

SUBJECT: Establishing performance standards for safety at certain storage vessels

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Landgraf, Dominguez, Dean, Goodwin, Kacal, Kuempel, Morales Shaw, Reynolds

0 nays

1 absent — Morrison

SENATE VOTE: On final passage, April 29 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Water Code ch. 26, subch. I governs underground and aboveground storage tanks with the purpose of maintaining and protecting the quality of groundwater and surface water resources in Texas from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources. The subchapter requires the use of all reasonable methods, including risk-based corrective action, to implement the subchapter's policies.

Following fires at various facilities across the state, interested parties have raised concerns regarding the insufficiency of state safety measures to protect public health and safety, groundwater and surface water, and the environment.

DIGEST: CSSB 900 would require the Texas Commission on Environmental Quality (TCEQ) 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. The bill would add to the provisions in the Water Code governing underground and aboveground storage tanks the purpose of promoting the safety of storage vessels by adopting requirements for the design, construction, operation, and

maintenance of such vessels.

Definitions. The bill would define "storage vessel" as:

- being made of nonearthen materials;
- being located on or above the surface of the ground;
- having a capacity of 21,000 gallons or more of a regulated substance; and
- being located at or being part of a petrochemical plant, a petroleum refinery, or a bulk storage terminal.

"Bulk storage terminal" would be defined as a site, including end-of-line pipeline storage terminals (excluding breakout tanks), refinery storage terminals, for-hire storage terminals, and rail and barge storage terminals.

"National consensus standards" would mean any performance standard for storage tanks, or a modification thereof that:

- had been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it could be determined by the commission that persons interested and affected by the scope or provisions of the standard had reached substantial agreement on its adoption; and
- was formulated in a manner that afforded an opportunity for diverse views to be considered.

Program. By September 1, 2023, TCEQ would have to establish the storage vessels program.

Standards. In developing the program, the commission would have to include all and only those critical safety elements applicable to a storage vessel, and that the commission determined to be critical for the protection of groundwater and surface water resources, from federal statutes and regulations specified by the bill and from national consensus standards specified by the bill. The commission would have to ensure that the correct critical safety elements were applied to the correct types of storage

vessels as delineated in the applicability section of each specified federal statute and regulation and national consensus standard.

The bill also would include certain applicability provisions and authorizations regarding the specified national consensus standards.

TCEQ could 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 to implement. The commission could apply the alternative standard in circumstances under which it had determined the alternative standard was as effective for public health and safety but more cost effective.

TCEQ would have to establish through rulemaking the effective date of a federal law or regulation, or a national consensus standard, that the commission was implementing. The commission would have to amend changes if a federal law or regulation or national consensus standard was amended in a way that materially conflicted with the commission's implementation of the program, except to the extent that the commission determined that the program as implemented was sufficiently effective for protection of the health, safety, and welfare of the citizens of Texas.

Compliance. By September 1, 2027, an owner or operator of a storage vessel would be required to register with TCEQ and assess and report to the commission its compliance status with the performance standards of the program. For storage vessels constructed and brought into service after that date, an owner or operator would have to register and certify its compliance status to TCEQ with the program no later than 30 days after the start of operation.

An owner or operator would have to comply with the program requirements on completion of the next regularly scheduled out-of-service maintenance of the vessel that occurred after September 1, 2027. However, all facilities would have to certify compliance status by September 1, 2037. Any modification or retrofit necessary for compliance

should be made during out-of-service maintenance periods unless the owner or operator made and recorded with the commission a demonstration of technical impracticability that the commission approved.

TCEQ would have 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 the specified federal statutes and regulations and national consensus standards.

TCEQ would have to conduct on-site inspections of registered facilities at least once every five years for determining compliance with the program. The commission would still have the ability to inspect a facility under other state or federal regulations.

Confidentiality. TCEQ would have to keep confidential information reported to, obtained by, or otherwise submitted to the commission that was subject to restrictions on dissemination under federal law or could otherwise present a security risk, if disclosed publicly.

Commission exemptions. TCEQ could approve exemption of specific storage vessels from regulation under the program if the legal owner or operator submitted a request to the commission demonstrating that the vessel presented a sufficiently low risk of floods, storm surges, hurricanes, accidents, fires, explosions, or other hazards such that it did not warrant regulation.

Certification and fees. TCEQ would have to establish fees in amounts sufficient to recover the reasonable costs to:

- implement a registration program for affected facilities;
- review initial and 10-year certifications;
- amend certifications;
- inspect certified facilities; and
- enforce compliance with applicable standards.

The certification fees would be deposited to the credit of an account to be

named the Performance Standards for Safety at Storage Vessels Program Account. TCEQ could use the money in the account to pay necessary expenses associated with the administration of the program and expenses associated with the review and amendment of certifications, inspection of certified facilities, and enforcement of the applicable standards of and rules and orders adopted by the program.

Exceptions. The following tanks, including any pipe connected to the tank, would not be considered to be storage vessels and would be exempt from the bill's provisions:

- a tank used in or associated with the production or gathering of crude oil or natural gas;
- a tank that was 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 could be moved within a facility;
- a tank regulated under the federal Surface Mining Control and Reclamation Act;
- a tank used for the storage of products regulated under the Federal Food, Drug, and Cosmetic Act;
- a tank, including piping and collection and treatment systems, that was used in the management of leachate, methane gas, or methane gas condensate, unless the tank was used for storage of a regulated substance;
- a tank or pressure vessel that was used to store liquid petroleum gas; and
- a tank regulated under the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about \$350,000 to general revenue related funds through fiscal 2023.

The House companion bill, HB 2780 by Paddie, was considered by the House Environmental Regulation Committee in a public hearing on May 3 and left pending.