

Issue 5: Landowner Responsibility for Release from a Petroleum Storage Tank

A. Brief Description of Issue

Current Texas law identifies owners or operators of an underground or aboveground petroleum storage tank (PST) system as responsible for any releases from those systems but does not identify landowner responsibility for corrective action for releases from tanks on their property. In those situations where corrective action is necessary and a tank owner or operator is unwilling, unable, or cannot be found, the state must assume responsibility for the cleanup.

B. Discussion

The registered owner or operator of a PST may be a different entity than the landowner, as property is often leased to a tenant business (e.g., gas station). When a release from a PST is discovered and reported, the tank owner or operator is required to conduct corrective action pursuant to Texas Water Code (TWC) Section 26.351(b). Where the tank owner or operator is unwilling or unable to take corrective action or cannot be found (e.g., corporate dissolution), or if more expeditious corrective action is necessary, TCEQ is authorized to conduct corrective action under TWC Section 26.351(c).

Site cleanups can be delayed in cases where tank owner/operator individuals or business entities fail to conduct corrective action for various reasons. Additional issues include landowner reluctance to provide property access for effective and timely completion of corrective action.

C. Possible Solutions and Impact

TCEQ recommends amending TWC Chapter 26 Subchapter I to include landowners among the parties considered responsible for corrective action for PST sites. Under this statutory change, the responsibility for corrective action would fall first to the tank owner or operator and then to landowners of commercial properties where the tank owner or operator is unwilling, unable, or cannot be found. Additionally, TCEQ recommends a corresponding change to TWC Section 26.351(c) to explicitly allow TCEQ to conduct corrective action where the owners/operators and landowners are unwilling or unable to take corrective action or cannot be found (e.g., corporate dissolution), or where more expeditious corrective action is necessary.

The entity most directly impacted by the amendment would be landowners of commercial properties who do not also own or operate the tanks located on their property. However, joint liability between landowners and tank owners/operators would be consistent with Texas Health and Safety Code Section 361.271, which provides that the current owner of a solid waste facility is jointly liable with persons who owned or operated the facility at the time of processing, storage, or disposal.

The proposed change would assist with effective and timely completion of corrective action at these PST sites. The fiscal impact for amending the statute would be preservation of state and/or federal funding for sites without another viable party and possible mitigation of problems related to landowner reluctance to provide property access for effective and timely completion of corrective action. TCEQ does not anticipate any negative outcomes to the state from the recommended amendment.