



SUPPORT

HB 49 by Darby

SB 1399 by Perry

Expand Existing Law Encouraging Recycling and Reuse of Fluid Oil and Gas Waste to Reflect Technological Advances

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In 2013, the Legislature enacted Chapter 122, Natural Resources Code, to establish a permitting procedure for an entity specializing in treating and recycling fluid oil and gas waste for beneficial use and to allocate responsibility for the treated waste.

That far-sighted legislation recognized that the revolutionary impact of recovery technology on the oil and gas industry demanded a new approach to the substantial increase in the amount of water necessary to produce oil and gas by hydraulic fracturing. At that time, the technological capacity to recycle fluid oil and gas waste was in its relative infancy. The new Chapter 122 aimed to incentivize the further development of this technology by (1) requiring the Railroad Commission to adopt a procedure for obtaining a permit for off-lease treatment of fluid oil and gas waste for beneficial use; (2) clarifying that once the waste is transferred to the permittee for treatment, the waste is considered to be the property of the permittee in possession until such time as the treated waste is transferred to another party for reuse; and (3) providing liability protection for a permittee that treats the waste for a subsequent beneficial use of the treated waste by a third-party.

In view of technological advances in the past 12 years, the time has come to revisit and update the statute to ensure that it continues to serve its original purpose. HB 49 by Rep. Darby and SB 1399 by Sen. Perry specifies that a person who takes possession of fluid oil and gas waste, produces from that waste a treated substance, and either puts it to a beneficial use or contractually transfers it to another person for beneficial use is not liable in tort for a consequence of subsequent use of that product by any person. The liability limitation, however, does not apply to gross negligence, an intentional, wrongful act or omission, or the negligence if the transferee did not treat, use, or dispose of the waste in compliance with its permit from the Commission. The bill further limits recovery for negligence based solely on regulatory non-conformity to actual damages. Exemplary damages would still be available, as they are in any civil lawsuit, for the defendant's gross negligence, malice, or fraud.

The stakes involved in this issue are high. The Texas oil and gas industry produces 35 million barrels (1.47 billion gallons) of produced water from oil and gas production statewide *every day*. America's largest oil field, the Permian Basin, accounts for 25 million barrels of produced water on a daily basis, 18 million of which come from Texas operations. As treatment technology continues to improve and expand in scope, reclaiming all or a substantial part of this 1.47 billion gallons of produced water would go a long way toward meeting our domestic needs, which currently run to 2.3 billion gallons per day. To put these numbers in perspective, Lake LBJ outside Austin holds about 42 billion gallons (130,000 acre feet) of water. Texas produced water would fill the lake approximately *once a month*. But in order for this expansion to occur as quickly as possible, two things are necessary: an efficient regulatory policy and a stable, predictable liability climate. HB 49 and SB 1399 accomplish both objectives and deserve your support.