By:  Paddie H.B. No. 2780

A BILL TO BE ENTITLED

AN ACT

relating to the safety of aboveground storage tanks.

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

SECTION 1.  Section 26.341(b), Water Code, is amended to read as follows:

(b)  The legislature declares that it is the policy of this state and the purpose of this subchapter to:

(1)  maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources; [~~and~~]

(2)  require the use of all reasonable methods, including risk-based corrective action, to implement this policy; and

(3)  promote the safety of aboveground storage tanks by the adoption of performance standards for the design, construction, operation, and maintenance of aboveground storage tanks, with the objective of protecting groundwater and surface water resources in the event of accidents and natural disasters.

SECTION 2.  Section 26.342, Water Code, is amended by amending Subdivision (1) and adding Subdivision (7-a) to read as follows:

(1)  "Aboveground storage tank":

(A)  means a stationary, nonvehicular device that:

(i)  is[~~: (A)~~] made of nonearthen materials;

(ii)  is [~~(B)~~] located on or above the surface of the ground or on or above the surface of the floor of a structure below ground such as a mineworking, basement, or vault; and

(iii)  has a capacity of 21,000 gallons or more of a regulated substance; and

(B)  does not include:

(i)  a tank used in or associated with the production of crude oil or natural gas;

(ii)  an aboveground storage tank operating above 0.5 Pounds per Square Inch Gauge;

(iii)  heated tanks;

(iv)  a tank that is part of a stormwater or wastewater collection system;

(v)  a surface impoundment, pit, pond, or lagoon;

(vi)  a flow-through process tank, including a pressure vessel or process vessel and oil and water separators;

(vii)  an intermediate bulk container or similar tank that may be moved within a facility;

(viii)  a tank regulated under the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.);

(ix)  a tank used for the storage of products regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

(x)  a tank, including piping and collection and treatment systems, that is used in the management of leachate, methane gas, or methane gas condensate, unless the tank is used for storage of a regulated substance;

(xi)  a tank or pressure vessel that is used to store liquid petroleum gas;

(xii)  any other tank otherwise excluded by the commission; or

(xiii)  any pipe that is connected to a tank or other facility described in this paragraph

[~~(C) designed to contain an accumulation of petroleum~~].

(7-a)  "National consensus standards" means any performance standard for aboveground storage tanks, or a modification thereof, which:

(A)  has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the commission that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption; and

(B)  was formulated in a manner which afforded an opportunity for diverse views to be considered.

SECTION 3.  Sections 26.344 (c), (d), and (f), Water Code, are amended to read as follows:

(c)  Notwithstanding Subsection (f), an [~~An~~] interstate pipeline facility, including gathering lines, or an aboveground storage tank connected to such a facility is exempt from regulation under this subchapter if the pipeline facility is regulated under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(d)  Notwithstanding Subsection (f), an [~~An~~] intrastate pipeline facility or an aboveground storage tank connected to such a facility is exempt from regulation under this subchapter but is not exempt from performance standards adopted under Section 26.3442 if the pipeline facility is regulated under one of the following state laws:

(1)  Chapter 111, Natural Resources Code;

(2)  Chapter 117, Natural Resources Code; or

(3)  Subchapter E, Chapter 121, Utilities Code.

(f)  An aboveground storage tank that is located at or is part of a petrochemical plant, a petroleum refinery, an electric generating facility, or a bulk facility as that term is defined by Section 26.3574(a) [~~of this code~~] is exempt from regulation under this subchapter but is not exempt for purposes of the fee imposed under Section 26.3574 or the performance standards adopted under Section 26.3442 [~~of this code~~].

SECTION 4.  Section 26.3441(b), Water Code, is amended to read as follows:

(b)  The commission may not develop a regulatory program for aboveground storage tanks that is more extensive than the regulatory program authorized by this subchapter and Section 26.3442 unless additional regulation of aboveground storage tanks is necessary to comply or be in conformity with requirements adopted by the United States Environmental Protection Agency or with federal law.

SECTION 5.  Subchapter I, Chapter 26, Water Code, is amended by adding Sections 26.3442, 26.3443, and 26.3444 to read as follows:

Sec. 26.3442.  ABOVEGROUND STORAGE TANK SAFETY PROGRAM AND PERFORMANCE STANDARDS. (a) This section applies only to an aboveground storage tank described by Section 26.342(1).

(b)  Not later than September 1, 2023, the commission shall establish an Aboveground Storage Tank Safety Program as described in this section to provide for the protection of public health and safety as well as groundwater and surface water resources from a release of substances from an aboveground storage tank in the event of an accident or natural disaster.

(c)  In establishing the Aboveground Storage Tank Safety Program under this section, the commission shall include but is limited to critical safety elements from the following statutes and regulations as applicable to an aboveground storage tank:

(1)  Clean Air Act Risk Management Plan Rule and Maximum Achievable Control Technology/National Emission Standards for Hazardous Air Pollutants program requirements;

(2)  Resource Conservation and Recovery Act requirements for Treatment, Storage, and Disposal Facilities (40 C.F.R. Parts 264/265, Subparts A-E);

(3)  OSHA Standards for Process Safety Management, Emergency Action Plans, and Hazardous Waste Operations and Emergency Response;

(4)  Spill Prevention, Control, and Countermeasure Regulations (40 C.F.R. part 112); and

(5)  any other requirements under federal law, including regulations, in effect on the date on which the program is established or as amended.

(d)  The Aboveground Storage Tank Safety Program under this section shall include but is limited to critical safety elements from the following national consensus standards as applicable to an aboveground storage tank:

(1)  for aboveground storage tanks constructed on or before September 1, 2027, and currently in service:

(A)  from API Standard 653: Tank Inspection, Repairs, Alteration, and Reconstruction, the commission shall require adherence to the protocol to applicable tanks included in this standard for the following:

(i)  Section 4.3: Tank Shell Evaluation;

(ii)  Section 4.4: Tank Bottom Evaluation;

(iii)  Section 4.5: Tank Foundation Evaluation;

(iv)  Section 6.2: Inspection Frequency Considerations;

(v)  Section 6.3: Inspections from the Outside of the Tank;

(vi)  Section 6.4: Internal Inspection, if applicable in accordance with Section 6.3;

(vii)  Section 8: Design Considerations for Reconstructed Tanks; and

(viii)  Section 9: Tank Repair and Alteration;

(B)  from API Standard 2350: Overfill Protection for Storage Tanks in Petroleum Facilities, the commission shall include the following critical safety elements for aboveground storage tanks included in this standard:

(i)  Section 4: Overfill Prevention Systems, including management systems and operational procedures before and after product receipt as applicable;

(ii)  Section 5: Overfill Prevention Systems, including requirements for manual or automated overfill prevention systems as applicable, including use of remote operated shutoff valves;

(iii)  the requirements referenced in Subparagraphs (i) and (ii) only apply to atmospheric tanks as specified in API Standard 2350; and

(iv)  API 2350 assessment protocol to determine how to manage overfill through engineered controls, administrative controls, and hazard class in applicable quantities; and

(C)  from National Fire Protection Association 30 Ch. 22 or API Recommended Practice 2001, the commission shall require fire suppression systems on aboveground storage tanks subject to the applicable standard; and

(2)  for aboveground storage tanks constructed and brought into service after September 1, 2027:

(A)  all of the standards listed in Subdivision (1); and

(B)  API 650: Welded Tanks for Oil Storage and National Fire Protection Association 30, chapter 22 and location standards, or an equally stringent standard as applicable to an aboveground storage tank.

(e)  The applicable standard in Subsection (d)(1)(C) only applies to material stored at atmospheric pressure with a flashpoint less than or equal to 100 Fahrenheit as defined by OSHA Process Safety Management.

(f)  The applicable standard in Subsection (d)(2)(B) only applies to atmospheric aboveground storage tanks as defined in API 650 and does not apply to aboveground storage tanks already regulated or managed under OSHA Standards for Process Safety Management.

(g)  The commission may require a plan to control spills from Atmospheric Storage Tanks that includes recommended practices in NFPA 30.

(h)  An owner or operator of an aboveground storage tank shall assess and report to the commission its current compliance status with the Aboveground Storage Tank Safety Program no later than September 1, 2027.

(i)  An owner or operator of an aboveground storage tank shall comply with the Aboveground Storage Tank Safety Program requirements consistent with and upon completion of the next regularly scheduled out-of-service maintenance of the aboveground storage tank by the owner or operator that occurs after September 1, 2027. Any modifications or retrofits necessary for compliance with the Aboveground Storage Tank Safety Program should be made during these out-of-service maintenance periods as identified by the owner or operator unless the owner or operator makes and records a demonstration of infeasibility.

(j)  The Aboveground Storage Tank Safety Program shall require an owner or operator of an aboveground storage tank or a designated third party as assigned by the owner or operator to certify compliance status every 10 years with the standards referenced in Subsections (c) and (d) as applicable.

(k)  The Aboveground Storage Tank Safety Program under this section shall allow for exemptions for aboveground storage tanks with low risk of floods, storm surges, hurricanes, accidents, fires, explosions, or other hazards.

(l)  The commission shall keep confidential information reported to, obtained by, or otherwise submitted to the commission that is subject to restrictions on dissemination under federal law, including but not limited to off-site consequence analysis information subject to Title 40, Part 1400, Code of Federal Regulations, or may otherwise present a security risk, if disclosed publicly.

Sec. 26.3443.  CERTIFICATION FEE. (a) The commission by rule shall establish fees in amounts sufficient to recover the reasonable costs to:

(1)  review certifications;

(2)  amend certifications;

(3)  inspect certified facilities; and

(4)  enforce certification of compliance with applicable standards of Sections 26.3442(c) and (d) and the rules and orders adopted by this certification.

(b)  The certification fee under Subsection (a) shall be deposited to the credit of an account to be named the Aboveground Storage Tank Safety Program Account.

SECTION 6.  The heading to Section 26.347, Water Code, is amended to read as follows:

Sec. 26.347.  UNDERGROUND STORAGE TANK STANDARDS.

SECTION 7.  This Act takes effect September 1, 2021.