

1-1 By: Isett (Senate Sponsor - Duncan) H.B. No. 3554
1-2 (In the Senate - Received from the House May 9, 2007;
1-3 May 10, 2007, read first time and referred to Committee on Natural
1-4 Resources; May 21, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 21, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3554 By: Averitt

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

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

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

1-13 SECTION 1. Section 26.351, Water Code, is amended by
1-14 amending Subsections (a) and (f) and adding Subsection (i) to read
1-15 as follows:

1-16 (a) The commission shall use risk-based corrective action
1-17 [~~adopt rules establishing the requirements~~] for taking corrective
1-18 action in response to a release from an underground or aboveground
1-19 storage tank. Corrective action may include:

1-20 (1) site cleanup, including the removal, treatment,
1-21 and disposal of surface and subsurface contamination;

1-22 (2) removal of underground or aboveground storage
1-23 tanks;

1-24 (3) measures to halt a release in progress or to
1-25 prevent future or threatened releases of regulated substances;

1-26 (4) well monitoring, taking of soil borings, and any
1-27 other actions reasonably necessary to determine the extent of
1-28 contamination caused by a release;

1-29 (5) providing alternate water supplies; and

1-30 (6) any other action reasonably necessary to protect
1-31 the public health and safety or the environment from harm or
1-32 threatened harm due to releases of regulated substances from
1-33 underground or aboveground storage tanks.

1-34 (f) The person performing corrective action under this
1-35 section, if the release was reported to the commission on or before
1-36 December 22, 1998, shall meet the following deadlines:

1-37 (1) a complete site assessment and risk assessment
1-38 (including, but not limited to, risk-based criteria for
1-39 establishing target concentrations), as determined by the
1-40 executive director, must be received by the agency no later than
1-41 September 1, 2002;

1-42 (2) a complete corrective action plan, as determined
1-43 by the executive director and including, but not limited to,
1-44 completion of pilot studies and recommendation of a cost-effective
1-45 and technically appropriate remediation methodology, must be
1-46 received by the agency no later than September 1, 2003. The person
1-47 may, in lieu of this requirement, submit by this same deadline a
1-48 demonstration that a corrective action plan is not required for the
1-49 site in question under commission rules. Such demonstration must
1-50 be to the executive director's satisfaction;

1-51 (3) for those sites found under Subdivision (2) to
1-52 require a corrective action plan, that plan must be initiated and
1-53 proceeding according to the requirements and deadlines in the
1-54 approved plan no later than March 1, 2004;

1-55 (4) for sites which require either a corrective action
1-56 plan or groundwater monitoring, a comprehensive and accurate annual
1-57 status report concerning those activities must be submitted to the
1-58 agency;

1-59 (5) for sites which require either a corrective action
1-60 plan or groundwater monitoring, all deadlines set by the executive
1-61 director concerning the corrective action plan or approved
1-62 groundwater monitoring plan shall be met; and

1-63 (6) for sites that require either a corrective action

2-1 plan or groundwater monitoring, have met all other deadlines under
 2-2 this subsection, and have submitted annual progress reports that
 2-3 demonstrate progress toward meeting closure requirements, a site
 2-4 closure request must be submitted to the executive director no
 2-5 later than September 1, 2011 [~~2007~~]. The request must be complete,
 2-6 as judged by the executive director.

2-7 (i) The commission shall by rule define "risk-based
 2-8 corrective action" for purposes of this section.

2-9 SECTION 2. Sections 26.3573(d), (e), (r-1), and (s), Water
 2-10 Code, are amended to read as follows:

2-11 (d) The commission may use the money in the petroleum
 2-12 storage tank remediation account to pay:

2-13 (1) necessary expenses associated with the
 2-14 administration of the petroleum storage tank remediation account
 2-15 and the groundwater protection cleanup program;

2-16 (2) expenses associated with investigation, cleanup,
 2-17 or corrective action measures performed in response to a release or
 2-18 threatened release from a petroleum storage tank, whether those
 2-19 expenses are incurred by the commission or pursuant to a contract
 2-20 between a contractor and an eligible owner or operator as
 2-21 authorized by this subchapter; [~~and~~]

2-22 (3) subject to the conditions of Subsection (f) [~~(e)~~],
 2-23 expenses associated with investigation, cleanup, or corrective
 2-24 action measures performed in response to a release or threatened
 2-25 release of hydraulic fluid or spent oil from hydraulic lift systems
 2-26 or tanks located at a vehicle service and fueling facility and used
 2-27 as part of the operations of that facility; and

2-28 (4) expenses associated with assuring compliance with
 2-29 the commission's applicable underground or aboveground storage
 2-30 tank administrative and technical requirements, including
 2-31 technical assistance and support, inspections, enforcement, and
 2-32 the provision of matching funds for grants.

2-33 (e) To consolidate appropriations, the commission may
 2-34 transfer from the petroleum storage tank remediation account to the
 2-35 waste management account an amount equal to the amounts authorized
 2-36 under Subsections [~~Subsection~~] (d)(1) and (4), subject to the
 2-37 requirements of those subsections [~~that subsection~~].

2-38 (r-1) In this subsection, "state-lead program" means the
 2-39 petroleum storage tank state-lead program administered by the
 2-40 commission. The executive director shall grant an extension for
 2-41 corrective action reimbursement to a person who is an eligible
 2-42 owner or operator under Section 26.3571. The petroleum storage
 2-43 tank remediation account may be used to reimburse an eligible owner
 2-44 or operator for corrective action performed under an extension
 2-45 before August 31, 2011 [~~2007~~]. Not later than July 1, 2011 [~~2007~~],
 2-46 an eligible owner or operator who is granted an extension under this
 2-47 subsection may apply to the commission in writing using a form
 2-48 provided by the commission to have the site subject to corrective
 2-49 action placed in the state-lead program. The eligible owner or
 2-50 operator must agree in the application to allow site access to state
 2-51 personnel and state contractors as a condition of placement in the
 2-52 state-lead program under this subsection. On receiving the
 2-53 application for placement in the state-lead program under this
 2-54 subsection, the executive director by order shall place the site in
 2-55 the state-lead program until the corrective action is completed to
 2-56 the satisfaction of the commission. An eligible owner or operator
 2-57 of a site that is placed in the state-lead program under this
 2-58 subsection is not liable to the commission for any costs related to
 2-59 the corrective action.

2-60 (s) The petroleum storage tank remediation account may not
 2-61 be used to reimburse any person for corrective action contained in a
 2-62 reimbursement claim filed with the commission after March 1, 2012
 2-63 [~~2008~~].

2-64 SECTION 3. Section 26.3574(b), Water Code, is amended to
 2-65 read as follows:

2-66 (b) A fee is imposed on the delivery of a petroleum product
 2-67 on withdrawal from bulk of that product as provided by this
 2-68 subsection. Each operator of a bulk facility on withdrawal from
 2-69 bulk of a petroleum product shall collect from the person who orders

the withdrawal a fee in an amount determined as follows:

(1) ~~[\$12.50 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002; and] \$10.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2009, and \$3.75 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2009, through the state fiscal year ending August 31, 2011 [2007];~~

(2) ~~[\$25.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002; and] \$20.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2009, and \$7.50 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2009, through the state fiscal year ending August 31, 2011 [2007];~~

(3) ~~[\$37.50 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002; and] \$30.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2009, and \$11.75 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for the state fiscal year beginning September 1, 2009, through the state fiscal year ending August 31, 2011 [2007];~~

(4) ~~[\$50.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002; and] \$40.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2009, [2007;] and \$15.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for the state fiscal year beginning September 1, 2009, through the state fiscal year ending August 31, 2011; and~~

(5) ~~[a \$25.00 fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002; and] \$20.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2009, and \$7.50 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2009, through the state fiscal year ending August 31, 2011 [2007].~~

SECTION 4. Sections 26.358(d), (f), and (g), Water Code, are amended to read as follows:

(d) The commission shall impose an annual facility fee on a facility that operates one or more underground or aboveground storage tanks if the fee charged under Section 26.3574 is discontinued. The commission may also impose reasonable interest and penalties for late payment of the fee as provided by commission rule. The commission may establish a fee schedule that will generate an amount of money sufficient to fund the commission's budget for the regulatory program regarding underground and aboveground storage tanks authorized by this subchapter.

(f) The amount of an [maximum] annual fee that the commission may impose on a facility under Subsection (d) is equal to

4-1 the amount set by the commission [~~is \$25~~] for each aboveground
4-2 storage tank and [~~\$50~~] for each underground storage tank operated
4-3 at the facility.

4-4 (g) The commission shall collect any [~~the~~] fees imposed
4-5 under this section on dates set by commission rule. The period
4-6 between collection dates may not exceed two years.

4-7 SECTION 5. Section 26.361, Water Code, is amended to read as
4-8 follows:

4-9 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
4-10 Notwithstanding any other provision of this subchapter, the
4-11 reimbursement program established under this subchapter expires
4-12 September 1, 2012 [~~2008~~]. On or after September 1, 2012 [~~2008~~], the
4-13 commission may not use money from the petroleum storage tank
4-14 remediation account to reimburse an eligible owner or operator for
4-15 any expenses of corrective action or to pay the claim of a person
4-16 who has contracted with an eligible owner or operator to perform
4-17 corrective action.

4-18 SECTION 6. (a) Section 26.3573(r-1), Water Code, as
4-19 amended by this Act, takes effect immediately if this Act receives a
4-20 vote of two-thirds of all the members elected to each house, as
4-21 provided by Section 39, Article III, Texas Constitution. If this
4-22 Act does not receive the vote necessary for immediate effect,
4-23 Section 26.3573(r-1), Water Code, as amended by this Act, takes
4-24 effect August 27, 2007.

4-25 (b) Except as provided by Subsection (a) of this section,
4-26 this Act takes effect September 1, 2007.

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