

1 AN ACT

2 relating to the regulation of underground and aboveground storage
3 tanks.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 7.156(c), Water Code, is amended to read
6 as follows:

7 (c) A person commits an offense if the person is an owner or
8 operator of an underground [~~underground~~] storage tank regulated
9 under Chapter 26 into which any regulated substance is delivered
10 [~~or physically delivers any regulated substance into an underground~~
11 ~~storage tank regulated under Chapter 26~~] unless the underground
12 storage tank has been issued a valid, current underground storage
13 tank registration and certificate of compliance under Section
14 26.346.

15 SECTION 2. Section 26.342, Water Code, is amended by adding
16 Subdivision (16-a) to read as follows:

17 (16-a) "Subsurface soil" does not include backfill or
18 native material that is placed immediately adjacent to or
19 surrounding an underground storage tank system when the system is
20 installed or the system's individual components are replaced unless
21 free phase petroleum product is present in the backfill or native
22 material.

23 SECTION 3. Sections 26.3467(a) and (b), Water Code, are
24 amended to read as follows:

1 (a) The owner or operator of an underground storage tank
2 into which a regulated substance is to be deposited shall provide
3 the common carrier a copy of the certificate of compliance for the
4 specific underground storage tank into which the regulated
5 substance is to be deposited before accepting delivery of the
6 regulated substance into the underground storage tank. The owner
7 or operator of an underground storage tank may comply with this
8 subsection by obtaining a current copy of the certificate from the
9 commission's Internet website.

10 (b) An owner or operator of an underground storage tank [~~A~~
11 ~~person~~] who [~~knowingly~~] violates Subsection (a) commits an offense
12 that is punishable as provided by Section 7.156 for an offense under
13 that section.

14 SECTION 4. Section 26.351(f), Water Code, is amended to
15 read as follows:

16 (f) The person performing corrective action under this
17 section, if the release was reported to the commission on or before
18 December 22, 1998, shall meet the following deadlines:

19 (1) a complete site assessment and risk assessment
20 (including, but not limited to, risk-based criteria for
21 establishing target concentrations), as determined by the
22 executive director, must be received by the agency no later than
23 September 1, 2002;

24 (2) a complete corrective action plan, as determined
25 by the executive director and including, but not limited to,
26 completion of pilot studies and recommendation of a cost-effective
27 and technically appropriate remediation methodology, must be

1 received by the agency no later than September 1, 2003. The person
2 may, in lieu of this requirement, submit by this same deadline a
3 demonstration that a corrective action plan is not required for the
4 site in question under commission rules. Such demonstration must
5 be to the executive director's satisfaction;

6 (3) for those sites found under Subdivision (2) to
7 require a corrective action plan, that plan must be initiated and
8 proceeding according to the requirements and deadlines in the
9 approved plan no later than March 1, 2004;

10 (4) for sites which require either a corrective action
11 plan or groundwater monitoring, a comprehensive and accurate annual
12 status report concerning those activities must be submitted to the
13 agency;

14 (5) for sites which require either a corrective action
15 plan or groundwater monitoring, all deadlines set by the executive
16 director concerning the corrective action plan or approved
17 groundwater monitoring plan shall be met; and

18 (6) for sites that require either a corrective action
19 plan or groundwater monitoring, have met all other deadlines under
20 this subsection, and have submitted annual progress reports that
21 demonstrate progress toward meeting closure requirements, a site
22 closure request must be submitted to [~~requests for all sites where~~]
23 the executive director [~~agreed in writing that no corrective action~~
24 ~~plan was required must be received by the agency~~] no later than
25 September 1, 2007 [~~2005~~]. The request must be complete, as judged
26 by the executive director.

27 SECTION 5. Section 26.355(b), Water Code, is amended to

1 read as follows:

2 (b) An owner or operator of an underground or aboveground
3 storage tank from which a regulated substance is released is liable
4 to the state unless:

5 (1) the release was caused by:

6 (A) [~~1~~] an act of God;

7 (B) [~~2~~] an act of war;

8 (C) [~~3~~] the negligence of the State of
9 Texas or the United States; or

10 (D) [~~4~~] an act or omission of a third
11 party; or

12 (2) the site at which the release occurred has been
13 admitted into the petroleum storage tank state-lead program under
14 Section 26.3573(r-1).

15 SECTION 6. Section 26.3573, Water Code, is amended by
16 amending Subsections (d), (r), and (s) and adding Subsection (r-1)
17 to read as follows:

18 (d) The commission may use the money in the petroleum
19 storage tank remediation account to pay:

20 (1) necessary expenses associated with the
21 administration of the petroleum storage tank remediation account
22 and the groundwater protection cleanup program[~~, not to exceed an~~
23 ~~amount equal to: 11.8 percent of the gross receipts of that account~~
24 ~~for FY02/03, 16.40 percent of the gross receipts of that account for~~
25 ~~FY04/05, and 21.1 percent of the gross receipts of that account for~~
26 ~~FY06/07];~~

27 (2) expenses associated with investigation, cleanup,

1 or corrective action measures performed in response to a release or
2 threatened release from a petroleum storage tank, whether those
3 expenses are incurred by the commission or pursuant to a contract
4 between a contractor and an eligible owner or operator as
5 authorized by this subchapter; and

6 (3) subject to the conditions of Subsection (e) [~~of~~
7 ~~this section~~], expenses associated with investigation, cleanup, or
8 corrective action measures performed in response to a release or
9 threatened release of hydraulic fluid or spent oil from hydraulic
10 lift systems or tanks located at a vehicle service and fueling
11 facility and used as part of the operations of that facility.

12 (r) Except as provided by Subsection (r-1), the [The]
13 petroleum storage tank remediation account may not be used to
14 reimburse any person for corrective action performed after
15 September 1, 2005.

16 (r-1) In this subsection, "state-lead program" means the
17 petroleum storage tank state-lead program administered by the
18 commission. The executive director shall grant an extension for
19 corrective action reimbursement to a person who is an eligible
20 owner or operator under Section 26.3571. The petroleum storage
21 tank remediation account may be used to reimburse an eligible owner
22 or operator for corrective action performed under an extension
23 before August 31, 2007. Not later than July 1, 2007, an eligible
24 owner or operator who is granted an extension under this subsection
25 may apply to the commission in writing using a form provided by the
26 commission to have the site subject to corrective action placed in
27 the state-lead program. The eligible owner or operator must agree

1 in the application to allow site access to state personnel and state
2 contractors as a condition of placement in the state-lead program
3 under this subsection. On receiving the application for placement
4 in the state-lead program under this subsection, the executive
5 director by order shall place the site in the state-lead program
6 until the corrective action is completed to the satisfaction of the
7 commission. An eligible owner or operator of a site that is placed
8 in the state-lead program under this subsection is not liable to the
9 commission for any costs related to the corrective action.

10 (s) The petroleum storage tank remediation account may not
11 be used to reimburse any person for corrective action contained in a
12 reimbursement claim filed with the commission after March 1, 2008
13 [~~2006~~].

14 SECTION 7. Section 26.361, Water Code, is amended to read as
15 follows:

16 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
17 Notwithstanding any other provision of this subchapter, the
18 reimbursement program established under this subchapter expires
19 September 1, 2008 [~~2006~~]. On or after September 1, 2008 [~~2006~~], the
20 commission may not use money from the petroleum storage tank
21 remediation account to reimburse an eligible owner or operator for
22 any expenses of corrective action or to pay the claim of a person
23 who has contracted with an eligible owner or operator to perform
24 corrective action.

25 SECTION 8. (a) Section 26.3467(b), Water Code, as amended
26 by this Act, applies only to an offense committed on or after the
27 effective date of this Act. For purposes of this section, an

1 offense is committed before the effective date of this Act if any
2 element of the offense occurs before that date.

3 (b) An offense committed before the effective date of this
4 Act is governed by the law in effect when the offense was committed,
5 and the former law is continued in effect for that purpose.

6 SECTION 9. This Act takes effect September 1, 2005.

David Swinhart

President of the Senate

Jim Caskill

Speaker of the House

I certify that H.B. No. 1987 was passed by the House on April 22, 2005, by a non-record vote.

Robert Honey

Chief Clerk of the House

I certify that H.B. No. 1987 was passed by the Senate on May 25, 2005, by the following vote: Yeas 31, Nays 0.

Dorothy Spaw

Secretary of the Senate

APPROVED:

18 JUNE '05

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
10:20 AM '05

Roger Williams
Secretary of State