NATURAL RESOURCES CODE

TITLE 3. OIL AND GAS

SUBTITLE D. REGULATION OF SPECIFIC BUSINESSES AND OCCUPATIONS

CHAPTER 122. TREATMENT AND RECYCLING FOR BENEFICIAL USE OF FLUID OIL AND GAS WASTE

Sec. 122.001.  DEFINITIONS.  In this chapter:

(1)  "Commission" means the Railroad Commission of Texas.

(2)  "Fluid oil and gas waste" means waste containing salt or other mineralized substances, brine, hydraulic fracturing fluid, flowback water, produced water, or other fluid that arises out of or is incidental to the drilling for or production of oil or gas.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. [2767](http://capitol.texas.gov/tlodocs/83R/billtext/html/HB02767F.HTM)), Sec. 1, eff. September 1, 2013.

Sec. 122.002.  OWNERSHIP OF FLUID OIL AND GAS WASTE TRANSFERRED FOR TREATMENT AND SUBSEQUENT BENEFICIAL USE.  Unless otherwise expressly provided by an oil or gas lease, a surface use agreement, a contract, a bill of sale, or another legally binding document:

(1)  when fluid oil and gas waste is produced and used by or transferred to a person who takes possession of that waste for the purpose of treating the waste for a subsequent beneficial use, the waste is considered to be the property of the person who takes possession of it for the purpose of treating the waste for subsequent beneficial use until the person transfers the waste or treated waste to another person for disposal or use; and

(2)  when a person who takes possession of fluid oil and gas waste for the purpose of treating the waste for a subsequent beneficial use transfers possession of the treated product or any treatment byproduct to another person for the purpose of subsequent disposal or beneficial use, the transferred product or byproduct is considered to be the property of the person to whom the material is transferred.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. [2767](http://capitol.texas.gov/tlodocs/83R/billtext/html/HB02767F.HTM)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 147 (H.B. [3246](http://capitol.texas.gov/tlodocs/86R/billtext/html/HB03246F.HTM)), Sec. 1, eff. September 1, 2019.

Sec. 122.003.  RESPONSIBILITY IN TORT. (a) Except as provided by Subsections (b) and (b-1), a person, including an owner of the surface estate of real property, who takes possession of fluid oil and gas waste for treatment, produces from that waste treated waste, and either puts the treated waste to a beneficial use or transfers the treated waste to another person with the contractual understanding that the treated waste will be put to a beneficial use is not liable in tort for a consequence of the subsequent use of that treated waste by any person.

(a-1)  Except as provided by Subsections (b) and (b-1), a person, including an owner of the surface estate of real property, who produces fluid oil and gas waste or who supplies or conveys fluid oil and gas waste to a treatment facility for the purpose of generating treated waste is not liable in tort for:

(1)  a consequence of the subsequent treatment of that fluid oil and gas waste to generate treated waste;

(2)  the subsequent use of that treated waste by any person; or

(3)  exposure to any component of the waste or any byproduct of the process used to generate treated waste.

(a-2)  An owner of the surface estate of real property on or under which fluid oil and gas waste is produced, conveyed, transported, or treated by others is not liable in an action for damages for personal injury, death, or property damage arising from exposure to fluid oil and gas waste, treated waste, or a byproduct of a process used to generate treated waste.

(b)  This section does not affect the liability of a person in an action brought by a claimant for damages for personal injury, death, or property damage arising from exposure to fluid oil and gas waste, treated waste, or a byproduct of a process used to generate treated waste if that exposure occurred as a result of the person's:

(1)  gross negligence or intentional, wrongful act or omission; or

(2)  negligence and the person did not treat, generate, use, or dispose of the fluid oil and gas waste, treated waste, or byproduct in conformity with:

(A)  rules adopted under Section 122.004;

(B)  a Texas Pollutant Discharge Elimination System program permit issued by the Texas Commission on Environmental Quality under Section 26.027 or 26.131, Water Code; or

(C)  a permit issued by the commission for the hauling or handling of fluid oil and gas waste, treated waste, or byproduct.

(b-1)  This section does not affect the liability under common, statutory, regulatory, or other law of a producer or subsequent transferee of fluid oil and gas waste to the owner of the surface estate of real property, and any owner of an interest in the surface estate of real property, on or under which fluid oil and gas waste is produced, transported, or treated.

(c)  A claimant awarded damages for a tort premised solely on the person's negligence and regulatory nonconformity under Subsection (b)(2) may not be awarded exemplary damages.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. [2767](http://capitol.texas.gov/tlodocs/83R/billtext/html/HB02767F.HTM)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 538 (H.B. [49](http://capitol.texas.gov/tlodocs/89R/billtext/html/HB00049F.HTM)), Sec. 1, eff. September 1, 2025.

Sec. 122.004.  COMMISSION RULES FOR TREATMENT AND BENEFICIAL USE. (a)  The commission shall adopt rules to govern the treatment and beneficial use of fluid oil and gas waste, treated waste, and any byproduct of a process used to generate treated waste.

(b)  Rules adopted under this section must:

(1)  encourage fluid oil and gas waste recycling for beneficial purposes; and

(2)  establish standards for the issuance of permits for commercial recycling of fluid oil and gas waste.

(c)  In adopting rules under this section, the commission shall consider previously adopted rules for recycling fluid oil and gas waste.

(d)  Rules adopted under this section for commercial recycling of fluid oil and gas waste must establish:

(1)  minimum siting standards for fluid recycling pits;

(2)  uniform technical, construction, and placement standards;

(3)  uniform standards for estimating closure costs;

(4)  minimum and maximum bonding and financial security amounts based on factors determined by the commission; and

(5)  standards for sampling and analysis of fluid oil and gas waste.

(e)  The commission shall approve or deny an application for a permit issued under rules adopted under this section not later than the 90th day after the date the complete application was received by the commission, unless a protest is filed with the commission, in which case the commission may extend the amount of time to approve or deny the application in order to allow for notice, public comment, and a public hearing on the application.  If the commission does not approve or deny the application before that date, the permit application is considered approved and the applicant may operate under the terms specified in the application for a period of one year.

(f)  An application requesting a variance from the standards adopted under this section must be evaluated and determined to be substantially similar to previous variances approved by the commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. [2767](http://capitol.texas.gov/tlodocs/83R/billtext/html/HB02767F.HTM)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 420 (H.B. [3516](http://capitol.texas.gov/tlodocs/87R/billtext/html/HB03516F.HTM)), Sec. 1, eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 538 (H.B. [49](http://capitol.texas.gov/tlodocs/89R/billtext/html/HB00049F.HTM)), Sec. 2, eff. September 1, 2025.