

BILL ANALYSIS

C.S.S.B. 900
By: Alvarado
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In March 2019, a fire ignited at the Intercontinental Terminals Company (ITC) in the Houston area. Due to the size and the chemicals involved, the fire was difficult to extinguish and burned for several days. The fire produced harmful air pollution, groundwater and surface water contamination, and millions of gallons of hazardous waste. This fire and other fires at similar facilities underscore the insufficiency of state safety measures to protect public health and safety, groundwater and surface water, and the environment. C.S.S.B. 900 seeks to address this issue by requiring the Texas Commission on Environmental Quality to establish a Performance Standards for Safety at Storage Vessels Program to provide for the protection of groundwater and surface water resources from a release of substances from a storage vessel in the event of an accident or natural disaster.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (amending Subchapter I, Chapter 26, Water Code) of this bill.

ANALYSIS

C.S.S.B. 900 amends the Water Code to establish that the legislature declares that it is a policy of the state and a purpose of provisions governing underground and aboveground storage tanks to promote the safety of storage vessels, as defined by the bill, 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.

C.S.S.B. 900 requires the Texas Commission on Environmental Quality (TCEQ), not later than September 1, 2023, to establish a Performance Standards for Safety at Storage Vessels Program, as prescribed by the bill, to provide for the protection of groundwater and surface water resources from a release of substances from a storage vessel in the event of an accident or natural disaster.

C.S.S.B. 900 provides that a storage vessel is made of nonearthen materials, located on or above the surface of the ground, has a capacity of 21,000 gallons or more of a regulated substance defined in the Water Code, and is located at or is part of a petrochemical plant, a petroleum refinery, or a bulk storage terminal as defined by the bill. The bill establishes that the following tanks, including any pipe that is connected to the tank, are not considered to be storage vessels:

- a tank used in or associated with the production or gathering of crude oil or natural gas;
- a tank that is part of a stormwater or wastewater collection system;
- a flow-through process tank, including a pressure vessel or process vessel and oil and water separators;
- a storage vessel operating above 0.5 Pounds per Square Inch Gauge;
- heated tanks;
- an intermediate bulk container or similar tank that may be moved within a facility;
- a tank regulated under the federal Surface Mining Control and Reclamation Act (30 U.S.C. Sec. 1201 et seq.);
- a tank used for the storage of products regulated under the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.);
- 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;
- a tank or pressure vessel that is used to store liquid petroleum gas; and
- a tank regulated under the U.S. Department of Transportation's (DOT's) Pipeline and Hazardous Materials Safety Administration (PHMSA) (49 U.S.C. 60101 et seq.).

The bill exempts those tanks from regulation under the Performance Standards for Safety at Storage Vessels requirements under the bill's provisions. The bill defines the following terms:

- "bulk storage terminal" to mean a site in Texas, including end-of-line pipeline storage terminals (excluding breakout tanks), refinery storage terminals, for-hire storage terminals, and rail and barge storage terminals; and
- "national consensus standards" to mean any performance standard for storage tanks, or a modification thereof, that:
 - 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
 - was formulated in a manner that afforded an opportunity for diverse views to be considered.

C.S.S.B. 900 requires TCEQ, in establishing applicable portions of the program and except as provided by the bill, to include all and only those critical safety elements that are applicable to a storage vessel, and that TCEQ determines to be critical in Texas for applicable protection of groundwater and surface water resources, from specified federal statutes and regulations and specified national consensus standards, ensuring that the correct critical safety elements are applied to the correct types of storage vessels as delineated in the applicability section of each applicable federal statute and regulation and each applicable national consensus standard. Federal statutes and regulations as follows:

- Clean Air Act Risk Management Plan Rule and Maximum Achievable Control Technology/National Emission Standards for Hazardous Air Pollutants program requirements;
- Resource Conservation and Recovery Act requirements for Treatment, Storage, and Disposal Facilities (40 C.F.R. Parts 264/265, Subparts A-E);
- Spill Prevention, Control, and Countermeasure Regulations (40 C.F.R. part 112); and
- EPA Risk Management Plan Rules regarding accident prevention at facilities that use certain hazardous substances.

National consensus standards as follows:

- for in-service storage vessels constructed on or before September 1, 2027:
 - from American Petroleum Institute (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:
 - Section 4.3: Tank Shell Evaluation;
 - Section 4.4: Tank Bottom Evaluation;
 - Section 4.5: Tank Foundation Evaluation;

- Section 6.2: Inspection Frequency Considerations;
 - Section 6.3: Inspections from the Outside of the Tank;
 - Section 6.4: Internal Inspection, if applicable in accordance with Section 6.3;
 - Section 8: Design Considerations for Reconstructed Tanks; and
 - Section 9: Tank Repair and Alteration;
 - from API Standard 2350 or API Recommended Practices 2350: Overfill Protection for Storage Tanks in Petroleum Facilities, the commission shall include the following critical safety elements for storage vessels included in this standard;
 - Section 4: Overfill Prevention Systems, including management systems and operational procedures before and after product receipt as applicable;
 - Section 5: Overfill Prevention Systems, including requirements for manual or automated overfill prevention systems as applicable, including use of remote operated shutoff valves;
 - the requirements referenced above with respect to Section 4: Overfill Prevention Systems and Section 5: Overfill Prevention Systems only apply to atmospheric tanks as specified in API Standard 2350; and
 - API 2350 assessment protocol to determine how to manage overfill through engineered controls, administrative controls, and hazard class in applicable quantities; and
 - from either National Fire Protection Association (NFPA) 30 Ch. 22 or API Recommended Practice 2001, the commission shall require fire suppression systems on storage vessels subject to the protocol in the applicable standard; and
- for in-service storage vessels constructed after September 1, 2027:
 - all of the standards listed above for in-service storage vessels constructed on or before September 1, 2027; and
 - API 650: Welded Tanks for Oil Storage and NFPA 30, chapter 22 location standards; and
 - NFPA 30, chapter 22 location standards, except for reconstruction standards at an original storage vessel location.

The bill provides that the applicable standard chosen by the commission from either National Fire Protection Association (NFPA) 30 Ch. 22 or API Recommended Practice 2001 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. The bill provides that the applicable standard for in-service storage vessels constructed after September 1, 2027, in API 650: Welded Tanks for Oil Storage and NFPA 30, chapter 22 location standards only applies to atmospheric storage vessels as defined in API 650. The bill authorizes TCEQ to require a plan to control spills from atmospheric storage vessels that includes recommended practices in NFPA 30.

C.S.S.B. 900 requires an owner or operator of a storage vessel to register with TCEQ, assess and report to TCEQ its current compliance status with the program no later than September 1, 2027. The bill requires an owner or operator of a storage vessel constructed and brought into service after September 1, 2027, to register and certify its compliance status to TCEQ with the program no later than 30 days after start of operation. The bill requires an owner or operator of a storage vessel to comply with the program requirements on completion of the next regularly scheduled out-of-service maintenance of the storage vessel by the owner or operator that occurs after September 1, 2027, but requires all facilities to certify compliance status by no later than September 1, 2037. The bill establishes that any modifications or retrofits necessary for compliance with the 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 with TCEQ a demonstration of technical impracticability that TCEQ approves. The bill requires TCEQ in implementing the program to require an owner or operator of a storage vessel or a designated third party as assigned by the owner or operator to certify compliance status every 10 years with applicable federal statutes or national consensus standards referenced by the bill.

C.S.S.B. 900 requires TCEQ to keep confidential information reported to, obtained by, or otherwise submitted to TCEQ that is subject to restrictions on dissemination under federal law, including off-site consequence analysis information subject to Title 40, Part 1400, C.F.R., or that may otherwise present a security risk if disclosed publicly. The bill requires TCEQ to conduct on-site inspections of the registered/certified facilities at least once every five years to determine compliance with the program and establishes that this requirement does not limit the ability of TCEQ to inspect a facility under other state or federal regulations.

C.S.S.B. 900 authorizes TCEQ, in implementing the program, to approve exemption of specific storage vessels otherwise subject to the program from regulation under the program if the legal owner or operator submits a request to TCEQ demonstrating that the vessel presents a sufficiently low risk of floods, storm surges, hurricanes, accidents, fires, explosions, or other hazards such that it does not warrant regulation under the program. The bill requires TCEQ to establish through rulemaking the effective date of an applicable federal law or regulation or an applicable national consensus standard that TCEQ is implementing under the program. The bill requires TCEQ to amend through rulemaking changes if a federal law or regulation or national consensus standard is amended in a way that materially conflicts with current TCEQ implementation of the program except to the extent that TCEQ determines, after a cost-benefit analysis and if not prohibited under federal law, that the program as currently implemented by TCEQ sufficiently effective for protection of the health, safety, and welfare of the citizens of the state. The bill authorizes TCEQ, notwithstanding the bill's requirement that TCEQ include only critical safety elements from specified national consensus standards, to initiate a rulemaking proceeding to determine whether, for certain vessels in certain situations, an alternative national consensus standard would be at least as effective for public health and safety but more cost effective for the persons affected to implement. The bill authorizes TCEQ by rule to apply the alternative national consensus standard in circumstances under which it has determined the alternative standard is as effective for public health and safety but more cost effective.

C.S.S.B. 900 requires TCEQ by rule to establish fees in amounts sufficient to recover the reasonable costs to do the following:

- implement a registration program for affected facilities;
- review initial and ten-year certifications;
- amend certifications;
- inspect certified facilities; and
- enforce compliance with the program's applicable performance standards and adopted rules and orders.

The bill requires the certification fee to be deposited to the credit of an account to be named the Performance Standards for Safety at Storage Vessels Program Account. The bill authorizes TCEQ to use the money in the account to pay the following:

- necessary expenses associated with the program's administration; and
- expenses associated with the review and amendment of certifications, inspection of certified facilities, and enforcement of the applicable standards and the rules and orders adopted by the program.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 900 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute differs from the engrossed by applying to a storage vessel, whereas the engrossed applied to a bulk storage vessel, and making related changes, including changing the bill's program name from the Bulk Storage Vessel Performance Standards Program to the Performance Standards for Safety at Storage Vessels Program. A storage vessel in the substitute differs from a bulk storage vessel in the engrossed by having a capacity of 21,000 gallons or more of an applicable regulated substance as defined by state law instead of having a capacity of 8,000 barrels or more and containing an applicable regulated substance listed under federal law. Whereas the engrossed included a stationary nonvehicular device within the meaning of a "bulk storage vessel" that meets certain other criteria, the substitute does not include a stationary non-vehicular device within the definition for a storage vessel.

The substitute removes a specification in the engrossed that the tanks that are not considered to be applicable storage vessels and that are exempt from regulation under the bill's requirements be aboveground storage tanks. The substitute includes as such an exempt tank a tank used in or associated with the gathering of crude oil or natural gas, whereas the engrossed did not include this tank.

The substitute includes API Recommended Practices 2350 as an alternative to API Standard 2350 with regard to applicable national consensus standards for in-service storage vessels constructed on or before September 1, 2027, and adds as a national consensus standard for in-service storage vessels constructed after September 1, 2027, NFPA 30, chapter 22 location standards, except for reconstruction standards at an original storage vessel location, whereas the engrossed did not contain this inclusion or addition.