

Amend CSHB 2694, in Article 4 of the bill, by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION 4.\_\_\_\_. Section 26.3513, Water Code, is amended by amending Subsections (a), (b), (c), (d), (e), (f), (g), and (h) and adding Subsection (b-1) to read as follows:

(a) This section applies at a site where:

(1) the owner and the operator are different persons;

(2) [~~or at a site where~~] there is more than one underground storage tank, petroleum storage tank, or a combination of both; or

(3) an underground storage tank or petroleum storage tank has one or more previous owners or operators.

(b) Each owner and operator or previous owner or operator of an underground storage tank or petroleum storage tank at a site to which this section applies and from which a release or threatened release occurs is responsible for taking all corrective action at the site which may be required under this subchapter; provided that liability for the expenses of corrective action among owners and operators may be apportioned as provided by this section.

(b-1) A previous owner or operator is not liable under this section if the owner or operator proves that no release occurred during the time that the person owned or operated the tank.

(c) All owners and operators, including previous owners and operators, of underground storage tanks and petroleum storage tanks at a site to which this section applies shall attempt to negotiate a settlement among themselves as to the apportionment of expenses.

(d) If the owners and operators, including previous owners and operators, reach a settlement as to the apportionment of expenses on or before the 30th day from the date on which the commission issues an order requiring corrective action, they shall submit the settlement to the commission for review. If the commission approves the settlement, the parties shall be liable for the expenses of taking corrective action in accordance with the approved settlement. Any action for breach of contract on the settlement agreement shall be to the district court of Travis County.

(e) If the parties cannot reach a settlement by the 30th day after the commission issues its order, the commission shall file suit in the district court of Travis County. In its petition, the commission:

(1) shall request the court to apportion the expenses of corrective action among the owners and operators, including previous owners and operators; and

(2) may request the court to award recovery of costs as provided by Section 26.355 of this code. In the alternative, the commission may file an action for recovery of costs at a later time.

(f) Where the owner or operator, including a previous owner or operator, can prove by a preponderance of the evidence that liability for the expenses of taking corrective action in response to a release or threatened release is divisible, that person shall be liable for the expenses only to the extent that the impact to the groundwater, surface water, or subsurface soils is attributable to the release or threatened release from that person's ~~his~~ underground storage tank or petroleum storage tank.

(g) The court may allocate corrective action costs among liable parties, using such equitable factors as the court determines are appropriate if the evidence is insufficient to establish each party's divisible portion of the liability for corrective action under Subsection (f) of this section and joint and several liability would impose undue hardship on the owners and operators, including previous owners and operators.

(h) If the court apportions liability for the expenses of corrective action as provided by Subsection (f) or (g) of this section, cost recovery against the owners and operators, including previous owners and operators, shall be based on the apportionment.