

BILL ANALYSIS

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C.S.S.B. 1334
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Natural Resources
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, numerous operators, as well as some developers and landowners, identify oil field pollution as part of environmental due diligence. During routine activities such as property transfers, it is common for these entities to approach the Texas Railroad Commission (commission) for review and approval of complex assessment and cleanup plans. The commission reviews approximately 400 plans at any one time. C.S.S.B. 1334 allows for reimbursement to the oil fund cleanup fund for related incurred costs.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 1 (Section 91.312) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 91.111(c), Natural Resources Code, to provide that the voluntary cleanup fund of the Railroad Commission of Texas (fund) consists of certain fees.

SECTION 2. Amends Section 91.112, Natural Resources Code, to authorize money in the fund to be used by the Railroad Commission of Texas (commission) or its employees for certain purposes, including implementing the voluntary cleanup program under Subchapter O. Requires the report to include certain information.

SECTION 3. Amends Chapter 91, Natural Resources Code, by adding Subchapter O, as follows:

SUBCHAPTER O. RAILROAD COMMISSION VOLUNTARY CLEANUP PROGRAM

Sec. 91.651. DEFINITIONS. Defines "contaminant," "environmental assessment," "response action," and "voluntary cleanup."

Sec. 91.652. ELIGIBILITY FOR COMMISSION VOLUNTARY CLEANUP PROGRAM.

(a) Provides that any site that is contaminated with a contaminant is eligible for participation in the commission voluntary cleanup program except the portion of a site that may be subject to a commission order.

(b) Requires a person electing to participate in the voluntary cleanup program to meet certain conditions.

Sec. 91.653. APPLICATION TO PARTICIPATE IN VOLUNTARY CLEANUP. (a)

Requires a person who desires to participate in the voluntary cleanup program under this subchapter to submit to the commission an application and an application fee as prescribed by this section.

(b) Requires an application to meet certain criteria.

(c) Requires the environmental assessment required by Subsection (b) to include certain information.

(d) Requires an application to be processed in the order in which it is received.

(e) Requires collected fees to be deposited to the credit of the oil field cleanup fund under Section 91.111.

Sec. 91.654. REJECTION OF APPLICATION. (a) Authorizes the commission to reject an application submitted under Section 91.653 in certain instances.

(b) Requires the commission, if an application is rejected because it is not completed or accurate, to, not later than the 45th day after receipt of the application, provide the person with a list of all information needed to make the application complete or accurate. Authorizes a person to resubmit an application not later than the 45th day after the date the commission issues notice that the application has been rejected.

(c) Requires the commission, if the commission rejects the application, to take certain actions.

Sec. 91.655. VOLUNTARY CLEANUP AGREEMENT. (a) Provides that before the commission evaluates any plan or report detailing the remediation goals and proposed methods of remediation, the person desiring to participate in the voluntary cleanup program is required to enter into a voluntary cleanup agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans.

(b) Requires a voluntary cleanup agreement to provide for recovery by the commission of all reasonable costs from certain factors.

(c) Requires the voluntary cleanup agreement to meet certain criteria.

(d) Provides that if an agreement is not reached between a person desiring to participate in the voluntary cleanup program and the commission on or before the 30th day after the good faith negotiations have begun the person or the commission is authorized to withdraw from the negotiations and the commission retains the person's application fee.

(e) Prohibits the commission from initiating an enforcement action against a person who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for the activity that resulted in the contamination or release.

Sec. 91.656. TERMINATION OF AGREEMENT; COST RECOVERY. (a) Authorizes the commission or the person in its sole discretion to terminate the agreement by giving 15 days' advance written notice. Provides that only those costs incurred or obligated by the commission before the notice of termination of the agreement are recoverable under the agreement if the agreement is terminated.

(b) Provides that the termination of the agreement does not affect any right the commission has under other law to recover costs.

(c) Provides that if the person does not pay to the commission the state's costs associated with the voluntary cleanup before the 31st day after the date the person receives notice that the costs are due and owing, the attorney general, at the request of the commission, is required to bring an action in the name of the state in Travis County

to recover the amount owed and reasonable legal expenses, including certain fees and costs.

Sec. 91.657. VOLUNTARY CLEANUP WORK PLANS AND REPORTS. (a) Requires the person, after signing a voluntary cleanup agreement, to prepare and submit the appropriate work plans and reports to the commission.

(b) Requires the commission to perform certain procedures.

(c) Authorizes the commission to request the person to submit additional or corrected information at any time during the evaluation.

(d) Authorizes the commission, after considering future land use, to approve work plans and reports submitted under this section that do not require removal or remedy of certain releases at a site if the partial response actions for the property meet certain criteria.

Sec. 91.658. CERTIFICATE OF COMPLETION. (a) Requires the commission, if the commission determines that a person has successfully completed a voluntary cleanup approved under this subchapter, to certify that the action has been completed by issuing the person a certificate of completion.

(b) Requires the certificate of completion to include certain information.

(c) Requires the commission, if it determines that the person has not successfully completed a voluntary cleanup, to notify the persons who undertook the voluntary cleanup of the site.

Sec. 91.659. PERSONS RELEASED FROM LIABILITY. (a) Provides that a person who is not a responsible person under Section 91.113 at the time the person applies to perform a voluntary cleanup does not become the responsible person solely because the person signs the application and is released from certain liability.

(b) Provides that a person who is not a responsible person under Section 91.113 at the time the commission issues a certificate of completion under Section 91.658 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(c) Provides that the release from liability does not apply to certain persons.

Sec. 91.660. PERMIT NOT REQUIRED. (a) Provides that a state or local permit is not required for removal or remedial action conducted on a site as part of a voluntary cleanup. Requires the person to coordinate a voluntary cleanup with ongoing federal and state hazardous waste programs.

(b) Requires the commission by rule to require that the person conducting the voluntary cleanup comply with certain requirements to which the remedial action would otherwise be subject of a permit were required..

SECTION 2. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Amends As Filed S.B. 1334, Section 91.111(c), Natural Resources Code, as follows:

- Adds new language to amend Section 91.111(c), Natural Resources Code, regarding funds.

SECTION 2. Adds new language to amend Section 91.112, Natural Resources Code, regarding the purpose of the fund.

SECTION 3. Amends As Filed S.B. 1334, as follows:

- Renumbered from As Filed SECTION 2.
- Changes previously proposed Subchapter I to Subchapter O.
- Redesignates As Filed Sections 91.301-91.312 to new proposed Sections 91.651-91.660
- Deletes the proposed definition of “commission” and amends the proposed definitions of “contaminant” and “environmental assessment.”
- Deletes previously proposed Sections 91.302 (PURPOSE) and 91.304 (ELIGIBILITY OF CERTAIN PERSONS FOR RELEASE FROM LIABILITY).
- Makes nonsubstantive changes in new proposed Sections 91.653, 91.658, and 91.660.
- Adds new proposed language in Section 91.659 regarding release from liability.

SECTION 4. Renumbered from SECTION 2.