

By: Paddie

H.B. No. 2780

A BILL TO BE ENTITLED

AN ACT

relating to the safety of aboveground storage tanks.

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

SECTION 1. Section 26.341(b), Water Code, is amended to read as follows:

(b) The legislature declares that it is the policy of this state and the purpose of this subchapter to:

(1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources; ~~and~~

(2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy; and

(3) promote the safety of aboveground storage tanks by the adoption of performance standards for the design, construction, operation, and maintenance of aboveground storage tanks, with the objective of protecting groundwater and surface water resources in the event of accidents and natural disasters.

SECTION 2. Section 26.342, Water Code, is amended by amending Subdivision (1) and adding Subdivision (7-a) to read as follows:

(1) "Aboveground storage tank":

(A) means a stationary, nonvehicular device

1 that:

2 (i) is[~~-(A)~~] made of nonearthen materials;

3 (ii) is [~~(B)~~] located on or above the  
4 surface of the ground or on or above the surface of the floor of a  
5 structure below ground such as a mineworking, basement, or vault;  
6 and

7 (iii) has a capacity of 21,000 gallons or  
8 more of a regulated substance; and

9 (B) does not include:

10 (i) a tank used in or associated with the  
11 production of crude oil or natural gas;

12 (ii) an aboveground storage tank operating  
13 above 0.5 Pounds per Square Inch Gauge;

14 (iii) heated tanks;

15 (iv) a tank that is part of a stormwater or  
16 wastewater collection system;

17 (v) a surface impoundment, pit, pond, or  
18 lagoon;

19 (vi) a flow-through process tank, including  
20 a pressure vessel or process vessel and oil and water separators;

21 (vii) an intermediate bulk container or  
22 similar tank that may be moved within a facility;

23 (viii) a tank regulated under the Surface  
24 Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.);

25 (ix) a tank used for the storage of products  
26 regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
27 301 et seq.);

1                   (x) a tank, including piping and collection  
2 and treatment systems, that is used in the management of leachate,  
3 methane gas, or methane gas condensate, unless the tank is used for  
4 storage of a regulated substance;

5                   (xi) a tank or pressure vessel that is used  
6 to store liquid petroleum gas;

7                   (xii) any other tank otherwise excluded by  
8 the commission; or

9                   (xiii) any pipe that is connected to a tank  
10 or other facility described in this paragraph

11                   ~~[(C) designed to contain an accumulation of~~  
12 ~~petroleum].~~

13                   (7-a) "National consensus standards" means any  
14 performance standard for aboveground storage tanks, or a  
15 modification thereof, which:

16                   (A) has been adopted and promulgated by a  
17 nationally recognized standards-producing organization under  
18 procedures whereby it can be determined by the commission that  
19 persons interested and affected by the scope or provisions of the  
20 standard have reached substantial agreement on its adoption; and

21                   (B) was formulated in a manner which afforded an  
22 opportunity for diverse views to be considered.

23                   SECTION 3. Sections 26.344 (c), (d), and (f), Water Code,  
24 are amended to read as follows:

25                   (c) Notwithstanding Subsection (f), an [An] interstate  
26 pipeline facility, including gathering lines, or an aboveground  
27 storage tank connected to such a facility is exempt from regulation

1 under this subchapter if the pipeline facility is regulated under  
2 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a  
3 succeeding law.

4 (d) Notwithstanding Subsection (f), an [~~An~~] intrastate  
5 pipeline facility or an aboveground storage tank connected to such  
6 a facility is exempt from regulation under this subchapter but is  
7 not exempt from performance standards adopted under Section 26.3442  
8 if the pipeline facility is regulated under one of the following  
9 state laws:

- 10 (1) Chapter 111, Natural Resources Code;
- 11 (2) Chapter 117, Natural Resources Code; or
- 12 (3) Subchapter E, Chapter 121, Utilities Code.

13 (f) An aboveground storage tank that is located at or is  
14 part of a petrochemical plant, a petroleum refinery, an electric  
15 generating facility, or a bulk facility as that term is defined by  
16 Section 26.3574(a) [~~of this code~~] is exempt from regulation under  
17 this subchapter but is not exempt for purposes of the fee imposed  
18 under Section 26.3574 or the performance standards adopted under  
19 Section 26.3442 [~~of this code~~].

20 SECTION 4. Section 26.3441(b), Water Code, is amended to  
21 read as follows:

22 (b) The commission may not develop a regulatory program for  
23 aboveground storage tanks that is more extensive than the  
24 regulatory program authorized by this subchapter and Section  
25 26.3442 unless additional regulation of aboveground storage tanks  
26 is necessary to comply or be in conformity with requirements  
27 adopted by the United States Environmental Protection Agency or

1 with federal law.

2 SECTION 5. Subchapter I, Chapter 26, Water Code, is amended  
3 by adding Sections 26.3442, 26.3443, and 26.3444 to read as  
4 follows:

5 Sec. 26.3442. ABOVEGROUND STORAGE TANK SAFETY PROGRAM AND  
6 PERFORMANCE STANDARDS. (a) This section applies only to an  
7 aboveground storage tank described by Section 26.342(1).

8 (b) Not later than September 1, 2023, the commission shall  
9 establish an Aboveground Storage Tank Safety Program as described  
10 in this section to provide for the protection of public health and  
11 safety as well as groundwater and surface water resources from a  
12 release of substances from an aboveground storage tank in the event  
13 of an accident or natural disaster.

14 (c) In establishing the Aboveground Storage Tank Safety  
15 Program under this section, the commission shall include but is  
16 limited to critical safety elements from the following statutes and  
17 regulations as applicable to an aboveground storage tank:

18 (1) Clean Air Act Risk Management Plan Rule and  
19 Maximum Achievable Control Technology/National Emission Standards  
20 for Hazardous Air Pollutants program requirements;

21 (2) Resource Conservation and Recovery Act  
22 requirements for Treatment, Storage, and Disposal Facilities (40  
23 C.F.R. Parts 264/265, Subparts A-E);

24 (3) OSHA Standards for Process Safety Management,  
25 Emergency Action Plans, and Hazardous Waste Operations and  
26 Emergency Response;

27 (4) Spill Prevention, Control, and Countermeasure

1 Regulations (40 C.F.R. part 112); and

2 (5) any other requirements under federal law,  
3 including regulations, in effect on the date on which the program is  
4 established or as amended.

5 (d) The Aboveground Storage Tank Safety Program under this  
6 section shall include but is limited to critical safety elements  
7 from the following national consensus standards as applicable to an  
8 aboveground storage tank:

9 (1) for aboveground storage tanks constructed on or  
10 before September 1, 2027, and currently in service:

11 (A) from API Standard 653: Tank Inspection,  
12 Repairs, Alteration, and Reconstruction, the commission shall  
13 require adherence to the protocol to applicable tanks included in  
14 this standard for the following:

15 (i) Section 4.3: Tank Shell Evaluation;  
16 (ii) Section 4.4: Tank Bottom Evaluation;  
17 (iii) Section 4.5: Tank Foundation  
18 Evaluation;

19 (iv) Section 6.2: Inspection Frequency  
20 Considerations;

21 (v) Section 6.3: Inspections from the  
22 Outside of the Tank;

23 (vi) Section 6.4: Internal Inspection, if  
24 applicable in accordance with Section 6.3;

25 (vii) Section 8: Design Considerations for  
26 Reconstructed Tanks; and

27 (viii) Section 9: Tank Repair and

1 Alteration;

2 (B) from API Standard 2350: Overfill Protection  
3 for Storage Tanks in Petroleum Facilities, the commission shall  
4 include the following critical safety elements for aboveground  
5 storage tanks included in this standard:

6 (i) Section 4: Overfill Prevention Systems,  
7 including management systems and operational procedures before and  
8 after product receipt as applicable;

9 (ii) Section 5: Overfill Prevention  
10 Systems, including requirements for manual or automated overfill  
11 prevention systems as applicable, including use of remote operated  
12 shutoff valves;

13 (iii) the requirements referenced in  
14 Subparagraphs (i) and (ii) only apply to atmospheric tanks as  
15 specified in API Standard 2350; and

16 (iv) API 2350 assessment protocol to  
17 determine how to manage overfill through engineered controls,  
18 administrative controls, and hazard class in applicable  
19 quantities; and

20 (C) from National Fire Protection Association 30  
21 Ch. 22 or API Recommended Practice 2001, the commission shall  
22 require fire suppression systems on aboveground storage tanks  
23 subject to the applicable standard; and

24 (2) for aboveground storage tanks constructed and  
25 brought into service after September 1, 2027:

26 (A) all of the standards listed in Subdivision  
27 (1); and

1           (B) API 650: Welded Tanks for Oil Storage and  
2 National Fire Protection Association 30, chapter 22 and location  
3 standards, or an equally stringent standard as applicable to an  
4 aboveground storage tank.

5           (e) The applicable standard in Subsection (d)(1)(C) only  
6 applies to material stored at atmospheric pressure with a  
7 flashpoint less than or equal to 100 Fahrenheit as defined by OSHA  
8 Process Safety Management.

9           (f) The applicable standard in Subsection (d)(2)(B) only  
10 applies to atmospheric aboveground storage tanks as defined in API  
11 650 and does not apply to aboveground storage tanks already  
12 regulated or managed under OSHA Standards for Process Safety  
13 Management.

14           (g) The commission may require a plan to control spills from  
15 Atmospheric Storage Tanks that includes recommended practices in  
16 NFPA 30.

17           (h) An owner or operator of an aboveground storage tank  
18 shall assess and report to the commission its current compliance  
19 status with the Aboveground Storage Tank Safety Program no later  
20 than September 1, 2027.

21           (i) An owner or operator of an aboveground storage tank  
22 shall comply with the Aboveground Storage Tank Safety Program  
23 requirements consistent with and upon completion of the next  
24 regularly scheduled out-of-service maintenance of the aboveground  
25 storage tank by the owner or operator that occurs after September 1,  
26 2027. Any modifications or retrofits necessary for compliance with  
27 the Aboveground Storage Tank Safety Program should be made during

1 these out-of-service maintenance periods as identified by the owner  
2 or operator unless the owner or operator makes and records a  
3 demonstration of infeasibility.

4 (j) The Aboveground Storage Tank Safety Program shall  
5 require an owner or operator of an aboveground storage tank or a  
6 designated third party as assigned by the owner or operator to  
7 certify compliance status every 10 years with the standards  
8 referenced in Subsections (c) and (d) as applicable.

9 (k) The Aboveground Storage Tank Safety Program under this  
10 section shall allow for exemptions for aboveground storage tanks  
11 with low risk of floods, storm surges, hurricanes, accidents,  
12 fires, explosions, or other hazards.

13 (l) The commission shall keep confidential information  
14 reported to, obtained by, or otherwise submitted to the commission  
15 that is subject to restrictions on dissemination under federal law,  
16 including but not limited to off-site consequence analysis  
17 information subject to Title 40, Part 1400, Code of Federal  
18 Regulations, or may otherwise present a security risk, if disclosed  
19 publicly.

20 Sec. 26.3443. CERTIFICATION FEE. (a) The commission by  
21 rule shall establish fees in amounts sufficient to recover the  
22 reasonable costs to:

- 23 (1) review certifications;  
24 (2) amend certifications;  
25 (3) inspect certified facilities; and  
26 (4) enforce certification of compliance with  
27 applicable standards of Sections 26.3442(c) and (d) and the rules

1 and orders adopted by this certification.

2 (b) The certification fee under Subsection (a) shall be  
3 deposited to the credit of an account to be named the Aboveground  
4 Storage Tank Safety Program Account.

5 SECTION 6. The heading to Section 26.347, Water Code, is  
6 amended to read as follows:

7 Sec. 26.347. UNDERGROUND STORAGE TANK STANDARDS.

8 SECTION 7. This Act takes effect September 1, 2021.