

By: Alvarado

S.B. No. 900

A BILL TO BE ENTITLED

AN ACT

relating to the safety of bulk storage vessels.

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 bulk storage vessels as defined in Section 26.3442, by adopting requirements for the design, construction, operation, and maintenance of bulk storage vessels, with the objective of protecting groundwater and surface water resources in the event of accidents and natural disasters.

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

Section 26.3442 BULK STORAGE VESSEL PERFORMANCE STANDARDS PROGRAM. (a) Definitions:

1           (1) "Bulk storage vessel" means a stationary,  
2 nonvehicular device that:

3                   (A) is made of nonearthen materials;

4                   (B) is located on or above the surface of the  
5 ground;

6                   (C) has a capacity of 8,000 barrels or more;

7                   (D) contains a regulated substance:

8                           (i) listed under Section 101(14) of the  
9 Comprehensive Environmental Response, Compensation, and Liability  
10 Act of 1980 (42 U.S.C. Section 9601 et seq.), but does not include a  
11 substance regulated as a hazardous waste under the federal Solid  
12 Waste Disposal Act (42 U.S.C. Section 6921 et seq.); or

13                           (ii) listed under Environmental Protection  
14 Agency 40 C.F.R. 68.130; and

15                   (E) is located at or is part of a petrochemical  
16 plant, a petroleum refinery, or a bulk storage terminal as that term  
17 is defined by Subsection (a)(2).

18           (2) "Bulk storage terminal" means a site in this  
19 state, including end-of-line pipeline storage terminals (excluding  
20 breakout tanks), refinery storage terminals, for-hire storage  
21 terminals, and rail and barge storage terminals.

22           (3) "National consensus standards" means any  
23 performance standard for storage tanks, or a modification thereof,  
24 that:

25                   (A) has been adopted and promulgated by a  
26 nationally recognized standards-producing organization under  
27 procedures whereby it can be determined by the commission that

1 persons interested and affected by the scope or provisions of the  
2 standard have reached substantial agreement on its adoption; and

3 (B) was formulated in a manner that afforded an  
4 opportunity for diverse views to be considered.

5 (b) The following aboveground storage tanks, including any  
6 pipe that is connected to the tank, are not considered to be a bulk  
7 storage vessel and are exempt from regulation under the Bulk  
8 Storage Vessel Performance Standards Program requirements in  
9 Sections 26.3442, 26.3443, and 26.3444:

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

12 (2) a tank that is part of a stormwater or wastewater  
13 collection system;

14 (3) a flow-through process tank, including a pressure  
15 vessel or process vessel and oil and water separators;

16 (4) a storage vessel operating above 0.5 Pounds per  
17 Square Inch Gauge;

18 (5) heated tanks;

19 (6) an intermediate bulk container or similar tank  
20 that may be moved within a facility;

21 (7) a tank regulated under the federal Surface Mining  
22 Control and Reclamation Act (30 U.S.C. Sec. 1201 et seq.);

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

26 (9) a tank, including piping and collection and  
27 treatment systems, that is used in the management of leachate,

methane gas, or methane gas condensate, unless the tank is used for storage of a regulated substance;

(10) a tank or pressure vessel that is used to store liquid petroleum gas; and

(11) a tank regulated under the U.S. Department of Transportation's (DOT's) Pipeline and Hazardous Materials Safety Administration (PHMSA) (49 U.S.C. 60101 et seq.).

(c) Not later than September 1, 2023, the commission shall establish a Bulk Storage Vessel Performance Standards Program as described in this section to provide for the protection of groundwater and surface water resources from a release of substances from a storage vessel in the event of an accident or natural disaster.

(d) In establishing the portion of the Bulk Storage Vessel Performance Standards Program governed by this subsection, the commission shall, except as provided by Section 26.3443, include all and only those critical safety elements that are applicable to a storage vessel, and that the commission determines to be critical in this state for the protection described by Subsection (c), from the following federal statutes and regulations, ensuring that the correct critical safety elements are applied to the correct types of storage vessel as delineated in the applicability section of each cited federal statute and regulation:

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

(2) Resource Conservation and Recovery Act

requirements for Treatment, Storage, and Disposal Facilities (40 C.F.R. Parts 264/265, Subparts A-E);

(3) Spill Prevention, Control, and Countermeasure Regulations (40 C.F.R. Part 112); and

(4) EPA Risk Management Plan Rules regarding accident prevention at facilities that use certain hazardous substances.

(e) In establishing the portion of the Bulk Storage Vessel Performance Standards Program governed by this subsection, the commission shall, except as provided by Section 26.3443, include all and only those critical safety elements that are applicable to a storage vessel, and that the commission determines to be critical in this state for the protection described by Subsection (c), from the following national consensus standards, ensuring that the correct critical safety elements are applied to the correct types of storage vessel as delineated in the applicability section of each cited national consensus standard:

(1) for in-service bulk storage vessels constructed on or before September 1, 2027:

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

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

1                    (iv) Section 6.2: Inspection Frequency  
2 Considerations;

3                    (v) Section 6.3: Inspections from the  
4 Outside of the Tank;

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

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

9                    (viii) Section 9: Tank Repair and  
10 Alteration;

11                    (B) from API Standard 2350: Overfill Protection  
12 for Storage Tanks in Petroleum Facilities, the commission shall  
13 include the following critical safety elements for bulk storage  
14 vessels included in this standard:

15                    (i) Section 4: Overfill Prevention  
16 Systems, including management systems and operational procedures  
17 before and after product receipt as applicable;

18                    (ii) Section 5: Overfill Prevention  
19 Systems, including requirements for manual or automated overfill  
20 prevention systems as applicable, including use of remote operated  
21 shutoff valves;

22                    (iii) the requirements referenced in  
23 Subparagraphs (i) and (ii) only apply to atmospheric tanks as  
24 specified in API Standard 2350; and

25                    (iv) API 2350 assessment protocol to  
26 determine how to manage overfill through engineered controls,  
27 administrative controls, and hazard class in applicable

1 quantities; and

2 (C) from either National Fire Protection  
3 Association (NFPA) 30 Ch. 22 or API Recommended Practice 2001, the  
4 commission shall require fire suppression systems on bulk storage  
5 vessels subject to the protocol in the applicable standard; and

6 (2) for in-service bulk storage vessels constructed  
7 after September 1, 2027:

8 (A) all of the standards listed in Subdivision  
9 (1); and

10 (B) API 650: Welded Tanks for Oil Storage and  
11 NFPA 30, Chapter 22 location standards.

12 (f) The applicable standard chosen by the commission under  
13 Subsection (e)(1)(C) only applies to material stored at atmospheric  
14 pressure with a flashpoint less than or equal to 100 Fahrenheit as  
15 defined by OSHA Process Safety Management.

16 (g) The applicable standard in Subsection (e)(2)(B) only  
17 applies to atmospheric bulk storage vessels as defined in API 650.

18 (h) The commission may require a plan to control spills from  
19 atmospheric bulk storage vessels that includes recommended  
20 practices in NFPA 30.

21 (i) An owner or operator of a bulk storage vessel shall  
22 register with the commission, assess and report to the commission  
23 its current compliance status with the Bulk Storage Vessel  
24 Performance Standards Program no later than September 1, 2027. For  
25 bulk storage vessels constructed and brought into service after  
26 September 1, 2027, an owner or operator of a bulk storage vessel  
27 shall register and certify its compliance status to the commission

1 with the Bulk Storage Vessel Performance Standards Program no later  
2 than 30 days after start of operation.

3 (j) An owner or operator of a bulk storage vessel shall  
4 comply with the Bulk Storage Vessel Performance Standards Program  
5 requirements on completion of the next regularly scheduled  
6 out-of-service maintenance of the bulk storage vessel by the owner  
7 or operator that occurs after September 1, 2027. However, all  
8 facilities must certify compliance status by no later than  
9 September 1, 2037. Any modifications or retrofits necessary for  
10 compliance with the Bulk Storage Vessel Performance Standards  
11 Program should be made during these out-of-service maintenance  
12 periods as identified by the owner or operator unless the owner or  
13 operator makes and records with the commission a demonstration of  
14 technical impracticability that the commission approves.

15 (k) The commission in implementing the Bulk Storage Vessel  
16 Performance Standards Program shall require an owner or operator of  
17 a bulk storage vessel or a designated third party as assigned by the  
18 owner or operator to certify compliance status every 10 years with  
19 the standards referenced in Subsections (d) and (e) as applicable.

20 (l) The commission shall keep confidential information  
21 reported to, obtained by, or otherwise submitted to the commission  
22 that:

23 (1) is subject to restrictions on dissemination under  
24 federal law, including off-site consequence analysis information  
25 subject to Title 40, Part 1400, C.F.R.; or

26 (2) may otherwise present a security risk, if  
27 disclosed publicly.

(m) The commission shall conduct on-site inspections of the registered/certified facilities at least once every five years to determine compliance with the Bulk Storage Vessel Performance Standards Program. This subsection does not limit the commission's ability to inspect a facility under other state or federal regulations.

Sec. 26.3443. CERTAIN COMMISSION EXEMPTIONS AND RULES; AMENDMENTS AND ALTERNATIVE STANDARDS. (a) The commission, in implementing the Bulk Storage Vessel Performance Standards Program under Section 26.3442, may approve exemption of specific bulk storage vessels otherwise subject to Section 26.3442 from regulation under the program if the legal owner or operator submits a request to the commission demonstrating that the vessel presents a sufficiently low risk of floods, storm surges, hurricanes, accidents, fires, explosions, or other hazards such that it does not warrant regulation under the program.

(b) The commission shall establish through rulemaking the effective date of a federal law or regulation that the commission is implementing under Section 26.3442(d), or a national consensus standard that the commission is implementing under Section 26.3442(e). The commission shall amend through rulemaking changes if a federal law, regulation, or national consensus standard is amended in a way that materially conflicts with the commission's current implementation of the Bulk Storage Vessel Performance Standards Program except to the extent that the commission determines, after a cost-benefit analysis and if not prohibited under federal law, that the program as currently implemented by the

1 commission is sufficiently effective for protection of the health,  
2 safety, and welfare of the citizens of this state.

3 (c) Notwithstanding the requirement of Section 26.3442(e)  
4 that the commission include only critical safety elements from  
5 specified national consensus standards, the commission may  
6 initiate a rulemaking proceeding to determine whether, for certain  
7 vessels in certain situations, an alternative national consensus  
8 standard would be at least as effective for public health and safety  
9 but more cost effective for the persons affected to implement. The  
10 commission may by rule apply the alternative national consensus  
11 standard in circumstances under which it has determined the  
12 alternative standard is as effective for public health and safety  
13 but more cost effective.

14 Sec. 26.3444. CERTIFICATION FEE. (a) The commission by  
15 rule shall establish fees in amounts sufficient to recover the  
16 reasonable costs to:

17 (1) implement a registration program for affected  
18 facilities;

19 (2) review initial and ten-year certifications;

20 (3) amend certifications;

21 (4) inspect certified facilities; and

22 (5) enforce compliance with applicable standards of  
23 Section 26.3442 and rules and orders adopted under those  
24 subsections.

25 (b) The certification fee under Subsection (a) shall be  
26 deposited to the credit of an account to be named the Bulk Storage  
27 Vessel Performance Standards Program Account.

1        (c) The commission may use the money in the Bulk Storage  
2 Vessel Performance Standards Program Account to pay:

3                (1) necessary expenses associated with the  
4 administration of the Bulk Storage Vessel Performance Standards  
5 Program; and

6                (2) expenses associated with the review and amendment  
7 of certifications, inspection of certified facilities, and  
8 enforcement of the applicable standards of Section 26.3442 and the  
9 rules and orders adopted by the Bulk Storage Vessel Performance  
10 Standards Program.

11        SECTION 3. This Act takes effect September 1, 2021.