

SUBJECT: Expanding liability limitations to certain fluid oil and gas waste treatment

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 7 ayes — Darby, E. Morales, Dyson, J. Garcia, Gerdes, Reynolds,
Rosenthal

0 nays

4 absent — Craddick, Dean, Gates, Guerra

WITNESSES: For — Chad Unrau, Aris Water Solutions; Greg Mathews, Chevron; Michael D. Lozano, Permian Basin Petroleum Association; George Christian, Texas Civil Justice League; Trace Finley, Texas Independent Produced Water Association; Micheal Dobbs, Texas Pacific Land Corporation (*Registered, but did not testify*: Jerrod Jones, Apache Corporation; Kari Gibson, ConocoPhillips; Royce Poinsett, Coterra; Isaac Griesbaum, Deep Blue Midland Basin; Teddy Carter, Devon Energy; Jimmy Carlile, Fasken Oil and Ranch; James Allison, Milestone Environmental Services; Doug White, NGL Energy Partners; Julie Moore, Occidental Petroleum (Oxy); Lee Parsley, Texans for Lawsuit Reform; Gabriela Perdichizzi, Texas Association of Business; Kyle Bush, Texas Association of Manufacturers; Ryan Paylor, Texas Independent Producers & Royalty Owners Association (TIPRO); Cory Pomeroy, TXOGA; Caleb Troxclair, WaterBridge; Jason Modglin, Western Midstream)

Against — Julie Range, Commission Shift Action; Cyrus Reed, Lone Star Chapter Sierra Club; Charles Maley, South Texans' Property Rights Association; James Dudley, Texas & Southwestern Cattle Raisers Association; Jennifer Owen, Texas Land & Mineral Owners Association; Jack Walker, Texas Trial Lawyers Association (*Registered, but did not testify*: Denisce Palacios, Climate Cabinet; Hanna Mitchell, Earthworks; Colin Leyden, Environmental Defense Fund; Blake Roach, Texas Farm Bureau; Sarah Berel-Harrop; Liza Binkley; Anita Knight; Glenda Pittman; Molly Smith)

On — (*Registered, but did not testify*: Paul Dubois, Railroad Commission of Texas)

BACKGROUND: Natural Resources Code sec. 122.003(a) grants immunity from liability in tort for consequences arising from the subsequent use of treated fluid oil and gas waste to a person who takes possession of such waste, produces certain treated items from it, and transfers the treated waste to another person with a specific contractual understanding regarding its use.

Sec. 122.003(b) establishes that tort responsibility provisions under sec. 122.003(a) do 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 or a treated product.

Concerns have been raised that current liability protections related to the treatment and reuse of fluid oil and gas waste are inconsistent and may expose certain entities, such as oil and gas producers or third-party conveyors, to liability risk. Some have suggested that the law should define the scope of indemnification or its exceptions to establish certainty and encourage beneficial reuse of treated waste products.

DIGEST: CSHB 49 would amend Natural Resources Code sec. 122.003(a) to establish that a person would have to take possession of fluid oil and gas waste for the purpose of treatment, and would replace the reference to “a treated product generally considered in the oil and gas industry to be suitable for use in connection with the drilling for or production of oil or gas” with “treated waste.” The bill would authorize the exempt person to use the treated waste beneficially as an alternative to transferring it to another party and change the contractual requirement to specify that the treated waste would have to be used for a beneficial use, rather than only in connection with the drilling for or production of oil or gas.

Exemptions. The bill would further amend sec. 122.003(a) to add two exemptions. The bill would exempt a person who produced fluid oil and gas waste or who supplied or conveyed fluid oil and gas waste to a treatment facility for the purpose of generating treated waste from liability

in tort for:

- a consequence of the subsequent treatment of that fluid oil and gas waste to generate treated waste;
- the subsequent use of that treated waste by any person; or
- exposure to any component of the waste or any byproduct of the process used to generate treated waste.

The bill also would exempt an owner of the surface estate of real property on or under which fluid oil and gas waste was produced, conveyed, or transported from liability 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.

Liability for certain tort suits. CSHB 49 would amend Natural Resources Code sec. 122.003(b) to establish that the provision only applied if exposure resulted from gross negligence, an intentional, wrongful act or omission, or negligence coupled with a failure to treat, generate, use, or dispose of the waste or byproduct in accordance with rules adopted by the Railroad Commission of Texas or under a Texas Pollutant Discharge Elimination System permit issued by the Texas Commission on Environmental Quality.

The bill also would amend the provision to expand liability to include exposure to a byproduct of the treatment process and remove the condition that the liable party would have had to have been treating the waste for beneficial use. The bill would replace references to “treated product” with “treated waste.”

A claimant awarded damages for a tort premised solely on a person's negligence and regulatory nonconformity under these provisions could not be awarded exemplary damages.

The bill would take effect September 1, 2025, and apply only to a cause of action that accrued on or after that effective date.

