

SUBJECT: Prohibiting Petroleum Tank Fund reimbursements after 1998

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 8 ayes — Counts, Yost, Combs, King, R. Lewis, Puente, Stiles, Walker

0 nays

1 absent — Corte

WITNESSES: For — None

Against — None

On — Joe Woodard, Texas Natural Resource Conservation Commission;
Gerhardt Schulle, Texas Society of Professional Engineers

BACKGROUND: The Petroleum Storage Tank Remediation Fund (PSTRF) is used to reimburse tank owners for allowable costs associated with remediation of petroleum storage tank sites. The fund also allows tank owners to comply with EPA guidelines requiring that operators of underground petroleum storage tanks provide proof of financial responsibility for no less than \$1 million for each spill or leak that occurred.

Texas Natural Resource Conservation Commission (TNRCC) has the authority to license and certify contractors who install, repair and remove underground storage tanks under VACS, art. 9800. It is a Class A misdemeanor, maximum penalty of one year in jail and a \$4,000 fine, to supervise the installation, repair or removal of an underground storage tank in a manner that does not comply with statutory requirements. The TNRCC can also assess a civil penalty of not more than \$2,500 for each day of the violation.

DIGEST: HB 2587 would amend Water Code, 26.3512(b) to provide that the Petroleum Storage Tank Remediation Fund (PSTRF) could not be used to pay for expenses incurred for corrective action taken to remediate tank releases discovered and reported to the commission after December 22, 1998.

Certain types of tanks containing substances other than petroleum products would not be eligible for reimbursement, even if they were issued a registration certificate.

The TNRCC could impose administrative and civil penalties on tank owners and operators if acceptable evidence of financial responsibility were not maintained and could seek the criminal penalties allowed under Subchapter F of the Water Code. The TNRCC could also seek injunctive relief to force the temporary or permanent closure of an underground storage tank for which there was no proof of financial responsibility.

Between 2 and 3 percent of gross receipts from the PSTRF could be used for administrative expenses associated with regulating tanks, claim reimbursement, disposing of contaminated soils and conducting audit claims.

The current statutory provisions concerning licensing and registration of those who contract to perform corrective action to remediate problems caused by faulty underground storage tanks, would be amended and moved from VACS, art. 8900 to a new Subchapter K of Chapter 26 of the Texas Water Code.

The commission could adopt minimum qualifications for those who supervise or perform corrective actions, and could require corrective work to be done by a registered supervisor as a prerequisite for reimbursement.

Fees could be established to cover the costs of administering the registration program. Anyone who violated a rule of the program would be subject to the appropriate sanctions and penalties imposed under Chapter 26 of the Water Code.

The bill would specify that it would be a Class A misdemeanor, maximum penalty of one year in jail and a \$4,000 fine, for a person or business entity to install, repair or remove (or authorize to be installed, repaired or removed) a tank without either obtaining a certificate of registration or being under substantial control of someone who held such a certificate. It would also be a Class A misdemeanor for a person to perform or supervise tank installation, repair or removal without a TNRCC installer or on-site supervisor license.

The bill would allow administrative penalties for noncompliance with TNRCC rules up to \$10,000.

The TNRCC would be authorized to adopt rules regarding the repayment of reimbursement claims, and would no longer be subject to the Prompt Payment Act. Water Code, sec. 26.3573(p) prohibiting the payment of interest charges on claims made by owners and operators would be reworded to provide that payment would also be prohibited to agents of owners or operators and adding that the prohibition would stand, notwithstanding any other law to the contrary.

The bill would also provide that members of the Petroleum Storage Tank Advisory Committee would be entitled to serve until the expiration of their terms.

HB 2587 would take effect September 1, 1995.

**SUPPORTERS
SAY:**

HB 2587, part of a package (along with HB 843 and HB 3032, also on today's calendar) recommended by the Joint Committee on Petroleum Storage Tanks, would provide that after December 22, 1998, the Petroleum Storage Tank Remediation Fund (PSTRF) could no longer be used to reimburse petroleum storage tank owners for their leaking tanks. This would encourage owners and operators of storage tanks to consider other means of satisfying their financial assurance requirements.

By 1998 most tanks should have been brought into compliance, and are therefore less costly to insure. Tank owners would be able to obtain private insurance and take care of their own problems. The state would no longer have to continue borrowing from the general revenue fund.

The bill would give TNRCC enforcement and supervisory capabilities over consultants who are contracted to repair leaking tanks and clean up storage tank sites. It is important to make sure that those who are actually doing the remediation work are actually cleaning up the site. The longer the tanks leak, the more costly it is to clean up the mess.

Currently TNRCC can revoke or suspend the license of a contractor who is not doing the work as promised. TNRCC can also assess a civil penalty of not more than \$2500. HB 2587 would allow TNRCC also to impose administrative penalties of up to \$10,000 for noncompliance. The additional penalties would make compliance more attractive to those who

currently would rather pay a fine than clean or upgrade sites. Current penalties are so low that some tank owners consider a fine as merely a cost of doing business and ignore TNRCC rules.

Millions of dollars are being spent on the remediation program and neither the TNRCC nor industry representatives are able to guarantee that the work being paid for is actually being done. TNRCC inspectors may be present when a tank is being removed but usually cannot ensure that contaminated soil, for example, is properly disposed of and not simply returned without being decontaminated.

The bill would also clarify that the agents of tank owners and operators would not be entitled to interest charges on their reimbursement claims. This would save the TNRCC from having to defend itself in court against those who would try to collect interest from the state.

OPPONENTS
SAY:

HB 2587 should clarify that licensed professional engineers are fully qualified to oversee work done on underground storage tanks without additional "re-licensing" by the TNRCC.

NOTES:

The companion to HB 2587, SB 1105 by Sims and Brown, was amended in the Senate Natural Resources committee to incorporate provisions of SB 396 by Sims and Brown (companion to HB 834 by Alexander), which would permit transfer of up to \$120 million from the General Revenue Fund to the Petroleum Storage Tank Remediation Fund, SB 1501 by Sims/Brown (companion to HB 3032 by Alexander), which would permit TNRCC to place noncomplying facilities "out-of-service", limit lender liability for remediation loans and require "risk based corrective action," and several new provisions. The bill was left pending in the Senate Natural Resources committee on April 27.