relating to the regulation of underground and aboveground storage tanks.

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

SECTION 1. Subsection (c), Section 7.156, Water Code, is amended to read as follows:

(c) A person commits an offense if the person is an owner or operator of an underground storage tank regulated under Chapter 26 into which any regulated substance is delivered unless the underground storage tank has been issued a valid, current underground tank registration and certificate of compliance under Section 26.346.

SECTION 2. Section 26.342, Water Code, is amended by adding Subdivision (16-a) to read as follows:

(16-a) "Subsurface soil" does not include backfill or native material that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless free phase petroleum product is present in the backfill or native material.

SECTION 3. Subsections (a) and (b), Section 26.3467, Water Code, are amended to read as follows:
(a) The owner or operator of an underground storage tank into which a regulated substance is to be deposited shall provide the common carrier a copy of the certificate of compliance for the specific underground storage tank into which the regulated substance is to be deposited before accepting delivery of the regulated substance into the underground storage tank. The owner or operator of an underground storage tank may comply with this subsection by obtaining a current copy of the certificate from the commission's Internet website.

(b) An owner or operator of an underground storage tank [a person] who [knowingly] violates Subsection (a) commits an offense that is punishable as provided by Section 7.156 for an offense under that section.

SECTION 4. Subsection (f), Section 26.351, Water Code, is amended to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be
received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a corrective action plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a corrective action plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a corrective action plan or groundwater monitoring, all deadlines set by the executive director concerning the corrective action plan or approved groundwater monitoring plan shall be met; and

(6) 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 request must be submitted to the executive director [requests for all sites where the executive director agreed in writing that no corrective action plan was required must be received by the agency] no later than September 1, 2007 [2005]. The request must be complete, as judged by the executive director.

SECTION 5. Subsection (b), Section 26.355, Water Code, is
amended to read as follows:

(b) An owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

(1) the release was caused by:

   (A) an act of God;
   (B) an act of war;
   (C) the negligence of the State of Texas or the United States; or
   (D) an act or omission of a third party; or

(2) the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

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

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program[, not to exceed an amount equal to: 11.8 percent of the gross receipts of that account for FY02/03; 16.40 percent of the gross receipts of that account for FY04/05; and 21.1 percent of the gross receipts of that account for FY06/07];

(2) expenses associated with investigation, cleanup,
or corrective action measures performed in response to a release or
threatened release from a petroleum storage tank, whether those
expenses are incurred by the commission or pursuant to a contract
between a contractor and an eligible owner or operator as
authorized by this subchapter; and

(3) subject to the conditions of Subsection (e) [of this section], expenses associated with investigation, cleanup, or
corrective action measures performed in response to a release or
threatened release of hydraulic fluid or spent oil from hydraulic
lift systems or tanks located at a vehicle service and fueling
facility and used as part of the operations of that facility.

(r) Except as provided by Subsection (r-1), the [The] petroleum storage tank remediation account may not be used to
reimburse any person for corrective action performed after
September 1, 2005.

(r-1) In this subsection, "state-lead program" means the
petroleum storage tank state-lead program administered by the
commission. The executive director shall grant an extension for
corrective action reimbursement to a person who is an eligible
owner or operator under Section 26.3571. The petroleum storage
tank remediation account may be used to reimburse an eligible owner
or operator for corrective action performed under an extension
before August 31, 2007. Not later than July 1, 2007, an eligible
owner or operator who is granted an extension under this subsection
may apply to the commission in writing using a form provided by the
commission to have the site subject to corrective action placed in
the state-lead program. The eligible owner or operator must agree
in the application to allow site access to state personnel and state contractors as a condition of placement in the state-lead program under this subsection. On receiving the application for placement in the state-lead program under this subsection, the executive director by order shall place the site in the state-lead program until the corrective action is completed to the satisfaction of the commission. An eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to the commission for any costs related to the corrective action.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2008.

SECTION 7. Subsection (b), Section 26.35731, Water Code, is amended to read as follows:

(b) The commission may postpone considering, processing, or paying a claim for reimbursement from the petroleum storage tank remediation account for corrective action work begun without prior commission approval after September 1, 1993, that is filed with the commission before January 1, 2005 [and without prior commission approval until all claims for reimbursement for corrective action work preapproved by the commission have been considered, processed, and paid].

SECTION 8. Section 26.361, Water Code, is amended to read as follows:

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. Notwithstanding any other provision of this subchapter, the
reimbursement program established under this subchapter expires September 1, 2008 [2006]. On or after September 1, 2008 [2006], the commission may not use money from the petroleum storage tank remediation 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.

SECTION 9. (a) Subsection (b), Section 26.3467, Water Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2005.
President of the Senate

I hereby certify that S.B. No. 485 passed the Senate on April 14, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 23, 2005, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 485 passed the House, with amendment, on May 18, 2005, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor