

## CHAPTER 277

## S.B. No. 779

## AN ACT

relating to the regulation of underground storage tanks, imposing certain fees, authorizing charges for late payment, and establishing an underground storage tank fund.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter 26, Water Code, is amended by adding Subchapter I to read as follows:

## SUBCHAPTER I. UNDERGROUND STORAGE TANKS

Sec. 26.341. *PURPOSE.* The legislature finds that leaking underground tanks storing certain hazardous, toxic, or otherwise harmful substances have caused and continue to pose serious groundwater contamination problems in Texas. The legislature declares that it is the policy of this state and the purpose of this subchapter to maintain and protect the quality of groundwater resources in the state from substances in underground tanks that may pollute groundwater resources and to require the use of all reasonable methods to implement this policy.

Sec. 26.342. *DEFINITIONS.* In this subchapter:

(1) "Person" means an individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States government.

(2) "Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment.

(3) "Release" means any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

(4) "Underground storage tank" means any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground.

Sec. 26.343. *REGULATED SUBSTANCES.* (a) Regulated substances under this subchapter include:

(1) a substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), but does not include a substance regulated as a hazardous waste under the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.);

(2) petroleum, including crude oil or a fraction of it, that is liquid at standard conditions of temperature and pressure; and

(3) any other substance designated by the commission.

(b) Standard conditions of temperature and pressure under Subdivision (2) of Subsection (a) of this section are 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

Sec. 26.344. EXEMPTIONS. (a) The following are exempt from regulation under this subchapter:

(1) farm or residential tanks with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;

(2) tanks used for storing heating oil for consumptive use on the premises where stored;

(3) septic tanks;

(4) surface impoundments, pits, ponds, or lagoons;

(5) storm water or waste water collection systems;

(6) flow-through process tanks;

(7) tanks, liquid traps, gathering lines, or other facilities used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code; and

(8) storage tanks located in an underground area including a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is located on or above the surface of the floor.

(b) A pipeline facility, including gathering lines, is exempt from regulation under this subchapter if it is regulated under:

(1) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. Section 1671 et seq.); or

(2) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. Section 2001 et seq.).

(c) An intrastate pipeline facility is exempt from regulation under this subchapter if it is regulated under one of the following state laws:

(1) Chapter 111, Natural Resources Code;

(2) Chapter 117, Natural Resources Code; or

(3) Articles 6053-1 and 6053-2, Revised Statutes.

(d) Except for Section 26.351 of this subchapter, in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and hold less than 100 gallons of hydraulic oil, if exempt by the federal Environmental Protection Agency, are exempt under this subchapter.

Sec. 26.345. ADMINISTRATIVE PROVISIONS. (a) The commission shall administer this subchapter and may develop a regulatory program regarding underground storage tanks in accordance with this subchapter.

(b) In implementing this subchapter, the commission shall cooperate with:

(1) cities and towns;

(2) agencies, departments, and other political subdivisions of the state; and

(3) the United States and its agencies.

(c) The commission may adopt rules necessary to carry out the purposes of this subchapter.

(d) The commission may authorize the executive director to enter into contracts with a public agency, private person, or other entity for the purpose of implementing this subchapter.

(e) The commission may enter into contracts and cooperative agreements with the federal government to carry out remedial action for releases from underground storage tanks as authorized by the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.).

*Sec. 26.346. REGISTRATION REQUIREMENTS. (a) Except as provided by Subsection (b) of this section, all underground storage tanks must be registered with the commission. The commission by rule shall establish the procedures and requirements for establishing and maintaining current registration information.*

*(b) An underground storage tank is not required to be registered if the tank:*

- (1) does not contain a regulated substance; and*
- (2) is not in operation and has not been in operation since January 1, 1974.*

*(c) A person who has previously provided notice to the commission of an underground storage tank under Section 9002 of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.) is not required to register the tank with the commission under this section.*

*Sec. 26.347. TANK STANDARDS. (a) The commission shall adopt performance standards for underground storage tanks brought into use on or after the effective date of the standards.*

*(b) The performance standards for these underground storage tanks must include design, construction, installation, release detection, and compatibility standards.*

*Sec. 26.348. LEAK DETECTION AND RECORD MAINTENANCE. The commission shall adopt standards of performance for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. In addition, the commission shall adopt requirements for maintaining records of any leak detection monitoring that includes inventory control or tank testing system or comparable system.*

*Sec. 26.349. REPORTING OF RELEASES AND CORRECTIVE ACTION. (a) The commission shall adopt requirements for the reporting of any releases and corrective action taken in response to a release from an underground storage tank.*

*(b) The commission shall prepare an annual compilation of reported releases, make that report available to the public, and provide that report to the legislature and to the governor. The report must contain, for each reported release:*

- (1) the corrective action or other response taken by the owner, operator, commission, or any local governmental agency; and*
- (2) any information or enforcement action taken by the commission against the owner or operator responsible for the release.*

*Sec. 26.350. TANK CLOSURE REQUIREMENTS. The commission shall adopt requirements for the closure of tanks, including the removal, disposal, or removal and disposal of tanks to prevent future releases of regulated substances into the environment.*

*Sec. 26.351. CORRECTIVE ACTION. (a) The commission shall adopt rules establishing the requirements for taking corrective action in response to a release from an underground storage tank. Corrective action may include:*

- (1) site cleanup, including the removal, treatment, and disposal of surface and subsurface contamination;*
- (2) removal of underground storage tanks;*
- (3) measures to halt a release in progress or to prevent future or threatened releases of regulated substances;*
- (4) well monitoring, taking of soil borings, and any other actions reasonably necessary to determine the extent of contamination caused by a release;*
- (5) providing alternate water supplies; and*
- (6) any other action reasonably necessary to protect the public health and safety or the environment from harm or threatened harm due to releases of regulated substances from underground storage tanks.*

*(b) The owner or operator of an underground storage tank shall immediately take all reasonable actions to prevent a threatened release of regulated substances from an*

underground storage tank and to abate and remove any releases subject to applicable federal and state requirements. The owner or operator may be ordered to take corrective action under this subchapter.

(c) The commission may undertake corrective action in response to a release or a threatened release if:

(1) the owner or operator of the underground storage tank is unwilling to take corrective action;

(2) the owner or operator of the underground storage tank cannot be found;

(3) the owner or operator of the underground storage tank, in the opinion of the executive director, is unable to take the corrective action necessary to protect the public health and safety or the environment; or

(4) notwithstanding any other provision of this chapter, the executive director determines that more expeditious corrective action than is provided by this chapter is necessary to protect the public health and safety or the environment from harm.

(d) The commission may retain agents to take corrective action it considers necessary under this section. The agents shall operate under the direction of the executive director. Any expenses arising from corrective action taken by the commission or the executive director may be paid from the underground storage tank fund.

**Sec. 26.352. FINANCIAL RESPONSIBILITY.** The commission shall adopt requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

**Sec. 26.353. COMMISSION ORDERS.** The commission may issue orders to enforce this subchapter and rules adopted under this subchapter in accordance with the procedures applicable to orders issued under Section 26.019 of this code.

**Sec. 26.354. EMERGENCY ORDERS.** (a) Notwithstanding any other provision of this chapter, the executive director may issue emergency orders to the persons identified in Subsection (e) of this section if it appears that:

(1) there is an actual or threatened release of a regulated substance from an underground storage tank; and

(2) the executive director determines that more expeditious corrective action than is otherwise provided for under this chapter is necessary to protect the public health and safety or the environment from harm.

(b) An order issued under Subsection (a) of this section may prohibit a person from allowing or continuing the release or threatened release and require the person to take the actions necessary to eliminate the release or threatened release.

(c) An emergency order issued under this section shall be:

(1) mailed by certified mail, return receipt requested, to each person identified in the order;

(2) hand delivered to each person identified in the order; or

(3) on failure of service by certified mail or hand delivery, served by publication one time in the Texas Register and one time in a newspaper with general circulation in each county in which any of the persons had a last known address.

(d) An emergency order issued under this section does not require notice or an adjudicative hearing before its issuance. If the executive director issues an order under this section, the commission shall fix a time and place for a hearing to affirm, modify, or set aside the emergency order issued by the executive director. The hearing before the commission shall be held as soon as practicable after the issuance of the emergency order.

(e) The executive director may issue orders under this section to the following persons:

(1) the owner of an underground storage tank; or

(2) *the operator of an underground storage tank.*

*Sec. 26.355. RECOVERY OF COSTS. (a) If the commission has incurred any costs in undertaking corrective action or enforcement action with respect to the release of regulated substances from an underground storage tank, the owner or the operator of the tank is liable to the state for all reasonable costs of those corrective and enforcement actions and for court costs and reasonable attorney's fees.*

*(b) An owner or operator of an underground storage tank from which a regulated substance is released is liable to the state unless the release was caused by:*

- (1) an act of God;*
- (2) an act of war;*
- (3) the negligence of the State of Texas or the United States; or*
- (4) an act or omission of a third party.*

*(c) The state's right to recover under this section arises whether or not the commission uses funds from the underground storage tank fund or receives or will receive funds from the state, the federal government, or any other source for the purpose of corrective action or enforcement.*

*(d) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer the liability imposed under this section from the owner or operator of an underground storage tank or from a person who may be liable for a release or threat of release to any other person. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any liability under this section.*

*(e) This section does not bar a cause of action that an owner or operator or any other person subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.*

*(f) At the request of the commission, the attorney general shall initiate court proceedings to recover costs under this section.*

*(g) Money recovered in a court proceeding under this section shall be deposited in the State Treasury to the credit of the underground storage tank fund.*

*Sec. 26.356. INSPECTIONS, MONITORING, AND TESTING. (a) For the purposes of developing or assisting in the development of any regulation, conducting any study, or enforcing this subchapter, an owner or operator of an underground storage tank, on the request of the commission, shall:*

- (1) furnish information relating to the tank, including tank equipment and contents;*
- (2) conduct monitoring or testing; and*
- (3) permit a designated agent or employee of the commission at all reasonable times to have access to and to copy all records relating to the tank.*

*(b) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing the provisions of this section, the commission, its designated agent, or employee may:*

- (1) enter at reasonable times an establishment or place in which an underground storage tank is located;*
- (2) inspect and obtain samples of a regulated substance contained in the tank from any person; and*
- (3) conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.*

*(c) Each inspection made under this section must be begun and completed with reasonable promptness. Before a designated agent or employee of the commission enters private property to carry out a function authorized under this section, the agent or employee must give reasonable notice and exhibit proper identification to the manager or owner of the property or to another appropriate person, as provided by commission rule. The commission's designated agent or employee must observe the*

*regulations of the establishment being inspected, including regulations regarding safety, internal security, and fire protection.*

*Sec. 26.357. STANDARDS AND RULES. (a) Standards and rules adopted by the commission under this subchapter must be at least as stringent as the federal requirements under Title VI of the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. Section 6901 et seq.).*

*(b) The commission may not impose standards or rules more stringent than the federal requirements unless the commission determines that more stringent standards or rules are necessary to protect human health or the environment.*

*Sec. 26.358. UNDERGROUND STORAGE TANK FUND; FEES. (a) The underground storage tank fund is created in the State Treasury.*

*(b) The underground storage tank fund consists of money collected by the commission from:*

*(1) fees imposed on facilities with underground storage tanks used for the storage of regulated substances;*

*(2) the interest and penalties imposed under this section for the late payment of those fees;*

*(3) funds received from cost recovery for corrective and enforcement actions taken under this subchapter;*

*(4) funds received from insurers, guarantors, or other sources of financial responsibility; and*

*(5) funds from the federal government and other sources for use in connection with the underground storage tank program.*

*(c) The commission shall impose an annual facility fee on a facility that operates one or more underground storage tanks. The commission may also impose reasonable interest and penalties for late payment of the fee as provided by commission rule. The commission may establish a fee schedule that will generate an amount of money sufficient to fund the commission's budget for the regulatory program regarding underground storage tanks authorized by this subchapter.*

*(d) The commission may use money in the underground storage tank fund to:*

*(1) pay the costs of taking corrective action;*

*(2) provide matching funds for grants and to fund contracts executed under this subchapter; and*

*(3) pay for administrative expenses, rules development, enforcement, monitoring, and inspection costs, and other costs incurred in the course of carrying out the purposes and duties of this subchapter.*

*(e) The maximum annual fee that the commission may impose on a facility is \$25 for each underground storage tank operated at the facility.*

*(f) The commission shall collect the underground storage tank fee imposed under this section on dates set by commission rule. The period between collection dates may not exceed two years. The commission shall deposit all fees collected and all interest and penalties for late payment in the State Treasury to the credit of the underground storage tank fund.*

*(g) The commission shall adopt rules necessary to administer this section.*

*Sec. 26.359. LOCAL REGULATION OR ORDINANCE. This subchapter establishes a unified statewide program for underground and surface water protection, and any local regulation or ordinance is effective only to the extent the regulation or ordinance does not conflict with the standards adopted for the design, construction, installation, or operation of underground storage tanks under this subchapter.*

**SECTION 2.** This Act takes effect on September 1, 1987.

**SECTION 3.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 30, 1987, by a viva-voce vote; and that the Senate concurred in House amendment on May 28, 1987, by the following vote: Yeas 30, Nays 0.  
Passed the House, with amendment, on May 21, 1987, by the following votes on a division of the question: revenue dedication provisions of Section 1 passed by the following vote: Yeas 141, Nays 2, two present not voting; the remainder of the bill passed by a non-record vote.

Approved June 11, 1987.

Effective Sept. 1, 1987.