

SUBJECT: Petroleum storage tank program revisions

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 6 ayes — Counts, T. King, Corte, Hamric, Shields, Walker
0 nays
3 absent — Cook, R. Lewis, Puente

WITNESSES: For — Chris Newton, Texas Petroleum Marketers and Convenience Store Association
Against — None

BACKGROUND: In 1989, in view of the serious problems posed by leaking underground storage tanks and contaminated sites threatening serious groundwater contamination, the Legislature created the petroleum storage tank remediation account (PSTRA). It serves as an inclusive state-sponsored insurance fund and is funded by a bulk fuel-delivery fee. The PSTRA is used to help contractors and tank owners with the expenses of cleaning up contaminated sites. Tank owners pay a deductible based on the number of tanks they own and can make up the rest, up to \$1 million per site, with PSTRA funds.

Under Water Code, sec. 25.3512(e), tank owners and operators can be held responsible for the first \$1,000 of cleanup expenses for fewer than 13 tanks and for up to \$10,000 for 1,000 or more tanks if the Texas Natural Resource Conservation Commission (TNRCC) approved their corrective action plans before December 23, 1997.

Under sec. 25.3512(h), owners and operators whose action plans were not approved before December 23, 1997, can be held responsible for the first \$4,000 of cleanup expenses for fewer than 13 tanks and for up to \$40,000 for 1,000 or more tanks.

Under sec. 25.3512(j), if owners or operators do not have a corrective action plan in place approved by TNRCC or, as of December 23, 1998, had not met the goals specified in the plan to be met by that date, they can be held

responsible for the first \$8,000 of cleanup expenses for fewer than 13 tanks and for up to \$80,000 for 1,000 tanks or more.

DIGEST:

CSHB 2815 would extend several deadlines for those already participating in the petroleum storage tank program. The bill also would require underground storage tank owners and operators to complete an annual compliance certification form and require persons who deposit fuel in tanks to ensure that compliance certifications had been issued for those tanks.

An underground storage tank owner's corrective action plan would have to have been approved before June 23, 1998, rather than before December 23, 1997, for the owner or operator to qualify for the lowest deductibles for initial cleanup expenses as provided by Water Code, sec. 25.3512(e). The bill would extend until December 23, 1999, the deadline by which owners or operators would have to have met the goals in a corrective action plan to qualify for those same deductibles.

An owner or operator whose corrective action plan was not approved before June 23, 1998, rather than before December 23, 1997, would have to pay the deductibles specified in sec. 25.3512(h).

Owners and operators without corrective action plans approved by the commission and who had not met the goals set in the plan before December 23, 1999, rather than before December 23, 1998, as in current law, would have to pay the deductibles specified in sec. 25.3512(j).

TNRCC would have to require underground storage tank owners or operators to complete an annual compliance certification form. The agency would have to issue each owner and operator of a registered storage tank a registration and compliance confirmation certificate describing their responsibility to complete accurately the part of the registration form pertaining to the certification of compliance with underground storage tank administrative requirements and technical standards.

An owner or operator who did not provide proof of registration or certification of compliance on TNRCC's request would be liable for a civil penalty under Water Code, chapter 7, subchapter D, which provides for a penalty of no less than \$50 or no more than \$25,000 for each day of each violation. Each day of a continuing violation would be a separate violation.

Anyone selling a regulated substance for deposit into an underground storage tank would have to ensure that a certificate of compliance had been issued for the tank before ordering delivery of that substance into the tank. A regulated substance, as defined in the Water Code, is a substance that, if released into the environment, may present a substantial danger to public health, welfare, or the environment. The penalty for a seller who did not comply with this provision would be a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000.

It also would be a Class A misdemeanor to deposit a regulated substance into an underground storage tank regulated under Water Code, chapter 26, which regulates water quality, unless the tank was issued a valid underground storage tank registration and certificate of compliance.

If, in the exercise of good faith, a person deposited a regulated substance into a tank, the receipt of the certificate of compliance for that tank would be considered prima facie evidence of compliance with the bill's requirements.

CSHB 2815 would take effect September 1, 1999.

**SUPPORTERS
SAY:**

Although current law requires that petroleum storage tanks have to have been equipped with overfill spill-containment systems, line-leak detection, and other environmental controls by December 22, 1998, nothing in the statute prohibits motor fuel distributors from placing fuel in tanks that have not been upgraded. This defeats the purpose of the underground storage tank program that the Legislature enacted to protect Texas' soil and water resources from contamination by leaking tanks.

CSHB 2815 would remedy this situation by requiring owners and operators of underground storage tanks to complete an annual certification of their tanks to ensure that they are complying with TNRCC's rules and technical standards. This certificate would have to be submitted to TNRCC for the tank owners to be able to receive a fuel delivery.

Gas station owners and other operators of underground storage tanks could not order a trucker to deliver fuel unless their tanks had been issued certificates of compliance. Submitting false information to TNRCC or depositing a regulated substance in a noncompliant tank could result in

substantial penalties. Currently, motor fuel distributors who refuse to deliver fuel to a leaking tank risk losing that account to unscrupulous distributors because no law prohibits this practice.

The bill also would extend deadlines to enable tank owners who already have corrective action plans in place to take advantage of PSTRA funds. The PSTRA program now requires tank owners to have submitted and received TNRCC approval of a correction action plan before December 23, 1997, and the owner must have achieved the specific goals in the plan by December 22, 1998.

Corrective action plans have taken longer to develop than originally thought, for a number of reasons. To develop such a plan, for example, owners had to gain access to off-site areas to determine whether or not contamination had migrated from the owner's property. In some cases, this took months while the tank owner and neighbors reached an agreement.

Also, TNRCC changed the way it determined each site's potential harm to human health, which further delayed the process. As a result, many owners failed to meet their deadlines. CSHB 2825 would extend the deadline to meet requirements of the corrective action plan to December 23, 1999, and would extend the deadline for TNRCC approval of a corrective action plan to June 23, 1998.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The original bill did not include the provision requiring those selling regulated substances to ensure, before ordering delivery, that a certificate of compliance had been issued for the tank and providing penalties for a person who did not do this.

The companion bill, SB 1299 by Brown, was referred to the Senate Natural Resources Committee on March 15.

A related bill, HB 2816 by Junell, which would reduce bulk fuel-delivery fees but extend the duration of their collection and which would extend the petroleum storage tank reimbursement program, passed the House on April 22 and has been referred to the Senate Natural Resources Committee.