

AN ACT

relating to the safety of storage vessels.

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 storage vessels as defined in Section 26.3442, by adopting requirements for the design, construction, operation, and maintenance of storage vessels, with the objective of protecting groundwater and surface water resources in the event of accidents and natural disasters.

SECTION 2. 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. PERFORMANCE STANDARDS FOR SAFETY AT STORAGE VESSELS. (a) Definitions:

1 (1) Storage vessel:

2 (A) is made of nonearthen materials;

3 (B) is located on or above the surface of the
4 ground;

5 (C) has a capacity of 21,000 gallons or more of a
6 regulated substance as defined by Section 26.343, Water Code; and

7 (D) is located at or is part of a petrochemical
8 plant, a petroleum refinery, or a bulk storage terminal as that term
9 is defined by Subsection (a)(2).

10 (2) "Bulk storage terminal" means a site in this
11 state, including end-of-line pipeline storage terminals (excluding
12 breakout tanks), refinery storage terminals, for-hire storage
13 terminals, and rail and barge storage terminals.

14 (3) "National consensus standards" means any
15 performance standard for storage tanks, or a modification thereof,
16 that:

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

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

24 (b) The following tanks, including any pipe that is
25 connected to the tank, are not considered to be storage vessels and
26 are exempt from regulation under the Performance Standards for
27 Safety at Storage Vessels requirements in Sections 26.3442,

1 26.3443, and 26.3444:

2 (1) a tank used in or associated with the production or
3 gathering of crude oil or natural gas;

4 (2) a tank that is part of a stormwater or wastewater
5 collection system;

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

8 (4) a storage vessel operating above 0.5 Pounds per
9 Square Inch Gauge;

10 (5) heated tanks;

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

13 (7) a tank regulated under the federal Surface Mining
14 Control and Reclamation Act (30 U.S.C. Sec. 1201 et seq.);

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

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

22 (10) a tank or pressure vessel that is used to store
23 liquefied petroleum gas; and

24 (11) a tank regulated under the U.S. Department of
25 Transportation's (DOT's) Pipeline and Hazardous Materials Safety
26 Administration (PHMSA) (49 U.S.C. 60101 et seq.).

27 (c) Not later than September 1, 2023, the commission shall

1 establish a Performance Standards for Safety at Storage Vessels
2 Program as described in this section to provide for the protection
3 of groundwater and surface water resources from a release of
4 substances from a storage vessel in the event of an accident or
5 natural disaster.

6 (d) In establishing the portion of the Performance
7 Standards for Safety at Storage Vessels Program governed by this
8 subsection, the commission shall, except as provided by Section
9 26.3443, include all and only those critical safety elements that
10 are applicable to a storage vessel, and that the commission
11 determines to be critical in this state for the protection
12 described by Subsection (c), from the following federal statutes
13 and regulations, ensuring that the correct critical safety elements
14 are applied to the correct types of storage vessels as delineated in
15 the applicability section of each cited federal statute and
16 regulation:

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

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

23 (3) Spill Prevention, Control, and Countermeasure
24 Regulations (40 C.F.R. Part 112); and

25 (4) EPA Risk Management Plan Rules regarding accident
26 prevention at facilities that use certain hazardous substances.

27 (e) In establishing the portion of the Performance

1 Standards for Safety at Storage Vessels Program governed by this
2 subsection, the commission shall, except as provided by Section
3 26.3443, include all and only those critical safety elements that
4 are applicable to a storage vessel, and that the commission
5 determines to be critical in this state for the protection
6 described by Subsection (c), from the following national consensus
7 standards, ensuring that the correct critical safety elements are
8 applied to the correct types of storage vessels as delineated in the
9 applicability section of each cited national consensus standard:

10 (1) for in-service storage vessels constructed on or
11 before September 1, 2027:

12 (A) from American Petroleum Institute (API)
13 Standard 653: Tank Inspection, Repairs, Alteration, and
14 Reconstruction, the commission shall require adherence to the
15 protocol to applicable tanks included in this standard for the
16 following:

17 (i) Section 4.3: Tank Shell Evaluation;
18 (ii) Section 4.4: Tank Bottom Evaluation;
19 (iii) Section 4.5: Tank Foundation
20 Evaluation;

21 (iv) Section 6.2: Inspection Frequency
22 Considerations;

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

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

27 (vii) Section 8: Design Considerations for

1 Reconstructed Tanks; and
2 (viii) Section 9: Tank Repair and
3 Alteration;
4 (B) from API Standard 2350 or API Recommended
5 Practices 2350: Overfill Protection for Storage Tanks in Petroleum
6 Facilities, the commission shall include the following critical
7 safety elements for storage vessels included in this standard:
8 (i) Section 4: Overfill Prevention
9 Systems, including management systems and operational procedures
10 before and after product receipt as applicable;
11 (ii) Section 5: Overfill Prevention
12 Systems, including requirements for manual or automated overfill
13 prevention systems as applicable, including use of remote operated
14 shutoff valves;
15 (iii) the requirements referenced in
16 Subparagraphs (i) and (ii) only apply to atmospheric tanks as
17 specified in API Standard 2350; and
18 (iv) API 2350 assessment protocol to
19 determine how to manage overfill through engineered controls,
20 administrative controls, and hazard class in applicable
21 quantities; and
22 (C) from either National Fire Protection
23 Association (NFPA) 30 Ch. 22 or API Recommended Practice 2001, the
24 commission shall require fire suppression systems on storage
25 vessels subject to the protocol in the applicable standard; and
26 (2) for in-service storage vessels constructed after
27 September 1, 2027:

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

3 (B) API 650: Welded Tanks for Oil Storage and
4 NFPA 30, Chapter 22 location standards; and

5 (C) NFPA 30, Chapter 22 location standards,
6 except for reconstruction standards at an original storage vessel
7 location.

8 (f) The applicable standard chosen by the commission under
9 Subsection (e)(1)(C) only applies to material stored at atmospheric
10 pressure with a flashpoint less than or equal to 100 Fahrenheit as
11 defined by OSHA Process Safety Management.

12 (g) The applicable standard in Subsection (e)(2)(B) only
13 applies to atmospheric storage vessels as defined in API 650.

14 (h) The commission may require a plan to control spills from
15 atmospheric storage vessels that includes recommended practices in
16 NFPA 30.

17 (i) An owner or operator of a storage vessel shall register
18 with the commission, assess and report to the commission its
19 current compliance status with the Performance Standards for Safety
20 at Storage Vessels Program no later than September 1, 2027. For
21 storage vessels constructed and brought into service after
22 September 1, 2027, an owner or operator of a storage vessel shall
23 register and certify its compliance status to the commission with
24 the Performance Standards for Safety at Storage Vessels Program no
25 later than 30 days after start of operation.

26 (j) An owner or operator of a storage vessel shall comply
27 with the Performance Standards for Safety at Storage Vessels

1 Program requirements on completion of the next regularly scheduled
2 out-of-service maintenance of the storage vessel by the owner or
3 operator that occurs after September 1, 2027. However, all
4 facilities must certify compliance status by no later than
5 September 1, 2037. Any modifications or retrofits necessary for
6 compliance with the Performance Standards for Safety at Storage
7 Vessels Program should be made during these out-of-service
8 maintenance periods as identified by the owner or operator unless
9 the owner or operator makes and records with the commission a
10 demonstration of technical impracticability that the commission
11 approves.

12 (k) The commission in implementing the Performance
13 Standards for Safety at Storage Vessels Program shall require an
14 owner or operator of a storage vessel or a designated third party as
15 assigned by the owner or operator to certify compliance status
16 every 10 years with the standards referenced in Subsections (d) and
17 (e) as applicable.

18 (l) The commission shall keep confidential information
19 reported to, obtained by, or otherwise submitted to the commission
20 that:

21 (1) is subject to restrictions on dissemination under
22 federal law, including off-site consequence analysis information
23 subject to Title 40, Part 1400, C.F.R.; or

24 (2) may otherwise present a security risk, if
25 disclosed publicly.

26 (m) The commission shall conduct on-site inspections of the
27 registered/certified facilities at least once every five years to

1 determine compliance with the Performance Standards for Safety at
2 Storage Vessels Program. This subsection does not limit the
3 commission's ability to inspect a facility under other state or
4 federal regulations.

5 Sec. 26.3443. CERTAIN COMMISSION EXEMPTIONS AND RULES;
6 AMENDMENTS AND ALTERNATIVE STANDARDS. (a) The commission, in
7 implementing the Performance Standards for Safety at Storage
8 Vessels Program under Section 26.3442, may approve exemption of
9 specific storage vessels otherwise subject to Section 26.3442 from
10 regulation under the program if the legal owner or operator submits
11 a request to the commission demonstrating that the vessel presents
12 a sufficiently low risk of floods, storm surges, hurricanes,
13 accidents, fires, explosions, or other hazards such that it does
14 not warrant regulation under the program.

15 (b) The commission shall establish through rulemaking the
16 effective date of a federal law or regulation that the commission is
17 implementing under Section 26.3442(d), or a national consensus
18 standard that the commission is implementing under Section
19 26.3442(e). The commission shall amend through rulemaking changes
20 if a federal law or regulation or national consensus standard is
21 amended in a way that materially conflicts with the commission's
22 current implementation of the Performance Standards for Safety at
23 Storage Vessels Program except to the extent that the commission
24 determines, after a cost-benefit analysis and if not prohibited
25 under federal law, that the program as currently implemented by the
26 commission is sufficiently effective for protection of the health,
27 safety, and welfare of the citizens of this state.

1 (c) Notwithstanding the requirement of Section 26.3442(e)
2 that the commission include only critical safety elements from
3 specified national consensus standards, the commission may
4 initiate a rulemaking proceeding to determine whether, for certain
5 vessels in certain situations, an alternative national consensus
6 standard would be at least as effective for public health and safety
7 but more cost effective for the persons affected to implement. The
8 commission may by rule apply the alternative national consensus
9 standard in circumstances under which it has determined the
10 alternative standard is as effective for public health and safety
11 but more cost effective.

12 Sec. 26.3444. CERTIFICATION FEE. (a) The commission by
13 rule shall establish fees in amounts sufficient to recover the
14 reasonable costs to:

- 15 (1) implement a registration program for affected
16 facilities;
17 (2) review initial and ten-year certifications;
18 (3) amend certifications;
19 (4) inspect certified facilities; and
20 (5) enforce compliance with applicable standards of
21 Section 26.3442 and rules and orders adopted under those
22 subsections.

23 (b) The certification fee under Subsection (a) shall be
24 deposited to the credit of an account to be named the Performance
25 Standards for Safety at Storage Vessels Program Account.

26 (c) The commission may use the money in the Performance
27 Standards for Safety at Storage Vessels Program Account to pay:

1 (1) necessary expenses associated with the
2 administration of the Performance Standards for Safety at Storage
3 Vessels Program; and

4 (2) expenses associated with the review and amendment
5 of certifications, inspection of certified facilities, and
6 enforcement of the applicable standards of Section 26.3442 and the
7 rules and orders adopted by the Performance Standards for Safety at
8 Storage Vessels Program.

9 SECTION 3. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 900 passed the Senate on April 29, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 27, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 900 passed the House, with amendments, on May 24, 2021, by the following vote: Yeas 145, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor