

1-1 By: Armbrister S.B. No. 485
1-2 (In the Senate - Filed February 14, 2005; February 22, 2005,
1-3 read first time and referred to Committee on Natural Resources;
1-4 April 6, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 6, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 485 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of underground and aboveground storage
1-11 tanks.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (c), Section 7.156, Water Code, is
1-14 amended to read as follows:

1-15 (c) A person commits an offense if the person is an owner or
1-16 operator of an underground [~~underground~~] storage tank regulated
1-17 under Chapter 26 into which any regulated substance is delivered
1-18 [~~or physically delivers any regulated substance into an underground~~
1-19 ~~storage tank regulated under Chapter 26~~] unless the underground
1-20 storage tank has been issued a valid, current underground storage
1-21 tank registration and certificate of compliance under Section
1-22 26.346.

1-23 SECTION 2. Section 26.342, Water Code, is amended by adding
1-24 Subdivision (16-a) to read as follows:

1-25 (16-a) "Subsurface soil" does not include backfill or
1-26 native material that is placed immediately adjacent to or
1-27 surrounding an underground storage tank system when the system is
1-28 installed or the system's individual components are replaced unless
1-29 free phase petroleum product is present in the backfill or native
1-30 material.

1-31 SECTION 3. Subsections (a) and (b), Section 26.3467, Water
1-32 Code, are amended to read as follows:

1-33 (a) The owner or operator of an underground storage tank
1-34 into which a regulated substance is to be deposited shall provide
1-35 the common carrier a copy of the certificate of compliance for the
1-36 specific underground storage tank into which the regulated
1-37 substance is to be deposited before accepting delivery of the
1-38 regulated substance into the underground storage tank. The owner
1-39 or operator of an underground storage tank may comply with this
1-40 subsection by obtaining a current copy of the certificate from the
1-41 commission's Internet website.

1-42 (b) An owner or operator of an underground storage tank [A
1-43 person] who [knowingly] violates Subsection (a) commits an offense
1-44 that is punishable as provided by Section 7.156 for an offense under
1-45 that section.

1-46 SECTION 4. Subsection (f), Section 26.351, Water Code, is
1-47 amended to read as follows:

1-48 (f) The person performing corrective action under this
1-49 section, if the release was reported to the commission on or before
1-50 December 22, 1998, shall meet the following deadlines:

1-51 (1) a complete site assessment and risk assessment
1-52 (including, but not limited to, risk-based criteria for
1-53 establishing target concentrations), as determined by the
1-54 executive director, must be received by the agency no later than
1-55 September 1, 2002;

1-56 (2) a complete corrective action plan, as determined
1-57 by the executive director and including, but not limited to,
1-58 completion of pilot studies and recommendation of a cost-effective
1-59 and technically appropriate remediation methodology, must be
1-60 received by the agency no later than September 1, 2003. The person
1-61 may, in lieu of this requirement, submit by this same deadline a
1-62 demonstration that a corrective action plan is not required for the
1-63 site in question under commission rules. Such demonstration must

2-1 be to the executive director's satisfaction;

2-2 (3) for those sites found under Subdivision (2) to
2-3 require a corrective action plan, that plan must be initiated and
2-4 proceeding according to the requirements and deadlines in the
2-5 approved plan no later than March 1, 2004;

2-6 (4) for sites which require either a corrective action
2-7 plan or groundwater monitoring, a comprehensive and accurate annual
2-8 status report concerning those activities must be submitted to the
2-9 agency;

2-10 (5) for sites which require either a corrective action
2-11 plan or groundwater monitoring, all deadlines set by the executive
2-12 director concerning the corrective action plan or approved
2-13 groundwater monitoring plan shall be met; and

2-14 (6) for sites that require either a corrective action
2-15 plan or groundwater monitoring, have met all other deadlines under
2-16 this subsection, and have submitted annual progress reports that
2-17 demonstrate progress toward meeting closure requirements, a site
2-18 closure request must be submitted to [requests for all sites where]
2-19 the executive director [agreed in writing that no corrective action
2-20 plan was required must be received by the agency] no later than
2-21 September 1, 2007 [2005]. The request must be complete, as judged
2-22 by the executive director.

2-23 SECTION 5. Subsection (b), Section 26.355, Water Code, is
2-24 amended to read as follows:

2-25 (b) An owner or operator of an underground or aboveground
2-26 storage tank from which a regulated substance is released is liable
2-27 to the state unless:

- 2-28 (1) the release was caused by:
2-29 (A) [~~1~~] an act of God;
2-30 (B) [~~2~~] an act of war;
2-31 (C) [~~3~~] the negligence of the State of
2-32 Texas or the United States; or
2-33 (D) [~~4~~] an act or omission of a third
2-34 party; or

2-35 (2) the site at which the release occurred has been
2-36 admitted into the petroleum storage tank state-lead program under
2-37 Section 26.3573(r-1).

2-38 SECTION 6. Section 26.3573, Water Code, is amended by
2-39 amending Subsections (d), (r), and (s) and adding Subsection (r-1)
2-40 to read as follows:

2-41 (d) The commission may use the money in the petroleum
2-42 storage tank remediation account to pay:

- 2-43 (1) necessary expenses associated with the
2-44 administration of the petroleum storage tank remediation account
2-45 and the groundwater protection cleanup program[, not to exceed an
2-46 amount equal to: 11.8 percent of the gross receipts of that account
2-47 for FY02/03, 16.40 percent of the gross receipts of that account for
2-48 FY04/05, and 21.1 percent of the gross receipts of that account for
2-49 FY06/07];

2-50 (2) expenses associated with investigation, cleanup,
2-51 or corrective action measures performed in response to a release or
2-52 threatened release from a petroleum storage tank, whether those
2-53 expenses are incurred by the commission or pursuant to a contract
2-54 between a contractor and an eligible owner or operator as
2-55 authorized by this subchapter; and

2-56 (3) subject to the conditions of Subsection (e) [~~of~~
2-57 ~~this section~~], expenses associated with investigation, cleanup, or
2-58 corrective action measures performed in response to a release or
2-59 threatened release of hydraulic fluid or spent oil from hydraulic
2-60 lift systems or tanks located at a vehicle service and fueling
2-61 facility and used as part of the operations of that facility.

2-62 (r) Except as provided by Subsection (r-1), the [The]
2-63 petroleum storage tank remediation account may not be used to
2-64 reimburse any person for corrective action performed after
2-65 September 1, 2005.

2-66 (r-1) In this subsection, "state-lead program" means the
2-67 petroleum storage tank state-lead program administered by the
2-68 commission. The executive director shall grant an extension for
2-69 corrective action reimbursement to a person who is an eligible

3-1 owner or operator under Section 26.3571. The petroleum storage
3-2 tank remediation account may be used to reimburse an eligible owner
3-3 or operator for corrective action performed under an extension
3-4 before August 31, 2007. Not later than July 1, 2007, an eligible
3-5 owner or operator who is granted an extension under this subsection
3-6 may apply to the commission in writing using a form provided by the
3-7 commission to have the site subject to corrective action placed in
3-8 the state-lead program. The eligible owner or operator must agree
3-9 in the application to allow site access to state personnel and state
3-10 contractors as a condition of placement in the state-lead program
3-11 under this subsection. On receiving the application for placement
3-12 in the state-lead program under this subsection, the executive
3-13 director by order shall place the site in the state-lead program
3-14 until the corrective action is completed to the satisfaction of the
3-15 commission. An eligible owner or operator of a site that is placed
3-16 in the state-lead program under this subsection is not liable to the
3-17 commission for any costs related to the corrective action.

3-18 (s) The petroleum storage tank remediation account may not
3-19 be used to reimburse any person for corrective action contained in a
3-20 reimbursement claim filed with the commission after March 1, 2008
3-21 [2006].

3-22 SECTION 7. Section 26.361, Water Code, is amended to read as
3-23 follows:

3-24 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
3-25 Notwithstanding any other provision of this subchapter, the
3-26 reimbursement program established under this subchapter expires
3-27 September 1, 2008 [2006]. On or after September 1, 2008 [2006], the
3-28 commission may not use money from the petroleum storage tank
3-29 remediation account to reimburse an eligible owner or operator for
3-30 any expenses of corrective action or to pay the claim of a person
3-31 who has contracted with an eligible owner or operator to perform
3-32 corrective action.

3-33 SECTION 8. (a) Subsection (b), Section 26.3467, Water
3-34 Code, as amended by this Act, applies only to an offense committed
3-35 on or after the effective date of this Act. For purposes of this
3-36 section, an offense is committed before the effective date of this
3-37 Act if any element of the offense occurs before that date.

3-38 (b) An offense committed before the effective date of this
3-39 Act is governed by the law in effect when the offense was committed,
3-40 and the former law is continued in effect for that purpose.

3-41 SECTION 9. This Act takes effect September 1, 2005.

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