

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE D. WATER QUALITY CONTROL

CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. SHORT TITLE. This chapter may be cited as the Subsurface Area Drip Dispersal System Act.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.002. DEFINITIONS. In this chapter:

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

(2) "Commercial, industrial, or municipal waste":

(A) means any water-dominant liquid waste substance that may cause or might reasonably be expected to cause pollution of fresh water and that may result from:

(i) processes of industry, manufacturing, trade, or business;

(ii) development or recovery of natural resources, except as provided by Paragraph (B); or

(iii) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, other municipal corporations, educational facilities, apartment complexes, and other commercial facilities; and

(B) does not include:

(i) oil and gas waste, as defined by Section 27.002;

(ii) tar sands;

(iii) sulfur;

(iv) brine from desalination; or

(v) hazardous waste, as defined by Section 361.003, Health and Safety Code.

(3) "Department" means the Department of State Health Services.

(4) "Executive director" means the executive director of the commission.

(5) "Fresh water" has the meaning assigned by Section 27.002.

(6) "Pollution" has the meaning assigned by Section 27.002.

(7) "Processed" means the action of reducing liquid waste to a state that will allow injection by subsurface drip dispersal into an area without creating pollution.

(8) "Subsurface area drip dispersal system" means a waste disposal system that injects processed commercial, industrial, or municipal waste into the ground at a depth of not more than 48 inches and spreads the waste over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.003. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to:

(1) maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries;

(2) promote the beneficial reuse of commercial, industrial, and municipal waste for the economic development of the state, thereby reducing the demand on the state's supply of fresh water;

(3) prevent underground injection that may pollute fresh water; and

(4) require the use of all reasonable methods to implement this policy.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

SUBCHAPTER B. JURISDICTION OF COMMISSION

Sec. 32.051. PERMIT FROM COMMISSION. A person may not

operate a subsurface area drip dispersal system without first obtaining a permit from the commission.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.052. APPLICATION FOR PERMIT. The commission shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the executive director considers necessary to discharge the executive director's duties under this chapter and the rules of the commission.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.054. INSPECTION OF DISPERSION AREA. On receiving an application for a permit, the executive director shall inspect the location of the proposed dispersion area to determine the local conditions and the probable effect of the subsurface area drip dispersal system.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. The executive director shall submit to the department and to other persons designated by the commission copies of each permit application received in proper form. A person to whom an application is submitted may make recommendations to the commission concerning any aspect of the application not later than the 30th day after the date the application is submitted.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) In this

section, "local government" has the meaning assigned by Section [26.001](#).

(b) The commission may hold a public hearing on a permit application for a subsurface area drip dispersal system if the commission determines that a hearing is necessary and in the public interest.

(c) The commission shall hold a public hearing on a permit application for a subsurface area drip dispersal system if a hearing is requested by a local government located in the county of the proposed disposal site or by an affected person.

(d) The commission by rule shall provide for giving notice of the opportunity to request a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and affected persons.

(e) Before the commission begins to hear the testimony in a contested case as defined by Chapter [2001](#), Government Code, evidence must be placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons. If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the record that notice was mailed to the address of the affected person included in the appropriate county tax rolls at the time of mailing. For the purposes of this subsection, the affidavit of the commission employee responsible for the mailing of the notice, attesting to the fact that notice was mailed to the address included in the tax rolls at the time of mailing, shall be prima facie evidence of proper mailing. The commission may not proceed with receipt of testimony in a contested case until the requirements of this subsection are complied with.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. [2651](#)), Sec. 1, eff. June 17, 2005.

Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. The commission shall send copies of proposed rules under this chapter to the department and any other persons designated by the commission. A person to whom the copies of proposed rules are sent may submit comments and recommendations to the commission and shall

have a reasonable time to do so as determined by the commission.
Added by Acts 2005, 79th Leg., Ch. 637 (H.B. [2651](#)), Sec. 1, eff.
June 17, 2005.

SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

Sec. 32.101. ISSUANCE OF PERMIT. (a) The commission may grant an application for a permit for a subsurface area drip dispersal system in whole or part and may issue the permit if it finds that:

(1) the use or installation of the system is in the public interest;

(2) with proper safeguards, both subsurface and surface fresh water can be adequately protected from pollution; and

(3) the applicant has provided for the proper operation of the system.

(b) In the permit, the commission shall impose terms and conditions reasonably necessary to protect fresh water from pollution.

(c) The commission, in determining if the use or installation of a subsurface area drip dispersal system is in the public interest under Subsection (a)(1), shall consider:

(1) compliance history of the applicant and related entities under the method for using compliance history developed by the commission under Section [5.754](#) and in accordance with the provisions of Subsection (d) of this section;

(2) whether there is a practical, economic, and feasible alternative to a subsurface area drip dispersal system reasonably available; and

(3) any other factor the commission considers relevant.

(d) The commission shall establish a procedure for the preparation of comprehensive summaries of the applicant's compliance history, including the compliance history of any corporation or other business entity managed, owned, or otherwise closely related to the applicant. The summaries shall be made available to the applicant and any interested person after the

commission has completed its technical review of the permit application and prior to giving public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for a subsurface area drip dispersal system permit with environmental statutes and the rules adopted or orders or permits issued by the commission may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. Evidence of the compliance history of an applicant for a subsurface area drip dispersal system permit may be offered by the executive director at a hearing on the application and admitted into evidence subject to the rules of evidence. The commission shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit. If the commission concludes that the applicant's compliance history is unacceptable, the commission shall deny the permit.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.22, eff. September 1, 2011.

Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) The commission shall send to the department a copy of each permit issued under this chapter.

(b) Before beginning injection operations, a person receiving a permit for a subsurface area drip dispersal system shall file a copy of the permit with the applicable local health authorities of the area in which the system is located.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

SUBCHAPTER D. GENERAL POWERS

Sec. 32.151. POWER TO ENTER PROPERTY. A member or employee of the commission or an authorized agent or employee of a local government may enter public or private property to inspect and

investigate conditions relating to a subsurface area drip dispersal system in connection with subsurface drip dispersal activities or to monitor compliance with a rule, permit, or order of the commission. A member or employee acting under the authority of this section who enters an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. [2651](#)), Sec. 1, eff. June 17, 2005.

Sec. 32.152. POWER TO EXAMINE RECORDS. A member or employee of the commission or an authorized agent or employee of a local government may examine and copy any record or memorandum of a business the member, employee, or agent is investigating as provided by Section [32.151](#) that relates to the operation of a subsurface area drip dispersal system or any other record the commission requires the business to maintain.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. [2651](#)), Sec. 1, eff. June 17, 2005.