

BILL ANALYSIS

Senate Research Center

S.B. 900
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Natural Resources & Economic Development
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In March 2019, a fire ignited at the ITC terminals in the Houston area. Due to the size and the chemicals involved, the fire was difficult to extinguish and burned for approximately one week. This produced harmful air pollution, ground and surface water contamination, and millions of gallons of hazardous waste. The ITC fire and several additional fires at similar facilities underscore the insufficiency of state safety measures. This incident in particular highlights the existing regulatory scheme's failure to protect public health and safety, ground and surface water, and the environment. Currently, the state lacks a comprehensive program to oversee these complex facilities.

S.B. 900 directs the Texas Commission on Environmental Quality (TCEQ) to establish the Bulk Storage Vessel Performance Standards program. It requires TCEQ to create and enforce safety requirements to protect ground and surface water and mitigate potential safety hazards and minimize catastrophic incidents in the event of an accident or natural disaster. The program incorporates all critical safety elements from federal statutes, regulations, and national consensus standards that are applicable and necessary to provide protection in the event of an incident. These include standards for the construction of new tanks and standards for existing tanks. The requirements include enhanced safety measures such as remote shut off valves, overflow prevention, and fire suppression.

As proposed, S.B. 900 amends current law relating to the safety of aboveground storage tanks.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 5 (Section 26.3443, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 26.341(b), Water Code, to provide that the legislature declares that it is the policy of this state and the purpose of Subchapter I (Underground and Aboveground Storage Tanks) to protect certain resources, including to promote the safety of aboveground storage tanks by the adoption of performance standards for the design, construction, operation, and maintenance of aboveground storage tanks, with the objective of protecting groundwater and surface water resources in the event of accidents and natural disasters. Makes nonsubstantive changes.

SECTION 2. Amends Section 26.342, Water Code, by amending Subdivision (1) and adding Subdivision (7-a), to redefine "aboveground storage tank" and to define "national consensus standards" for Subchapter I.

SECTION 3. Amends Sections 26.344(c), (d), and (f), Water Code, as follows:

(c) Provides that, notwithstanding Subsection (f), an interstate pipeline facility, including gathering lines, or an aboveground storage tank connected to such a facility is exempt from regulation under Subchapter I if the pipeline facility is regulated under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law. Makes a nonsubstantive change.

(d) Provides that, notwithstanding Subsection (f), an intrastate pipeline facility or an aboveground storage tank connected to such a facility is exempt from regulation under Subchapter I, but is not exempt from performance standards adopted under Section 26.3442 if the pipeline facility is regulated under Chapter 111 (Common Carriers, Public Utilities, and Common Purchasers), Natural Resources Code; Chapter 117 (Hazardous Liquid or Carbon Dioxide Pipeline Transportation Industry), Natural Resources Code; or Subchapter E (Pipeline Safety), Chapter 121 (Gas Pipelines), Utilities Code. Makes a nonsubstantive change.

(f) Provides that an aboveground storage tank that is located at or is part of a petrochemical plant, a petroleum refinery, an electric generating facility, or a bulk facility as that term is defined by Section 26.3574(a) (relating to the definitions of "bulk facility," "cargo tank," "supplier," and "withdrawal from bulk") is exempt from regulation under Subchapter I but is not exempt for purposes of the fee imposed under Section 26.3574 (Fee on Delivery of Certain Petroleum Products) or the performance standards adopted under Section 26.3442. Makes nonsubstantive changes.

SECTION 4. Amends Section 26.3441(b), Water Code, to prohibit the Texas Commission on Environmental Quality (TCEQ) from developing a regulatory program for aboveground storage tanks that is more extensive than the regulatory program authorized by Subchapter I and Section 26.3442, rather than authorized by Subchapter I, unless additional regulation of aboveground storage tanks is necessary to comply or be in conformity with requirements adopted by the United States Environmental Protection Agency or with federal law.

SECTION 5. Amends Subchapter I, Chapter 26, Water Code, by adding Sections 26.3442, 26.3443, and 26.3444, as follows:

Sec. 26.3442. ABOVEGROUND STORAGE TANK SAFETY PROGRAM AND PERFORMANCE STANDARDS. (a) Provides that this section applies only to an aboveground storage tank described by Section 26.342(1).

(b) Requires TCEQ, not later than September 1, 2023, to establish an Aboveground Storage Tank Safety Program as described in this section to provide for the protection of public health and safety as well as groundwater and surface water resources from a release of substances from an aboveground storage tank in the event of an accident or natural disaster.

(c) Provides that TCEQ, in establishing the Aboveground Storage Tank Safety Program under this section, is required to include but is limited to critical safety elements from certain statutes and regulations as applicable to an aboveground storage tank.

(d) Requires that the Aboveground Storage Tank Safety Program under this section include but is limited to critical safety elements from certain national consensus standards as applicable to an aboveground storage tank.

(e) Provides that the applicable standard in Subsection (d)(1)(C) (relating to the TCEQ requirement that aboveground storage tanks constructed on or before September 1, 2027 have fire suppression systems) only applies to material stored at atmospheric pressure with a flashpoint less than or equal to 100 Fahrenheit as defined by the Occupational Safety and Health Administration (OSHA) Process Safety Management.

(f) Provides that the applicable standard in Subsection (d)(2)(B) (relating to the TCEQ requirement that aboveground storage tanks constructed after September 1, 2027, meet certain standards) only applies to atmospheric aboveground storage tanks as defined in American Petroleum Institute Standard (API) 650 and does not apply to aboveground storage tanks already regulated or managed under OSHA Standards for Process Safety Management.

(g) Authorizes TCEQ to require a plan to control spills from Atmospheric Storage Tanks that includes recommended practices in National Fire Protection Association (NFPA) 30.

(h) Requires an owner or operator of an aboveground storage tank to assess and report to TCEQ its current compliance status with the Aboveground Storage Tank Safety Program no later than September 1, 2027.

(i) Requires an owner or operator of an aboveground storage tank to comply with the Aboveground Storage Tank Safety Program requirements consistent with and upon completion of the next regularly scheduled out-of-service maintenance of the aboveground storage tank by the owner or operator that occurs after September 1, 2027. Provides that any modifications or retrofits necessary for compliance with the Aboveground Storage Tank Safety 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 a demonstration of infeasibility.

(j) Requires that the Aboveground Storage Tank Safety Program require an owner or operator of an aboveground storage tank or a designated third party as assigned by the owner or operator to certify compliance status every 10 years with the standards referenced in Subsections (c) and (d) as applicable.

(k) Requires that the Aboveground Storage Tank Safety Program under this section allow for exemptions for aboveground storage tanks with low risk of floods, storm surges, hurricanes, accidents, fires, explosions, or other hazards.

(l) 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 but not limited to off-site consequence analysis information subject to Title 40, Part 1400, Code of Federal Regulations, or may otherwise present a security risk, if disclosed publicly.

Sec. 26.3443. CERTIFICATION FEE. (a) Requires TCEQ by rule to establish fees in amounts sufficient to recover the reasonable costs to review certifications, amend certifications, inspect certified facilities, and enforce certification of compliance with applicable standards of Sections 26.3442(c) and (d) and the rules and orders adopted by this certification.

(b) Requires that the certification fee under Subsection (a) be deposited to the credit of an account to be named the Aboveground Storage Tank Safety Program Account.

SECTION 6. Amends the heading to Section 26.347, Water Code, to read as follows:

Sec. 26.347. UNDERGROUND STORAGE TANK STANDARDS.

SECTION 7. Effective date: September 1, 2021.