

PUBLICATION

New Texas Law Hopes to Eliminate the Barriers to Recycling Fracking Wastewater

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Following a unanimous vote of approval in both the House and Senate and signature of Governor Rick Perry, House Bill 2767 will go into effect in Texas on September 1, 2013. HB 2767 adds Chapter 122 to the Texas Natural Resources Code by addressing the treatment and recycling for beneficial use of certain waste arising out of or incidental to the drilling for or production of oil and gas. Its intended purpose is to help eliminate the barriers to recycling fracking wastewater for re-use in subsequent operations. Unless specifically modified by contract, bill of sale, or other legally binding document, it transfers ownership of the oil and gas waste to those who are engaged to recycle the waste for treatment and re-use in drilling operations. The recycler will now own the wastewater after the transfer.

HB 2767 also eliminates certain tort liability for the recycler from any consequence of the subsequent use of the treated product when the treated product is transferred to another person with the contractual understanding that it will be used in connection with drilling or production of oil and gas. The only exception is for actions for personal injury, death or property damage resulting from exposure to the initial waste or subsequent treated product. It will, of course, be up to the courts to interpret and apply this tort immunity. Follow what happens next as the Railroad Commission of Texas adopts rules to govern the treatment and beneficial use of oil and gas waste.