

By: _____ .B. No. _____

Substitute the following for .B. No. _____:

By: _____ C.S. .B. No. _____

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the safety of storage vessels.

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

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

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

8 (1) maintain and protect the quality of groundwater
9 and surface water resources in the state from certain substances in
10 underground and aboveground storage tanks that may pollute
11 groundwater and surface water resources;

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

15 (3) promote the safety of storage vessels as defined
16 in Section 26.3442, by adopting requirements for the design,
17 construction, operation, and maintenance of storage vessels, with
18 the objective of protecting groundwater and surface water resources
19 in the event of accidents and natural disasters.

20 SECTION 2. Subchapter I, Chapter 26, Water Code, is amended
21 by adding Sections 26.3442, 26.3443, and 26.3444 to read as
22 follows:

23 Section 26.3442 PERFORMANCE STANDARDS FOR SAFETY AT
24 STORAGE VESSELS

1 (a) Definitions:

2 (1) Storage Vessel:

3 (A) is made of nonearthen materials;

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

6 (C) has a capacity of 21,000 gallons or more of a
7 regulated substance as defined by TWC Sec. 26.343; and

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

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

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

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

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

25 (b) The following tanks, including any pipe that is
26 connected to the tank, are not considered to be storage vessels and
27 are exempt from regulation under the Performance Standards for

1 Safety at Storage Vessels requirements in Sections 26.3442,
2 26.3443, and 26.3444:

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

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

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

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

11 (5) heated tanks;

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

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

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

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

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

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

1 (c) Not later than September 1, 2023, the commission shall
2 establish a Performance Standards for Safety at Storage Vessels
3 Program as described in this section to provide for the protection
4 of groundwater and surface water resources from a release of
5 substances from a storage vessel in the event of an accident or
6 natural disaster.

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

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

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

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

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

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

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

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

18 (i) Section 4.3: Tank Shell Evaluation;

19 (ii) Section 4.4: Tank Bottom Evaluation;

20 (iii) Section 4.5: Tank Foundation
21 Evaluation;

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

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

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

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

3 (viii) Section 9: Tank Repair and
4 Alteration;

5 (B) from API Standard 2350: Overfill Protection
6 for Storage Tanks in Petroleum Facilities, the commission shall
7 include the following critical safety elements or recommended
8 practice for storage vessels included in this standard:

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

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

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

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

23 (C) from either National Fire Protection
24 Association (NFPA) 30 Ch. 22 or API Recommended Practice 2001, the
25 commission shall require fire suppression systems on storage
26 vessels subject to the protocol in the applicable standard; and

27 (2) for in-service storage vessels constructed after

1 September 1, 2027:

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

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

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

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

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

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

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

27 (j) An owner or operator of a storage vessel shall comply

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

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

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

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

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

27 (m) the commission shall conduct on-site inspections of the

1 registered/certified facilities at least once every five years to
2 determine compliance with the Performance Standards for Storage
3 Vessels Program. This subsection does not limit the commission's
4 ability to inspect a facility under other state or federal
5 regulations.

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

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

1 safety, and welfare of the citizens of this state.

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

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

16 (1) implement a registration program for affected
17 facilities.

18 (2) review initial and ten-year certifications;

19 (3) amend certifications;

20 (4) inspect certified facilities; and

21 (5) enforce compliance with applicable standards of
22 Sections 26.3442 and rules and orders adopted under those
23 subsections.

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

27 (c) The commission may use the money in the Performance

1 Standards for Safety at Storage Vessels Program account to pay:

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

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

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