

AN ACT

relating to prosecution of environmental crimes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. PURPOSE. The purpose of this Act is to ensure statewide consistency in the interpretation and enforcement of environmental laws.

SECTION 2. AMENDMENT. Subchapter E, Chapter 7, Water Code, is amended by adding Section 7.203 to read as follows:

Sec. 7.203. CRIMINAL ENFORCEMENT REVIEW. (a) This section is applicable to criminal prosecution of alleged environmental violations of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction committed by a defendant holding a permit issued by the commission or a defendant employed by a person holding such a permit and that is related to the activity for which the permit was issued. This section does not apply to an alleged environmental violation that clearly involves imminent danger of death or bodily injury under an endangerment offense specified in Section 7.252. Nothing in this section limits the power of a peace officer to arrest a person for an alleged offense.

(b) Before a peace officer, as that term is defined in Section 7.193 or Chapter 2, Code of Criminal Procedure, may refer any alleged criminal environmental violation by a person holding a

1 permit issued by the commission or an employee of that person of
2 this code, of the Health and Safety Code, or of any other statute,
3 rule, order, permit, or other decision of the commission that is
4 within the commission's jurisdiction to a prosecuting attorney for
5 criminal prosecution, the peace officer shall notify the commission
6 in writing of the alleged criminal environmental violation and
7 include with the notification a report describing the facts and
8 circumstances of the alleged criminal environmental violation.
9 This section does not prohibit a peace officer from issuing a
10 citation or making an arrest.

11 (c) As soon as practicable and in no event later than the
12 45th day after receiving a notice and report under Subsection (b),
13 the commission shall evaluate the report and determine whether an
14 alleged environmental violation exists and whether administrative
15 or civil remedies would adequately and appropriately address the
16 alleged environmental violation. In making its evaluation and
17 determination, the commission shall consider the factors
18 prescribed in Section 7.053. If the commission does not make a
19 determination within the 45-day period required by this subsection:

20 (1) the appropriate prosecuting attorney may bring an
21 action for criminal prosecution; and

22 (2) notwithstanding Subsection (e), the commission or
23 the state is not entitled to receive any part of an amount recovered
24 through a prosecution brought by that prosecuting attorney.

25 (d) If the commission determines that an alleged
26 environmental violation exists and that administrative or civil
27 remedies are inadequate or inappropriate to address the violation,

1 the commission shall notify the peace officer in writing of the
2 reasons why administrative or civil remedies are inadequate or
3 inappropriate and recommending criminal prosecution, and the
4 prosecuting attorney may proceed with the criminal prosecution of
5 the alleged violation. In all other cases, the commission shall
6 issue written notification to the peace officer that the alleged
7 environmental violation is to be resolved through administrative or
8 civil means by the appropriate authorities and the reasons why
9 administrative or civil remedies are adequate or appropriate. A
10 prosecuting attorney may not prosecute an alleged violation if the
11 commission determines that administrative or civil remedies are
12 adequate and appropriate.

13 (e) Any fine, penalty, or settlement recovered through a
14 prosecution subject to this section and brought in the name and by
15 authority of the State of Texas, whether recovered through any form
16 of pretrial resolution, plea agreement, or sentencing after trial,
17 shall be apportioned 70 percent to the state to cover the costs of
18 instituting the procedures and requirements of Subsections (a)-(d)
19 and 30 percent to any local government significantly involved in
20 prosecuting the case. In a case where the procedures described in
21 this section do not apply, the provisions of Section 7.190 apply.

22 SECTION 3. TRANSITION. Not later than six months after the
23 effective date of this Act, the Texas Commission on Environmental
24 Quality by rule shall establish procedures to fulfill the
25 requirements of Subsections (a) through (d), Section 7.203, Water
26 Code, as added by this Act, and to ensure an objective and unbiased
27 process.

1 SECTION 4. EFFECTIVE DATE. This Act takes effect
2 immediately if it receives a vote of two-thirds of all the members
3 elected to each house, as provided by Section 39, Article III, Texas
4 Constitution. If this Act does not receive the vote necessary for
5 immediate effect, this Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1265 passed the Senate on April 25, 2003, by the following vote: Yeas 29, Nays 0; and that the Senate concurred in House amendments on May 21, 2003, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1265 passed the House, with amendments, on May 5, 2003, by the following vote: Yeas 84, Nays 56, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor