

1 AN ACT

2 relating to the authority of the Texas Commission on Environmental
3 Quality to issue permits for the discharge into water in this state
4 of produced water, hydrostatic test water, and gas plant effluent
5 resulting from certain oil and gas activities.

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

7 SECTION 1. Section 26.131, Water Code, as effective until
8 delegation of authority under the Resource Conservation and
9 Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) to the
10 Railroad Commission of Texas, is amended by amending Subsections
11 (a) and (b) and adding Subsection (d) to read as follows:

12 (a) Except as provided by this section, the ~~The~~ Railroad
13 Commission of Texas is solely responsible for the control and
14 disposition of waste and the abatement and prevention of pollution
15 of surface and subsurface water resulting from:

16 (1) activities associated with the exploration,
17 development, and production of oil or gas or geothermal resources,
18 including:

19 (A) activities associated with the drilling of
20 injection water source wells which penetrate the base of useable
21 quality water;

22 (B) activities associated with the drilling of
23 cathodic protection holes associated with the cathodic protection
24 of wells and pipelines subject to the jurisdiction of the Railroad

1 Commission of Texas;

2 (C) activities associated with gasoline plants,
3 natural gas or natural gas liquids processing plants, pressure
4 maintenance plants, or repressurizing plants;

5 (D) activities associated with any underground
6 natural gas storage facility, provided the terms "natural gas" and
7 "storage facility" shall have the meanings set out in Section
8 [91.173](#), Natural Resources Code;

9 (E) activities associated with any underground
10 hydrocarbon storage facility, provided the terms "hydrocarbons"
11 and "underground hydrocarbon storage facility" shall have the
12 meanings set out in Section [91.201](#), Natural Resources Code; and

13 (F) activities associated with the storage,
14 handling, reclamation, gathering, transportation, or distribution
15 of oil or gas prior to the refining of such oil or prior to the use
16 of such gas in any manufacturing process or as a residential or
17 industrial fuel;

18 (2) except to the extent the activities are regulated
19 by the Texas Department of Health under Chapter [401](#), Health and
20 Safety Code, activities associated with uranium exploration
21 consisting of the disturbance of the surface or subsurface for the
22 purpose of or related to determining the location, quantity, or
23 quality of uranium ore; and

24 (3) any other activities regulated by the Railroad
25 Commission of Texas pursuant to Section [91.101](#), Natural Resources
26 Code.

27 (b) Except as provided by Subsection (d), the ~~[The]~~ Railroad

1 Commission of Texas may issue permits for the discharge of waste
2 resulting from the [~~these~~] activities described by Subsection (a),
3 and the discharge of waste into water in this state resulting from
4 those [~~these~~] activities must [~~shall~~] meet the water quality
5 standards established by the commission.

6 (d) The commission may issue permits for the discharge into
7 water in this state of produced water, hydrostatic test water, and
8 gas plant effluent resulting from the activities described by
9 Subsection (a) on delegation to the commission of NPDES authority
10 for those discharges. The discharge of produced water, hydrostatic
11 test water, and gas plant effluent into water in this state under
12 this subsection must meet the water quality standards established
13 by the commission.

14 SECTION 2. Section 26.131, Water Code, as effective on
15 delegation of authority under the Resource Conservation and
16 Recovery Act of 1976 (42 U.S.C. 6901 et seq.) to the Railroad
17 Commission of Texas, is amended to read as follows:

18 Sec. 26.131. DUTIES OF RAILROAD COMMISSION. (a) Except as
19 provided by this section, the [~~The~~] Railroad Commission of Texas is
20 solely responsible for the control and disposition of waste and the
21 abatement and prevention of pollution of surface and subsurface
22 water resulting from:

23 (1) activities associated with the exploration,
24 development, and production of oil or gas or geothermal resources,
25 including:

26 (A) activities associated with the drilling of
27 injection water source wells which penetrate the base of useable

1 quality water;

2 (B) activities associated with the drilling of
3 cathodic protection holes associated with the cathodic protection
4 of wells and pipelines subject to the jurisdiction of the Railroad
5 Commission of Texas;

6 (C) activities associated with gasoline plants,
7 natural gas or natural gas liquids processing plants, pressure
8 maintenance plants, or repressurizing plants;

9 (D) activities associated with any underground
10 natural gas storage facility, provided the terms "natural gas" and
11 "storage facility" shall have the meanings set out in Section
12 [91.173](#), Natural Resources Code;

13 (E) activities associated with any underground
14 hydrocarbon storage facility, provided the terms "hydrocarbons"
15 and "underground hydrocarbon storage facility" shall have the
16 meanings set out in Section [91.201](#), Natural Resources Code; and

17 (F) activities associated with the storage,
18 handling, reclamation, gathering, transportation, or distribution
19 of oil or gas prior to the refining of such oil or prior to the use
20 of such gas in any manufacturing process or as a residential or
21 industrial fuel;

22 (2) except to the extent the activities are regulated
23 by the Texas Department of Health under Chapter [401](#), Health and
24 Safety Code, activities associated with uranium exploration
25 consisting of the disturbance of the surface or subsurface for the
26 purpose of or related to determining the location, quantity, or
27 quality of uranium ore; and

1 (3) any other activities regulated by the Railroad
2 Commission of Texas pursuant to Section 91.101, Natural Resources
3 Code.

4 (b) Except as provided by Subsection (c), the [The] Railroad
5 Commission of Texas may issue permits for the discharge of waste
6 resulting from the [these] activities described by Subsection (a),
7 and the discharge of waste into water in this state resulting from
8 those [these] activities must [shall] meet the water quality
9 standards established by the commission.

10 (c) The commission may issue permits for the discharge into
11 water in this state of produced water, hydrostatic test water, and
12 gas plant effluent resulting from the activities described by
13 Subsection (a) on delegation to the commission of NPDES authority
14 for those discharges. The discharge of produced water, hydrostatic
15 test water, and gas plant effluent into water in this state under
16 this subsection must meet the water quality standards established
17 by the commission.

18 SECTION 3. (a) In this section:

19 (1) "Commission" means the Texas Commission on
20 Environmental Quality.

21 (2) "NPDES" means National Pollutant Discharge
22 Elimination System.

23 (b) On delegation of NPDES permit authority for discharges
24 of produced water, hydrostatic test water, and gas plant effluent
25 to the commission by the United States Environmental Protection
26 Agency under Section 402(b) of the Federal Water Pollution Control
27 Act (33 U.S.C. Section 1342(b)), the following are transferred from

1 the Railroad Commission of Texas to the commission:

2 (1) the powers, duties, functions, programs, and
3 activities of the Railroad Commission of Texas relating to the
4 regulation of discharges of produced water, hydrostatic test water,
5 and gas plant effluent into water in this state, other than
6 discharges resulting from spills or other unplanned releases;

7 (2) any obligations and contracts of the Railroad
8 Commission of Texas that are directly related to implementing a
9 power, duty, function, program, or activity transferred under this
10 Act; and

11 (3) all property and records in the custody of the
12 Railroad Commission of Texas that are related to a power, duty,
13 function, program, or activity transferred under this Act.

14 (c) The Railroad Commission of Texas shall continue to carry
15 out its duties related to the regulation of discharges of produced
16 water, hydrostatic test water, and gas plant effluent into water in
17 this state until delegation of NPDES permit authority for
18 discharges of produced water, hydrostatic test water, and gas plant
19 effluent to the commission by the United States Environmental
20 Protection Agency under Section 402(b) of the Federal Water
21 Pollution Control Act (33 U.S.C. Section 1342(b)).

22 (d) The commission may carry out activities to ensure an
23 orderly transfer of the powers, duties, functions, programs, and
24 activities transferred under this Act, including hiring additional
25 employees and amending the memorandum of understanding by mutual
26 agreement with the Railroad Commission of Texas.

27 (e) Not later than September 1, 2021, the commission shall

1 submit to the United States Environmental Protection Agency for
2 approval a request to supplement or amend the Texas Pollutant
3 Discharge Elimination System program to include delegation of NPDES
4 permit authority for discharges of produced water, hydrostatic test
5 water, and gas plant effluent.

6 SECTION 4. The change in law made by this Act to Section
7 26.131, Water Code, applies to an application for an authorization
8 to discharge produced water, hydrostatic test water, or gas plant
9 effluent into water in this state that is pending on or after the
10 effective date of delegation of National Pollutant Discharge
11 Elimination System permit authority for discharges of produced
12 water, hydrostatic test water, and gas plant effluent to the Texas
13 Commission on Environmental Quality by the United States
14 Environmental Protection Agency under Section 402(b) of the Federal
15 Water Pollution Control Act (33 U.S.C. Section 1342(b)). An
16 application that is granted or denied in a final decision before the
17 effective date of such delegation is governed by the law as it
18 existed immediately before the effective date of such delegation,
19 and that law is continued in effect for that purpose.

20 SECTION 5. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 2771 was passed by the House on April 17, 2019, by the following vote: Yeas 94, Nays 47, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2771 on May 23, 2019, by the following vote: Yeas 109, Nays 33, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2771 was passed by the Senate, with amendments, on May 16, 2019, by the following vote: Yeas 24, Nays 7.

Secretary of the Senate

APPROVED: _____

Date

Governor