

- SUBJECT:** Regulating certain evaporation pits
- COMMITTEE:** Natural Resources — favorable, without amendment
- VOTE:** 8 ayes — Puente, Gattis, Creighton, Gallego, Guillen, Hilderbran, Laubenberg, O'Day
- 0 nays
- 1 absent — Hamilton
- SENATE VOTE:** On final passage, April 26 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** *(On House companion bill, HB 3230 by Darby:)*  
For — John Grant, Colorado River Municipal Utility District; Dean Robbins, Texas Water Conservation Association; *(Registered, but did not testify:* Fred Aus, Lower Colorado River Authority; Myron Hess, National Wildlife Federation; Ken Kramer, Lone Star Chapter of the Sierra Club; Kitty-Sue Quinn, Texas Land & Mineral Owners Association)
- Against — Dick Crill, Ice Melt Products; Cesar Farias and Ron Roesler, West Texas Magnesium, Inc.; C.D. Gray, Jr., Ice Melt Products; *(Registered, but did not testify:* James Feeley and Allen Messenger, Ice Melt Products)
- BACKGROUND:** The Texas Railroad Commission regulates only evaporation pits utilized in oil and gas operations. Saltwater often must be stored and disposed of during oil and gas exploration. Under current law, oil and gas operators and pipeline operators must apply to the Railroad Commission for a permit to establish an evaporation pit for saltwater storage or saltwater disposal. To obtain such a permit, the operator must demonstrate conclusively that the evaporation pit will not cause pollution.
- The Texas Commission on Environmental Quality (TCEQ) does not have authority to control discharge from evaporation pits. Although the commission can regulate discharge from industrial facilities, a commercial evaporation pit is a production site for naturally occurring substances. After an incident of inappropriate discharge from an evaporation pit, TCEQ may take enforcement action.

DIGEST:

SB 1037 would regulate evaporation pits that were not regulated by the Railroad Commission and were used commercially to produce naturally occurring substances. It would define an evaporation pit as a pit where water was placed for the purpose of collecting minerals, salts, and other substances after the water's evaporation.

The owner or operator of an evaporation pit would be required to ensure that the pit was lined to minimize surface and groundwater pollution risks. The liner would have to be designed by a certified engineer and would meet standards adopted by TCEQ for a Type I landfill for Class I industrial solid waste. The evaporation pit owner or operator also would have to make certain that:

- storm water runoff was diverted from the pit and did not enter the pit;
- the pit did not cause water pollution;
- all structures used to manage storm water were properly constructed and maintained in a manner that prevented water pollution;
- discharge from the pit did not enter nearby water; and
- the pit was located in such a way that a pit failure or discharge from the pit would not adversely affect the state's water.

TCEQ could adopt rules to protect surface water and groundwater quality from the risks posed by commercial evaporation pits. The commission would be authorized to impose a fee on pit owners to recover the cost of administering the rules. Such rules would:

- govern the location, design, construction, capacity, operations, maintenance, and closure of evaporation pits;
- ensure that evaporation pit owners or operators had adequate financial assurance to ensure satisfactory closure of the pit;
- require that an evaporation pit owner or operator obtains a permit from TCEQ for pit operation;

The commission would require evaporation pit owners or operators to obtain a third party pollution liability insurance policy from an insurance company allowed to conduct business in Texas and rated at least "A-" by the A.M Best Company. The amount of the policy could not be less than

\$3 million and would have to cover bodily injury and property damage to third parties caused by pit operations.

The bill would apply to evaporation pits after rules were adopted by TCEQ, which would take place as soon as practicable after the bill took effect.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

SB 1037 would allow TCEQ to create a proactive regulatory structure in order to reduce threats to surface water and groundwater from commercial evaporation pits. In spite of the hazards posed by certain evaporation pits, no state or federal agency currently is authorized to take action to protect nearby surface water and groundwater until those water sources are polluted. The bill would prevent future incidents of surface water and groundwater contamination in certain areas.

Other entities that handle substances are subject to strict rules governing construction and mitigation. Evaporation pit owners and operators also should be required to follow set protocols to prevent future environmental hazards. By requiring pit operators and owners to install liners and hold financial assurance, evaporation pits would be regulated at a level consistent with other sites under TCEQ's authority, such as landfills and industrial wastewater treatment facilities.

SB 1037 would help prevent future devastation to important bodies of water in Texas. Special concern exists regarding the impact of brine evaporation pits in Borden County. Brine operations pump water from brine wells into evaporation ponds and use the pond contents to make products such as antifreeze. Water in the brine pits is about 10 times saltier than sea water. In the case of storm runoff or an accidental spill, these evaporation pits can emit chloride and other minerals into nearby bodies of water such as Lake Thomas. Furthermore, these brine pits are located near the headwaters of the Colorado River, thereby posing a threat to the drinking water for hundreds of thousands of Texans. The bill would better regulate such operations without requiring the closure of these facilities.

**OPPONENTS  
SAY:**

Evaporation ponds are secured by earthen embankments and do not impact water supplies. Operations are managed in a safe and responsible manner. Companies currently are in compliance with state regulations prohibiting discharge and should not be subject to stricter rules.

NOTES:

The identical companion bill, HB 3230 by Darby, was reported favorably, as substituted, by the House Natural Resources Committee on April 27.