Health and Safety Code, is
16 amended by amending Subsections (a), (c), and (f), as amended by
17 S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015,
18 amending Subsections (e) and (g), and adding Subsections (e-1) and
19 (e-2) to read as follows:

20 (a) For the purpose of community right-to-know, a facility
21 operator covered by this chapter shall compile and maintain a tier
22 two form that contains information on hazardous chemicals present
23 in the facility in quantities that meet or exceed thresholds
24 determined by the EPA in 40 CFR Part 370, or at any other reporting
25 thresholds as determined by commission [~~department~~] rule for
26 certain highly toxic or extremely hazardous substances.

27 (c) Each tier two form shall be filed annually with the

1 commission, along with the appropriate fee, according to the
2 procedures specified by commission [~~department~~] rules. [~~The~~
3 ~~facility operator shall furnish a copy of each tier two form to the~~
4 ~~fire chief of the fire department having jurisdiction over the~~
5 ~~facility and to the appropriate local emergency planning~~
6 ~~committee.~~]

7 (e) Except as provided by Section 507.0061(c), a [A]
8 facility operator shall file the tier two form with the commission
9 [~~department~~] not later than the 90th day after the date on which the
10 operator begins operation or has a reportable addition, at the
11 appropriate threshold, of a previously unreported hazardous
12 chemical or extremely hazardous substance.

13 (e-1) Except as provided by Section 507.0061(c), a facility
14 operator shall file an updated tier two form with the commission:

15 (1) not later than the 90th day after the date on which
16 the operator has a change in the chemical weight range, as listed in
17 40 C.F.R. Part 370, of a previously reported hazardous chemical or
18 extremely hazardous substance; and

19 (2) as otherwise required by commission rule.

20 (e-2) A facility operator shall furnish a copy of each tier
21 two form and updated tier two form filed with the commission under
22 this section to the fire chief of the fire department having
23 jurisdiction over the facility and to the appropriate local
24 emergency planning committee. [~~The operator shall furnish a copy~~
25 ~~of each tier two form to the fire chief of the fire department~~
26 ~~having jurisdiction over the facility and to the appropriate local~~
27 ~~emergency planning committee.~~]

1 (f) A facility operator shall file a safety data sheet with
2 the commission [~~department~~] on the commission's [~~department's~~]
3 request.

4 (g) The commission [~~department~~] shall maintain records of
5 the tier two forms and other documents filed under this chapter or
6 EPCRA for at least 30 years.

7 SECTION 27. Chapter 507, Health and Safety Code, is amended
8 by adding Section 507.0061 to read as follows:

9 Sec. 507.0061. REPORTING FOR FACILITIES STORING AMMONIUM
10 NITRATE USED IN FERTILIZER. (a) In this section, "ammonium
11 nitrate" and "ammonium nitrate storage facility" have the meanings
12 assigned by Section 63.151, Agriculture Code.

13 (b) As soon as practicable but not later than 72 hours after
14 the commission receives a tier two form reporting the presence of
15 ammonium nitrate at an ammonium nitrate storage facility, the
16 commission shall furnish a copy of the form to the state fire
17 marshal and the Texas Division of Emergency Management. The state
18 fire marshal shall furnish a copy of the form to the chief of the
19 fire department having jurisdiction over the facility. The Texas
20 Division of Emergency Management shall furnish a copy of the form to
21 the appropriate local emergency planning committee.

22 (c) The operator of an ammonium nitrate storage facility
23 shall file:

24 (1) a tier two form with the commission not later than
25 72 hours after the operator:

26 (A) begins operation; or

27 (B) has a reportable addition, at the appropriate

1 threshold, of previously unreported ammonium nitrate; and
2 (2) an updated tier two form with the commission not
3 later than 72 hours after the operator has a change in the chemical
4 weight range, as listed in 40 C.F.R. Part 370, of previously
5 reported ammonium nitrate.

6 SECTION 28. Section 507.007(b), Health and Safety Code, as
7 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
8 Session, 2015, is amended to read as follows:

9 (b) A facility operator, on request, shall give the fire
10 chief or the local emergency planning committee such additional
11 information on types and amounts of hazardous chemicals present at
12 a facility as the requestor may need for emergency planning
13 purposes. A facility operator, on request, shall give the
14 executive director [~~commissioner~~], the fire chief, or the local
15 emergency planning committee a copy of the SDS for any chemical on
16 the tier two form furnished under Section 507.006 or for any
17 chemical present at the facility.

18 SECTION 29. Section 507.008, Health and Safety Code, as
19 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
20 Session, 2015, is amended to read as follows:

21 Sec. 507.008. COMPLAINTS AND INVESTIGATIONS. On
22 presentation of appropriate credentials, a commission [~~department~~]
23 representative may enter a facility at reasonable times to inspect
24 and investigate complaints.

25 SECTION 30. Section 507.013, Health and Safety Code, as
26 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
27 Session, 2015, is amended to read as follows:

1 Sec. 507.013. RULES; FEES. (a) The commission [~~executive~~
2 ~~commissioner~~] may adopt rules and administrative procedures
3 reasonably necessary to carry out the purposes of this chapter.

4 (b) The commission [~~executive~~~~commissioner~~] by rule may
5 authorize the collection of annual fees from facility operators for
6 the filing of tier two forms required by this chapter. Except as
7 provided by Subsection (d), fees may be used only to fund activities
8 under this chapter. The fee may not exceed:

9 (1) \$50 for each required submission having no more
10 than 75 hazardous chemicals or hazardous chemical categories; or

11 (2) \$100 for each required submission having more than
12 75 hazardous chemicals or chemical categories.

13 (c) To minimize the fees, the commission [~~executive~~
14 ~~commissioner~~] by rule shall provide for consolidated filings of
15 multiple tier two forms for facility operators covered by
16 Subsection (b) if each of the tier two forms contains fewer than 25
17 items.

18 (d) The commission [~~department~~] may use up to 20 percent of
19 the fees collected under this section as grants to local emergency
20 planning committees to assist them to fulfill their
21 responsibilities under EPCRA.

22 SECTION 31. Chapter 507, Health and Safety Code, is amended
23 by adding Section 507.014 to read as follows:

24 Sec. 507.014. ENFORCEMENT. (a) A facility operator may not
25 violate this chapter, commission rules adopted under this chapter,
26 or an order issued under this chapter.

27 (b) The commission may enforce this chapter under Chapter 7,

1 Water Code, including by issuing an administrative order that
2 assesses a penalty or orders a corrective action.

3 SECTION 32. Section 5.013(a), Water Code, is amended to
4 read as follows:

5 (a) The commission has general jurisdiction over:

6 (1) water and water rights including the issuance of
7 water rights permits, water rights adjudication, cancellation of
8 water rights, and enforcement of water rights;

9 (2) continuing supervision over districts created
10 under Article III, Sections 52(b)(1) and (2), and Article XVI,
11 Section 59, of the Texas Constitution;

12 (3) the state's water quality program including
13 issuance of permits, enforcement of water quality rules, standards,
14 orders, and permits, and water quality planning;

15 (4) the determination of the feasibility of certain
16 federal projects;

17 (5) the adoption and enforcement of rules and
18 performance of other acts relating to the safe construction,
19 maintenance, and removal of dams;

20 (6) conduct of the state's hazardous spill prevention
21 and control program;

22 (7) the administration of the state's program relating
23 to inactive hazardous substance, pollutant, and contaminant
24 disposal facilities;

25 (8) the administration of a portion of the state's
26 injection well program;

27 (9) the administration of the state's programs

1 involving underground water and water wells and drilled and mined
2 shafts;

3 (10) the state's responsibilities relating to regional
4 waste disposal;

5 (11) the responsibilities assigned to the commission
6 by Chapters 361, 363, 382, [~~and~~] 401, 505, 506, and 507, Health and
7 Safety Code; and

8 (12) any other areas assigned to the commission by
9 this code and other laws of this state.

10 SECTION 33. Section 7.052, Water Code, is amended by adding
11 Subsection (b-4) to read as follows:

12 (b-4) The amount of the penalty against a facility operator
13 who violates Chapter 505, Health and Safety Code, or a rule adopted
14 or order issued under that chapter may not exceed \$500 a day for
15 each day a violation continues with a total not to exceed \$5,000 for
16 each violation. The amount of a penalty against a facility operator
17 who violates Chapter 506 or 507, Health and Safety Code, or a rule
18 adopted or order issued under those chapters may not exceed \$50 a
19 day for each day a violation continues with a total not to exceed
20 \$1,000 for each violation.

21 SECTION 34. Subchapter D, Chapter 7, Water Code, is amended
22 by adding Section 7.1021 to read as follows:

23 Sec. 7.1021. MAXIMUM CIVIL PENALTY: VIOLATION OF COMMUNITY
24 RIGHT-TO-KNOW LAWS. (a) A person who knowingly discloses false
25 information or negligently fails to disclose a hazard as required
26 by Chapter 505 or 506, Health and Safety Code, is subject to a civil
27 penalty of not more than \$5,000 for each violation.

1 (b) This section does not affect any other right of a person
2 to receive compensation under other law.

3 SECTION 35. Subchapter E, Chapter 7, Water Code, is amended
4 by adding Section 7.1851 to read as follows:

5 Sec. 7.1851. VIOLATIONS RELATING TO COMMUNITY
6 RIGHT-TO-KNOW LAWS. (a) A person who proximately causes an
7 occupational disease or injury to an individual by knowingly
8 disclosing false information or knowingly failing to disclose
9 hazard information as required by Chapter 505 or 506, Health and
10 Safety Code, commits an offense punishable by a fine of not more
11 than \$25,000.

12 (b) This section does not affect any other right of a person
13 to receive compensation under other law.

14 SECTION 36. The following provisions of the Health and
15 Safety Code, including provisions amended by S.B. No. 219, Acts of
16 the 84th Legislature, Regular Session, 2015, are repealed:

- 17 (1) Sections 505.004(2), (5), and (6);
18 (2) Sections 505.008(c), 505.010, 505.011, 505.012,
19 505.013, and 505.014;
20 (3) Sections 506.004(2), (5), and (6);
21 (4) Sections 506.008(c), 506.010, 506.011, 506.012,
22 506.013, 506.014, 506.015, and 506.016;
23 (5) Sections 507.004(2), (5), and (6); and
24 (6) Sections 507.007(c), 507.009, 507.010, and
25 507.011.

26 SECTION 37. (a) On September 1, 2015, the following are
27 transferred to the Texas Commission on Environmental Quality:

1 (1) the powers, duties, obligations, and liabilities
2 of the Department of State Health Services relating to Chapters
3 505, 506, and 507, Health and Safety Code;

4 (2) all unobligated and unexpended funds appropriated
5 to the Department of State Health Services designated for the
6 administration of Chapters 505, 506, and 507, Health and Safety
7 Code;

8 (3) all equipment and property of the Department of
9 State Health Services used solely or primarily for the
10 administration of Chapters 505, 506, and 507, Health and Safety
11 Code;

12 (4) all files and other records of the Department of
13 State Health Services kept by the department relating to the
14 administration of Chapters 505, 506, and 507, Health and Safety
15 Code; and

16 (5) employees of the Department of State Health
17 Services whose duties relate solely or primarily to the
18 administration of Chapters 505, 506, and 507, Health and Safety
19 Code.

20 (b) A rule adopted by the Department of State Health
21 Services that is in effect immediately before September 1, 2015,
22 and that relates to Chapters 505, 506, and 507, Health and Safety
23 Code, is, on September 1, 2015, a rule of the Texas Commission on
24 Environmental Quality and remains in effect until amended or
25 repealed by the Texas Commission on Environmental Quality. A
26 complaint, investigation, enforcement proceeding, or other
27 proceeding pending before the Department of State Health Services

1 on September 1, 2015, is continued by that department without
2 change in status after the effective date of this Act.

3 (c) The Department of State Health Services may agree with
4 the Texas Commission on Environmental Quality to transfer any
5 property of the department to the commission to implement the
6 transfer required by this Act.

7 SECTION 38. (a) Except as otherwise provided by Subsection
8 (b) of this section, this Act takes effect September 1, 2015.

9 (b) Sections 63.151(3), (4), and (5) and Section 63.158,
10 Agriculture Code, as added by this Act, take effect immediately if
11 this Act receives a vote of two-thirds of all the members elected to
12 each house, as provided by Section 39, Article III, Texas
13 Constitution. If this Act does not receive the vote necessary for
14 immediate effect, those sections take effect September 1, 2015.