

SUBJECT: Regulation of underground petroleum storage tanks

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 6 ayes — Counts, Yost, King, Puente, Stiles Walker

0 nays

3 absent — Combs, Corte, R. Lewis

WITNESSES: None

BACKGROUND: The Texas Natural Resource Conservation Commission (TNRCC) administers a program to monitor and prevent leaks from underground storage tanks. The Petroleum Storage Tank Remediation Fund (PSTRF) was created in 1989 by the Legislature to reimburse tank owners for allowable costs associated with remediation of petroleum storage tank sites.

The PSTRF also enables tank owners to comply with federal Environmental Protection Agency (EPA) financial responsibility guidelines, requiring that operators of underground petroleum storage tanks provide proof of financial responsibility for no less than \$1 million for each spill or leak that occurs.

Risk-based decision making is a method that can be used to determine which sites to clean up first when there are multiple sites creating a possible threat to human health and the environment. The EPA has encouraged the use of risk-based decision making as a part of the corrective action that should be taken at contaminated sites.

The TNRCC has developed a method of risk-based decision making and subsequent actions concerning underground storage tank sites, called, "risk-based corrective action (RBCA) that is consistent with EPA regulations. The TNRCC's RBCA would provide a technical framework to establish goals for storage tank cleanup based on site-specific factors that could lead to environmental contamination and risks to human health.

DIGEST: HB 3032 would amend the Water Code to include "risk-based corrective actions" as a required method of implementing state goals of protecting the quality of groundwater and surface water resources. Risk-based corrective actions would mean a site assessment or remediation determined according to a case-by-case consideration of actual or potential risk to public health

from environmental exposure to a regulated substance released from a leaking petroleum storage tank.

TNRCC would be required to use risk-based corrective action (RBCA) in negotiations with responsible parties about site assessment and remediation matters. RBCA procedures would be used to establish, by rule, cleanup levels, criteria for assigning priority, priority for each site and risk-based corrective action procedures. TNRCC would also adopt, by rule, criteria for the issuance of a closure letter to a tank operators or owners if they completed the TNRCC's required remediation.

The bill would amend the Water Code to require technical upgrades on underground storage tank systems including release detection and spill and overflow equipment. By December 22, 1998, tank owners would also have to comply with corrosion protection requirements. The TNRCC could issue a notice to a tank owner or operator who had not complied with these requirements, and if the violation was not corrected within 30 days, order the noncomplying equipment out of service.

Lenders would not be liable for property containing petroleum storage tanks as long as the lender was not involved in management of the property before foreclosure, ownership was maintained after foreclosure and held primarily to protect a security interest, and within 12 months the lender listed the property with a broker, or advertised the property monthly.

Lenders who rejected an offer of fair consideration for the property would no longer be presumed to be maintaining ownership to protect a security interest unless the lender were required by law to obtain an offer in a different matter.

TNRCC would be allowed to audit claims or deny claims as a result of a claims audit, using only TNRCC rules in effect when the audit was conducted. The commission could also audit claims suspected of fraud. Within 90 days after completing an audit, the TNRCC would be required to send a copy of the audit to the person whose claim was audited.

The bill would take effect September 1, 1995.

SAY: also on today's calendar) implementing the recommendations of the Joint Interim Committee on Petroleum Storage Tanks. A leaking underground storage tank is a direct threat to human health and groundwater supplies and should be cleaned up before a storage tank that may not pose immediate risks. The use of "risk-based corrective action" (RBCA) would allow the TNRCC to determine the amount of remediation that must be performed at a tank site based on the actual and potential risk posed by that specific site.

RBCA could save the state as much as \$300 million. The costs for cleanup would be reduced, since no more cleanup than was necessary would be performed at sites that had been carefully evaluated.

Allowing the TNRCC to close a site where the owner has not promptly complied with state and federal tank storage tank requirements would encourage compliance and reward those tank owners who have, in good faith, made a financial commitment to comply with the law. Currently, a tank owner who does not comply with state and federal requirements has an unfair competitive advantage over a tank owner who has spent the money to clean up the site.

This bill would also clearly define the limits of liability for lenders who are reluctant to lend money to small businesses for a facility that may have a substantial liability before a cleanup is finished. The more money lent to small facilities for remediation, the faster the problem of contaminated tank sites would be solved. The TNRCC's issuance of a closure letter to the owner of a tank site that has been satisfactorily remediated, would reassure lenders.

Tank upgrades including release detection and spill and overfill equipment are already required by federal law, and corrosion protection would be required by December 22, 1998.

Allowing TNRCC to deny claims as a result of a claims audit, using only the rules in effect when the audit was conducted, would make sure the claimants had a fair shot at reimbursement. In the past, full reimbursements were sometimes denied when invoices were provided to substantiate the costs, but those costs were deemed excessive by the TNRCC. The tank owners claim the work done was required by TNRCC field personnel, but TNRCC did not provide written guidelines to show what a reasonable cost would be for work done at the sites.

OPPONENTS
SAY:

To give a tank owner only 30 days to comply with the complicated remediation required by state and federal laws is unrealistic. HB 3032 would allow TNRCC to order an underground tank system out of service only 30 days after the agency has issued a notice of violation. It could take a tank owner 30 days to find a contractor willing to do the work. The grace period should be longer.

NOTES:

Related bills, HB 834 by Alexander, which would permit transfer of up to \$120 million from the general revenue fund to the Petroleum Storage Tank Remediation Fund, and HB 2587 by Alexander, which would prohibit PSTRF reimbursement for actions reported to TNRCC after 1998 and give TNRCC enforcement power over those who repair and install storage tanks, are also on today's calendar.

A bill identical to HB 3032, SB 1501 by Sims and Brown, was incorporated in SB 1105 by Sims/Brown (companion to HB 2587) along with SB 396 by Sims/Brown (companion to HB 843) and several new provisions by the Senate Natural Resources Committee, which left the bill pending on April 27.