

BILL ANALYSIS

Senate Research Center

S.B. 900
By: Alvarado
Natural Resources & Economic Development
5/28/2021
Enrolled

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.

(Original Author's / Sponsor's Statement of Intent)

S.B. 900 amends current law relating to the safety of storage vessels.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Sections 26.3443 and 26.3444, 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 among the purposes of Subchapter I (Underground and Aboveground Storage Tanks) to promote the safety of storage vessels as defined in Section 26.3442, 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. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter I, Chapter 26, Water Code, by adding Sections 26.3442, 26.3443, and 26.3444, as follows:

Sec. 26.3442. PERFORMANCE STANDARDS FOR SAFETY AT STORAGE VESSELS. (a) Defines "storage vessel," "bulk storage terminal," and "national consensus standards."

(b) Provides that certain listed tanks, including any pipe that is connected to the tank, are not considered to be storage vessels and are exempt from regulation

under the Performance Standards for Safety at Storage Vessels Program (program) requirements in Sections 26.3442, 26.3443, and 26.3444.

(c) Requires the Texas Commission on Environmental Quality (TCEQ), not later than September 1, 2023, to establish a program as described in this section 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.

(d) Requires TCEQ, in establishing the portion of the program governed by this subsection, except as provided by Section 26.3443, to include all and only those critical safety elements that are applicable to a storage vessel, and that TCEQ determines to be critical in this state for the protection described by Subsection (c), from certain federal statutes and regulations, ensuring that the correct critical safety elements are applied to the correct types of storage vessels as delineated in the applicability section of each cited federal statute and regulation.

(e) Requires TCEQ, in establishing the portion of the program governed by this subsection, to, except as provided by Section 26.3443, include all and only those critical safety elements that are applicable to a storage vessel, and that TCEQ determines to be critical in this state for the protection described by Subsection (c), from certain 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 cited national consensus standard.

(f) Provides that the applicable standard chosen by TCEQ under Subsection (e)(1)(C) (relating to the TCEQ requirement that in-service storage vessels 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.

(g) Provides that the applicable standard in Subsection (e)(2)(B) (relating to the TCEQ requirement that in-service storage vessels constructed after September 1, 2027, meet certain standards) only applies to atmospheric storage vessels as defined in American Petroleum Institute Standard (API) 650.

(h) Authorizes TCEQ to require a plan to control spills from atmospheric storage vessels that includes recommended practices in National Fire Protection Association (NFPA) 30.

(i) 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. Requires an owner or operator of a storage vessel, for storage vessels 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 the start of operation.

(j) 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. Requires all facilities to certify compliance status by no later than September 1, 2037. Provides 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.

(k) 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 the standards referenced in Subsections (d) and (e) as applicable.

(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 off-site consequence analysis information subject to Title 40, Part 1400, C.F.R., or may otherwise present a security risk, if disclosed publicly.

(m) Requires TCEQ to conduct on-site inspections of the registered/certified facilities at least once every five years to determine compliance with the program. Provides that this subsection does not limit TCEQ's ability to inspect a facility under other state or federal regulations.

Sec. 26.3443. CERTAIN COMMISSION EXEMPTIONS AND RULES; AMENDMENTS AND ALTERNATIVE STANDARDS. (a) Authorizes TCEQ, in implementing the program under Section 26.3442, to approve exemption of specific storage vessels otherwise subject to Section 26.3442 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.

(b) Requires TCEQ to establish through rulemaking the effective date of a federal law or regulation that TCEQ is implementing under Section 26.3442(d), or a national consensus standard that TCEQ is implementing under Section 26.3442(e). 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 TCEQ's current 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 is sufficiently effective for protection of the health, safety, and welfare of the citizens of this state.

(c) Authorizes TCEQ, notwithstanding the requirement of Section 26.3442(e) 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. 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.

Sec. 26.3444. CERTIFICATION FEE. (a) Requires TCEQ by rule to establish fees in amounts sufficient to recover the reasonable costs to implement a registration program for affected facilities, to review initial and ten-year certifications, to amend certifications, to inspect certified facilities, and to enforce compliance with applicable standards of Sections 26.3442 and rules and orders adopted under those subsections.

(b) Requires that the certification fee under Subsection (a) be deposited to the credit of an account to be named the Performance Standards for Safety at Storage Vessels Program Account (program account).

(c) Authorizes TCEQ to use the money in the program 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 Section 26.3442 and the rules and orders adopted by the program.

SECTION 2. Effective date: September 1, 2021.