

BILL ANALYSIS

Senate Research Center

S.B. 485
By: Armbrister
Natural Resources
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Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, there are approximately 2,800 petroleum storage tank remediation sites still being cleaned which will not be ready before the September 1, 2005 deadline. Although the Texas Commission on Environmental Quality (TCEQ) has removed ineligible sites from the program, many of them will not meet the deadline due to circumstances including problems with off-site access, bankruptcy and withdrawal from the market of a large remediation contractor, or geological issues. An extension of the program can be funded from the existing fee currently paid by distributors of motor fuel when they remove motor fuel from a terminal.

S.B. 485 extends the life of the petroleum storage tank remediation account from September 1, 2005, to September 1, 2007. It allows TCEQ to place any sites remaining in the program after that date into the state-lead program for completion, provided the owner or operator demonstrates progress in attempting to complete corrective action activities during the next two years, since many owners will be unable to obtain insurance coverage to continue correction activity.

Transporters of motor fuel make deliveries at night when most retail facilities are closed, thus making verification of certificates each time the transporters deliver motor fuel to a retail location difficult. The owner or operator of the underground storage tank should be held responsible for ensuring that each of their tanks has been issued a valid certificate.

S.B. 485 removes the requirement that transporters of motor fuel be held responsible for depositing motor fuel into underground storage tanks which do not have a valid TCEQ-issued delivery certificate.

Current Texas cleanup standards for underground storage tanks, contamination found in backfill surrounding a tank may trigger a full-scale remediation of the site containing the tank. Prior to September 1, 2003, contamination found in backfill was not considered a trigger because such contamination is common to almost all tanks, is usually limited in scope, and does not extend to the surrounding soils or ground water.

S.B. 485 makes a technical correction to certain cleanup standards impacting petroleum storage tanks and restores the cleanup standards for backfills to those before September 1, 2003.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 7.156(c), Water Code, to provide that a person commits an offense if the person is an owner or operator of an underground storage tank regulated under Chapter 26 (Water Quality Control) into which any regulated substance is delivered unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346 (Registration Requirements).

SECTION 2. Amends Section 26.342, Water Code, by adding Subsection (16-a) to define "subsurface soil."

SECTION 3. Amends Sections 26.3467(a) and (b), Water Code, as follows:

- (a) Authorizes the owner or operator of an underground storage tank to comply with this subsection by obtaining a current copy of the certificate from the Internet website of the Texas Commission on Environmental Quality (TCEQ).
- (b) Provides that an owner or operator of an underground storage tank who violates, rather than a person who knowingly violates, Subsection (a) commits an offense that is punishable by Section 7.156 (Violation Relating to Underground Storage Tank).

SECTION 4. Amends Section 26.351(f), Water Code, to require the person performing corrective action under this section, if the release was reported to TCEQ on or before December 22, 1998, to meet specific deadlines including for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure to be submitted to the executive director no later than September 1, 2007, rather than 2005. Deletes existing text regarding agreements in writing regarding corrective action plans.

SECTION 5. Amends Section 26.355(b), Water Code, to provide that an owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1) (Petroleum Storage Tank Remediation Account). Makes conforming changes.

SECTION 6. Amends Section 26.3573, Water Code, by amending Subsections (d), (r), and (s) and adding Subsection (r-1), as follows:

(d) Deletes existing text referring to allotted percentages for necessary expenses for the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program.

(r) Sets forth an exemption as provided by Subsection (r-1).

(r-1) Defines "state-lead program." Requires the executive director of TCEQ to grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. Authorizes the petroleum storage tank remediation account (account) to be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. Authorizes an eligible owner or operator who is granted an extension under this subsection, no later than July 1, 2007, to apply to TCEQ in writing using a form provided by TCEQ to have the site subject to corrective action placed in the state-lead program. Requires the eligible owner or operator to agree, in the application, to allow site access to state personnel and state contractors as a condition in the state-lead program under this subsection. Requires the executive director, on receiving the application for placement in the state-lead program under this subsection, by order, to place the site in the state-lead program until the corrective action is completed to the satisfaction of TCEQ. Provides that an eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to TCEQ for any costs related to the corrective action.

(s) Prohibits the account from being used to reimburse any person for corrective action contained in a reimbursement claim filed with TCEQ after March 1, 2008, rather than 2006.

SECTION 7. Amends Section 26.35731(b), Water Code, to authorize TCEQ to postpone considering, processing, or paying, rather than to prohibit TCEQ from considering, processing, or paying, a claim for reimbursement from the petroleum storage tank remediation account for corrective action work begun without prior TCEQ approval after September 1, 1993, that is filed with TCEQ before January 1, 2005. Deletes existing text relating to TCEQ approval of a claim for reimbursement until certain claims for reimbursement have been considered, processed, and paid.

SECTION 8. Amends Section 26.361, Water Code, to provide that the reimbursement program established under this subchapter expires September 1, 2008, rather than 2006. Prohibits the commission from using funds from the account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action on or after September 1, 2008, rather than 2006.

SECTION 9. Makes application of Section 27.3467(b), as amended by this Act, prospective.

SECTION 10. Effective date: September 1, 2005.