

By: Estes

S.B. No. 1569

A BILL TO BE ENTITLED

AN ACT

relating to the remediation of underground storage tanks and the fee on delivery of certain petroleum products.

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

SECTION 1. Section 26.342, Water Code, is amended by adding Subdivision (12-a) to read as follows:

(12-a) "Potential release" means a release that is possible due to the condition of the tank, but that has not yet occurred.

SECTION 2. Sections 26.351(a), (b), (c), and (f), Water Code, are amended to read as follows:

(a) The commission shall use risk-based corrective action for taking corrective action in response to a release or potential release from an underground or aboveground storage tank. Corrective action may include:

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

(2) removal of underground or aboveground storage tanks;

(3) measures to halt a release in progress or to prevent future or potential [~~threatened~~] releases of regulated substances;

(4) well monitoring, taking of soil borings, and any other actions reasonably necessary to determine the extent or

1 presence of contamination caused by a release;

2 (5) providing alternate water supplies; and

3 (6) any other action reasonably necessary to protect
4 the public health and safety or the environment from harm or
5 potential [~~threatened~~] harm due to releases or potential releases
6 of regulated substances from underground or aboveground storage
7 tanks.

8 (b) The owner or operator of an underground or aboveground
9 storage tank shall immediately take all reasonable actions to
10 prevent a potential [~~threatened~~] release of regulated substances
11 from an underground or aboveground storage tank and to abate and
12 remove any releases subject to applicable federal and state
13 requirements. The owner or operator may be ordered to take
14 corrective action under this subchapter.

15 (c) The commission may undertake corrective action in
16 response to a release or undertake corrective action described by
17 Subsection (a)(2) or (4) for underground storage tanks that do not
18 meet performance or technical standards adopted under this
19 subchapter [~~a threatened release~~] if:

20 (1) the owner or operator of the underground or
21 aboveground storage tank is unwilling to take corrective action;

22 (2) the owner or operator of the underground or
23 aboveground storage tank cannot be found;

24 (3) the owner or operator of the underground or
25 aboveground storage tank, in the opinion of the executive director,
26 is unable to take the corrective action necessary to protect the
27 public health and safety or the environment; or

1 (4) notwithstanding any other provision of this
2 chapter, the executive director determines that more expeditious
3 corrective action than is provided by this chapter is necessary to
4 protect the public health and safety or the environment from harm.

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

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

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

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

26 (4) for sites which require either a corrective action
27 plan or groundwater monitoring, a comprehensive and accurate annual

1 status report concerning those activities must be submitted to the
2 agency;

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

7 (6) for sites that require either a corrective action
8 plan or groundwater monitoring, have met all other deadlines under
9 this subsection, and have submitted annual progress reports that
10 demonstrate progress toward meeting closure requirements, a site
11 closure request must be submitted to the executive director no
12 later than September 1, 2017 [~~2011~~]. The request must be complete,
13 as judged by the executive director.

14 SECTION 3. Section 26.3511(a), Water Code, is amended to
15 read as follows:

16 (a) Notwithstanding Section 26.351(c) [~~of this code~~], to
17 the extent that the commission pays from the petroleum storage tank
18 remediation account or from sources other than the waste management
19 account the expenses of the investigations, cleanups, and
20 corrective action measures it performs, the commission may
21 undertake those corrective action measures described in Section
22 26.351 [~~of this code~~] in response to a release or potential [~~a~~
23 ~~threatened~~] release from an underground or aboveground storage tank
24 under any circumstances in which the commission considers it
25 necessary to protect the public health and safety or the
26 environment.

27 SECTION 4. Sections 26.3513(b) and (f), Water Code, are

1 amended to read as follows:

2 (b) Each owner and operator of an underground storage tank
3 or petroleum storage tank at a site to which this section applies
4 and from which a release or potential [~~threatened~~] release occurs
5 is responsible for taking all corrective action at the site which
6 may be required under this subchapter; provided that liability for
7 the expenses of corrective action among owners and operators may be
8 apportioned as provided by this section.

9 (f) Where the owner or operator can prove by a preponderance
10 of the evidence that liability for the expenses of taking
11 corrective action in response to a release or potential
12 [~~threatened~~] release is divisible, that person shall be liable for
13 the expenses only to the extent that the impact to the groundwater,
14 surface water, or subsurface soils is attributable to the release
15 or potential [~~threatened~~] release from his underground storage tank
16 or petroleum storage tank.

17 SECTION 5. Sections 26.3573(d), (r-1), and (s), Water Code,
18 are amended to read as follows:

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

21 (1) necessary expenses associated with the
22 administration of the petroleum storage tank remediation account
23 and the groundwater protection cleanup program;

24 (2) expenses associated with investigation, cleanup,
25 or corrective action measures performed in response to a release or
26 potential [~~threatened~~] release from a petroleum storage tank,
27 whether those expenses are incurred by the commission or pursuant

1 to a contract between a contractor and an eligible owner or operator
2 as authorized by this subchapter;

3 (3) subject to the conditions of Subsection (f),
4 expenses associated with investigation, cleanup, or corrective
5 action measures performed in response to a release or potential
6 [~~threatened~~] release of hydraulic fluid or spent oil from hydraulic
7 lift systems or tanks located at a vehicle service and fueling
8 facility and used as part of the operations of that facility; and

9 (4) expenses associated with assuring compliance with
10 the commission's applicable underground or aboveground storage
11 tank administrative and technical requirements, including
12 technical assistance and support, inspections, enforcement, and
13 the provision of matching funds for grants.

14 (r-1) In this subsection, "state-lead program" means the
15 petroleum storage tank state-lead program administered by the
16 commission. The executive director shall grant an extension for
17 corrective action reimbursement to a person who is an eligible
18 owner or operator under Section 26.3571. The petroleum storage
19 tank remediation account may be used to reimburse an eligible owner
20 or operator for corrective action performed under an extension
21 before August 31, 2017 [~~2011~~]. Not later than July 1, 2017 [~~2011~~],
22 an eligible owner or operator who is granted an extension under this
23 subsection may apply to the commission in writing using a form
24 provided by the commission to have the site subject to corrective
25 action placed in the state-lead program. The eligible owner or
26 operator must agree in the application to allow site access to state
27 personnel and state contractors as a condition of placement in the

1 state-lead program under this subsection. On receiving the
2 application for placement in the state-lead program under this
3 subsection, the executive director by order shall place the site in
4 the state-lead program until the corrective action is completed to
5 the satisfaction of the commission. An eligible owner or operator
6 of a site that is placed in the state-lead program under this
7 subsection is not liable to the commission for any costs related to
8 the corrective action.

9 (s) The petroleum storage tank remediation account may not
10 be used to reimburse any person for corrective action contained in a
11 reimbursement claim filed with the commission after March 1, 2018
12 [~~2012~~].

13 SECTION 6. Section 26.3574(b), Water Code, is amended to
14 read as follows:

15 (b) A fee is imposed on the delivery of a petroleum product
16 on withdrawal from bulk of that product as provided by this
17 subsection. Each operator of a bulk facility on withdrawal from
18 bulk of a petroleum product shall collect from the person who orders
19 the withdrawal a fee in an amount determined as follows:

20 (1) \$3.75 for each delivery into a cargo tank having a
21 capacity of less than 2,500 gallons for the state fiscal year
22 beginning September 1, 2011 [~~2007~~], through the state fiscal year
23 ending August 31, 2017 [~~2011~~];

24 (2) \$7.50 for each delivery into a cargo tank having a
25 capacity of 2,500 gallons or more but less than 5,000 gallons for
26 the state fiscal year beginning September 1, 2011 [~~2007~~], through
27 the state fiscal year ending August 31, 2017 [~~2011~~];

1 (3) \$11.75 for each delivery into a cargo tank having a
2 capacity of 5,000 gallons or more but less than 8,000 gallons for
3 the state fiscal year beginning September 1, 2011 [~~2007~~], through
4 the state fiscal year ending August 31, 2017 [~~2011~~];

5 (4) \$15.00 for each delivery into a cargo tank having a
6 capacity of 8,000 gallons or more but less than 10,000 gallons for
7 the state fiscal year beginning September 1, 2011 [~~2007~~], through
8 the state fiscal year ending August 31, 2017 [~~2011~~]; and

9 (5) \$7.50 for each increment of 5,000 gallons or any
10 part thereof delivered into a cargo tank having a capacity of 10,000
11 gallons or more for the state fiscal year beginning September 1,
12 2011 [~~2007~~], through the state fiscal year ending August 31, 2017
13 [~~2011~~].

14 SECTION 7. Section 26.361, Water Code, is amended to read as
15 follows:

16 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
17 Notwithstanding any other provision of this subchapter, the
18 reimbursement program established under this subchapter expires
19 September 1, 2018 [~~2012~~]. On or after September 1, 2018 [~~2012~~], the
20 commission may not use money from the petroleum storage tank
21 remediation account to reimburse an eligible owner or operator for
22 any expenses of corrective action or to pay the claim of a person
23 who has contracted with an eligible owner or operator to perform
24 corrective action.

25 SECTION 8. The Texas Commission on Environmental Quality
26 may adopt rules to implement the changes in law made to Subchapter
27 I, Chapter 26, Water Code, as amended by this Act.

1 SECTION 9. This Act takes effect September 1, 2011.