

1-1 By: Alvarado S.B. No. 900  
 1-2 (In the Senate - Filed March 1, 2021; March 11, 2021, read  
 1-3 first time and referred to Committee on Natural Resources &  
 1-4 Economic Development; April 20, 2021, reported adversely, with  
 1-5 favorable Committee Substitute by the following vote: Yeas 8,  
 1-6 Nays 0; April 20, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 900 By: Alvarado

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the safety of bulk storage vessels.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. Section 26.341(b), Water Code, is amended to  
 1-24 read as follows:  
 1-25 (b) The legislature declares that it is the policy of this  
 1-26 state and the purpose of this subchapter to:  
 1-27 (1) maintain and protect the quality of groundwater  
 1-28 and surface water resources in the state from certain substances in  
 1-29 underground and aboveground storage tanks that may pollute  
 1-30 groundwater and surface water resources; ~~and~~  
 1-31 (2) require the use of all reasonable methods,  
 1-32 including risk-based corrective action, to implement this policy;  
 1-33 and  
 1-34 (3) promote the safety of bulk storage vessels as  
 1-35 defined in Section 26.3442, by adopting requirements for the  
 1-36 design, construction, operation, and maintenance of bulk storage  
 1-37 vessels, with the objective of protecting groundwater and surface  
 1-38 water resources in the event of accidents and natural disasters.  
 1-39 SECTION 2. Subchapter I, Chapter 26, Water Code, is amended  
 1-40 by adding Sections 26.3442, 26.3443, and 26.3444 to read as  
 1-41 follows:  
 1-42 Section 26.3442 BULK STORAGE VESSEL PERFORMANCE STANDARDS  
 1-43 PROGRAM. (a) Definitions:  
 1-44 (1) "Bulk storage vessel" means a stationary,  
 1-45 nonvehicular device that:  
 1-46 (A) is made of nonearthen materials;  
 1-47 (B) is located on or above the surface of the  
 1-48 ground;  
 1-49 (C) has a capacity of 8,000 barrels or more;  
 1-50 (D) contains a regulated substance:  
 1-51 (i) listed under Section 101(14) of the  
 1-52 Comprehensive Environmental Response, Compensation, and Liability  
 1-53 Act of 1980 (42 U.S.C. Section 9601 et seq.), but does not include a  
 1-54 substance regulated as a hazardous waste under the federal Solid  
 1-55 Waste Disposal Act (42 U.S.C. Section 6921 et seq.); or  
 1-56 (ii) listed under Environmental Protection  
 1-57 Agency 40 C.F.R. 68.130; and  
 1-58 (E) is located at or is part of a petrochemical  
 1-59 plant, a petroleum refinery, or a bulk storage terminal as that term  
 1-60 is defined by Subsection (a)(2).

2-1 (2) "Bulk storage terminal" means a site in this  
 2-2 state, including end-of-line pipeline storage terminals (excluding  
 2-3 breakout tanks), refinery storage terminals, for-hire storage  
 2-4 terminals, and rail and barge storage terminals.

2-5 (3) "National consensus standards" means any  
 2-6 performance standard for storage tanks, or a modification thereof,  
 2-7 that:

2-8 (A) has been adopted and promulgated by a  
 2-9 nationally recognized standards-producing organization under  
 2-10 procedures whereby it can be determined by the commission that  
 2-11 persons interested and affected by the scope or provisions of the  
 2-12 standard have reached substantial agreement on its adoption; and

2-13 (B) was formulated in a manner that afforded an  
 2-14 opportunity for diverse views to be considered.

2-15 (b) The following aboveground storage tanks, including any  
 2-16 pipe that is connected to the tank, are not considered to be a bulk  
 2-17 storage vessel and are exempt from regulation under the Bulk  
 2-18 Storage Vessel Performance Standards Program requirements in  
 2-19 Sections 26.3442, 26.3443, and 26.3444:

2-20 (1) a tank used in or associated with the production of  
 2-21 crude oil or natural gas;

2-22 (2) a tank that is part of a stormwater or wastewater  
 2-23 collection system;

2-24 (3) a flow-through process tank, including a pressure  
 2-25 vessel or process vessel and oil and water separators;

2-26 (4) a storage vessel operating above 0.5 Pounds per  
 2-27 Square Inch Gauge;

2-28 (5) heated tanks;

2-29 (6) an intermediate bulk container or similar tank  
 2-30 that may be moved within a facility;

2-31 (7) a tank regulated under the federal Surface Mining  
 2-32 Control and Reclamation Act (30 U.S.C. Sec. 1201 et seq.);

2-33 (8) a tank used for the storage of products regulated  
 2-34 under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301  
 2-35 et seq.);

2-36 (9) a tank, including piping and collection and  
 2-37 treatment systems, that is used in the management of leachate,  
 2-38 methane gas, or methane gas condensate, unless the tank is used for  
 2-39 storage of a regulated substance;

2-40 (10) a tank or pressure vessel that is used to store  
 2-41 liquid petroleum gas; and

2-42 (11) a tank regulated under the U.S. Department of  
 2-43 Transportation's (DOT's) Pipeline and Hazardous Materials Safety  
 2-44 Administration (PHMSA) (49 U.S.C. 60101 et seq.).

2-45 (c) Not later than September 1, 2023, the commission shall  
 2-46 establish a Bulk Storage Vessel Performance Standards Program as  
 2-47 described in this section to provide for the protection of  
 2-48 groundwater and surface water resources from a release of  
 2-49 substances from a storage vessel in the event of an accident or  
 2-50 natural disaster.

2-51 (d) In establishing the portion of the Bulk Storage Vessel  
 2-52 Performance Standards Program governed by this subsection, the  
 2-53 commission shall, except as provided by Section 26.3443, include  
 2-54 all and only those critical safety elements that are applicable to a  
 2-55 storage vessel, and that the commission determines to be critical  
 2-56 in this state for the protection described by Subsection (c), from  
 2-57 the following federal statutes and regulations, ensuring that the  
 2-58 correct critical safety elements are applied to the correct types  
 2-59 of storage vessel as delineated in the applicability section of  
 2-60 each cited federal statute and regulation:

2-61 (1) Clean Air Act Risk Management Plan Rule and  
 2-62 Maximum Achievable Control Technology/National Emission Standards  
 2-63 for Hazardous Air Pollutants program requirements;

2-64 (2) Resource Conservation and Recovery Act  
 2-65 requirements for Treatment, Storage, and Disposal Facilities (40  
 2-66 C.F.R. Parts 264/265, Subparts A-E);

2-67 (3) Spill Prevention, Control, and Countermeasure  
 2-68 Regulations (40 C.F.R. Part 112); and

2-69 (4) EPA Risk Management Plan Rules regarding accident

3-1 prevention at facilities that use certain hazardous substances.  
3-2 (e) In establishing the portion of the Bulk Storage Vessel  
3-3 Performance Standards Program governed by this subsection, the  
3-4 commission shall, except as provided by Section 26.3443, include  
3-5 all and only those critical safety elements that are applicable to a  
3-6 storage vessel, and that the commission determines to be critical  
3-7 in this state for the protection described by Subsection (c), from  
3-8 the following national consensus standards, ensuring that the  
3-9 correct critical safety elements are applied to the correct types  
3-10 of storage vessel as delineated in the applicability section of  
3-11 each cited national consensus standard:  
3-12 (1) for in-service bulk storage vessels constructed on  
3-13 or before September 1, 2027:  
3-14 (A) from American Petroleum Institute (API)  
3-15 Standard 653: Tank Inspection, Repairs, Alteration, and  
3-16 Reconstruction, the commission shall require adherence to the  
3-17 protocol to applicable tanks included in this standard for the  
3-18 following:  
3-19 (i) Section 4.3: Tank Shell Evaluation;  
3-20 (ii) Section 4.4: Tank Bottom Evaluation;  
3-21 (iii) Section 4.5: Tank Foundation  
3-22 Evaluation;  
3-23 (iv) Section 6.2: Inspection Frequency  
3-24 Considerations;  
3-25 (v) Section 6.3: Inspections from the  
3-26 Outside of the Tank;  
3-27 (vi) Section 6.4: Internal Inspection, if  
3-28 applicable in accordance with Section 6.3;  
3-29 (vii) Section 8: Design Considerations for  
3-30 Reconstructed Tanks; and  
3-31 (viii) Section 9: Tank Repair and  
3-32 Alteration;  
3-33 (B) from API Standard 2350: Overfill Protection  
3-34 for Storage Tanks in Petroleum Facilities, the commission shall  
3-35 include the following critical safety elements for bulk storage  
3-36 vessels included in this standard:  
3-37 (i) Section 4: Overfill Prevention  
3-38 Systems, including management systems and operational procedures  
3-39 before and after product receipt as applicable;  
3-40 (ii) Section 5: Overfill Prevention  
3-41 Systems, including requirements for manual or automated overfill  
3-42 prevention systems as applicable, including use of remote operated  
3-43 shutoff valves;  
3-44 (iii) the requirements referenced in  
3-45 Subparagraphs (i) and (ii) only apply to atmospheric tanks as  
3-46 specified in API Standard 2350; and  
3-47 (iv) API 2350 assessment protocol to  
3-48 determine how to manage overfill through engineered controls,  
3-49 administrative controls, and hazard class in applicable  
3-50 quantities; and  
3-51 (C) from either National Fire Protection  
3-52 Association (NFPA) 30 Ch. 22 or API Recommended Practice 2001, the  
3-53 commission shall require fire suppression systems on bulk storage  
3-54 vessels subject to the protocol in the applicable standard; and  
3-55 (2) for in-service bulk storage vessels constructed  
3-56 after September 1, 2027:  
3-57 (A) all of the standards listed in Subdivision  
3-58 (1); and  
3-59 (B) API 650: Welded Tanks for Oil Storage and  
3-60 NFPA 30, Chapter 22 location standards.  
3-61 (f) The applicable standard chosen by the commission under  
3-62 Subsection (e)(1)(C) only applies to material stored at atmospheric  
3-63 pressure with a flashpoint less than or equal to 100 Fahrenheit as  
3-64 defined by OSHA Process Safety Management.  
3-65 (g) The applicable standard in Subsection (e)(2)(B) only  
3-66 applies to atmospheric bulk storage vessels as defined in API 650.  
3-67 (h) The commission may require a plan to control spills from  
3-68 atmospheric bulk storage vessels that includes recommended  
3-69 practices in NFPA 30.

4-1 (i) An owner or operator of a bulk storage vessel shall  
 4-2 register with the commission, assess and report to the commission  
 4-3 its current compliance status with the Bulk Storage Vessel  
 4-4 Performance Standards Program no later than September 1, 2027. For  
 4-5 bulk storage vessels constructed and brought into service after  
 4-6 September 1, 2027, an owner or operator of a bulk storage vessel  
 4-7 shall register and certify its compliance status to the commission  
 4-8 with the Bulk Storage Vessel Performance Standards Program no later  
 4-9 than 30 days after start of operation.

4-10 (j) An owner or operator of a bulk storage vessel shall  
 4-11 comply with the Bulk Storage Vessel Performance Standards Program  
 4-12 requirements on completion of the next regularly scheduled  
 4-13 out-of-service maintenance of the bulk storage vessel by the owner  
 4-14 or operator that occurs after September 1, 2027. However, all  
 4-15 facilities must certify compliance status by no later than  
 4-16 September 1, 2037. Any modifications or retrofits necessary for  
 4-17 compliance with the Bulk Storage Vessel Performance Standards  
 4-18 Program should be made during these out-of-service maintenance  
 4-19 periods as identified by the owner or operator unless the owner or  
 4-20 operator makes and records with the commission a demonstration of  
 4-21 technical impracticability that the commission approves.

4-22 (k) The commission in implementing the Bulk Storage Vessel  
 4-23 Performance Standards Program shall require an owner or operator of  
 4-24 a bulk storage vessel or a designated third party as assigned by the  
 4-25 owner or operator to certify compliance status every 10 years with  
 4-26 the standards referenced in Subsections (d) and (e) as applicable.

4-27 (l) The commission shall keep confidential information  
 4-28 reported to, obtained by, or otherwise submitted to the commission  
 4-29 that:

4-30 (1) is subject to restrictions on dissemination under  
 4-31 federal law, including off-site consequence analysis information  
 4-32 subject to Title 40, Part 1400, C.F.R.; or

4-33 (2) may otherwise present a security risk, if  
 4-34 disclosed publicly.

4-35 (m) The commission shall conduct on-site inspections of the  
 4-36 registered/certified facilities at least once every five years to  
 4-37 determine compliance with the Bulk Storage Vessel Performance  
 4-38 Standards Program. This subsection does not limit the commission's  
 4-39 ability to inspect a facility under other state or federal  
 4-40 regulations.

4-41 Sec. 26.3443. CERTAIN COMMISSION EXEMPTIONS AND RULES;  
 4-42 AMENDMENTS AND ALTERNATIVE STANDARDS. (a) The commission, in  
 4-43 implementing the Bulk Storage Vessel Performance Standards Program  
 4-44 under Section 26.3442, may approve exemption of specific bulk  
 4-45 storage vessels otherwise subject to Section 26.3442 from  
 4-46 regulation under the program if the legal owner or operator submits  
 4-47 a request to the commission demonstrating that the vessel presents  
 4-48 a sufficiently low risk of floods, storm surges, hurricanes,  
 4-49 accidents, fires, explosions, or other hazards such that it does  
 4-50 not warrant regulation under the program.

4-51 (b) The commission shall establish through rulemaking the  
 4-52 effective date of a federal law or regulation that the commission is  
 4-53 implementing under Section 26.3442(d), or a national consensus  
 4-54 standard that the commission is implementing under Section  
 4-55 26.3442(e). The commission shall amend through rulemaking changes  
 4-56 if a federal law, regulation, or national consensus standard is  
 4-57 amended in a way that materially conflicts with the commission's  
 4-58 current implementation of the Bulk Storage Vessel Performance  
 4-59 Standards Program except to the extent that the commission  
 4-60 determines, after a cost-benefit analysis and if not prohibited  
 4-61 under federal law, that the program as currently implemented by the  
 4-62 commission is sufficiently effective for protection of the health,  
 4-63 safety, and welfare of the citizens of this state.

4-64 (c) Notwithstanding the requirement of Section 26.3442(e)  
 4-65 that the commission include only critical safety elements from  
 4-66 specified national consensus standards, the commission may  
 4-67 initiate a rulemaking proceeding to determine whether, for certain  
 4-68 vessels in certain situations, an alternative national consensus  
 4-69 standard would be at least as effective for public health and safety

5-1 but more cost effective for the persons affected to implement. The  
5-2 commission may by rule apply the alternative national consensus  
5-3 standard in circumstances under which it has determined the  
5-4 alternative standard is as effective for public health and safety  
5-5 but more cost effective.

5-6 Sec. 26.3444. CERTIFICATION FEE. (a) The commission by  
5-7 rule shall establish fees in amounts sufficient to recover the  
5-8 reasonable costs to:

5-9 (1) implement a registration program for affected  
5-10 facilities;

5-11 (2) review initial and ten-year certifications;

5-12 (3) amend certifications;

5-13 (4) inspect certified facilities; and

5-14 (5) enforce compliance with applicable standards of  
5-15 Section 26.3442 and rules and orders adopted under those  
5-16 subsections.

5-17 (b) The certification fee under Subsection (a) shall be  
5-18 deposited to the credit of an account to be named the Bulk Storage  
5-19 Vessel Performance Standards Program Account.

5-20 (c) The commission may use the money in the Bulk Storage  
5-21 Vessel Performance Standards Program Account to pay:

5-22 (1) necessary expenses associated with the  
5-23 administration of the Bulk Storage Vessel Performance Standards  
5-24 Program; and

5-25 (2) expenses associated with the review and amendment  
5-26 of certifications, inspection of certified facilities, and  
5-27 enforcement of the applicable standards of Section 26.3442 and the  
5-28 rules and orders adopted by the Bulk Storage Vessel Performance  
5-29 Standards Program.

5-30 SECTION 3. This Act takes effect September 1, 2021.

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