

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 3, 2023

Thru: Laurie Gharis, Chief Clerk
Erin E. Chancellor, Interim Executive Director

From: Craig Pritzlaff, Director
Office of Compliance and Enforcement

Docket No.: 2022-0989-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 338, Aboveground Storage Vessel Safety Program
Rule Project No. 2022-015-338-CE

Background and reason(s) for the rulemaking:

This proposed rulemaking is to implement Senate Bill (SB) 900 (effective September 1, 2021) filed by Senator Alvarado (companion bill filed by Representative Paddie) which amends the Texas Water Code (TWC) by establishing a new Aboveground Storage Vessel Safety (ASVS) Program, to provide for the protection of groundwater and surface water resources in the event of an accident or natural disaster, identifying new safety elements that the TCEQ must include in the ASVS Program; and defining the universe of regulated entities.

SB 900 requires that the TCEQ must promulgate rules and establish the ASVS Program by September 1, 2023. The bill requires this program to include all critical safety elements applicable to a storage vessel and that TCEQ determines to be critical for the protection of ground water and surface water resources following federal statutes/regulations and national consensus standards identified in the bill.

Scope of the rulemaking:

The proposed new Chapter 338 rules would require that an owner or operator of a storage vessel must register, assess, and report to TCEQ on its compliance status with the ASVS Program no later than September 1, 2027, with any storage vessels constructed or brought into service after that date required to register and certify compliance no later than 30 days following start of their operations. The proposed rulemaking would require owners and operators of storage vessels to comply with the standards referenced in the rules, upon completion of the next regularly scheduled out-of-service maintenance that occurs after September 1, 2027, with all facilities required to certify compliance status no later than September 1, 2037.

The TCEQ estimates there are approximately 36,000 storage vessels subject to the ASVS Program. The TCEQ, per the SB900 bill language, is required to conduct on-site inspections of the registered and certified facilities at least once every five years to determine compliance. The rulemaking does allow the agency to approve exemptions from specific storage vessel regulations, if the owner or operator of the storage vessel demonstrates that the vessel presents a sufficiently low risk of hazards such that it does not warrant regulation under the program.

The ASVS Program is applicable to aboveground storage vessels located at petrochemical plants, petroleum refineries, or bulk storage terminals that are constructed with nonearthen materials, have a storage capacity of 21,000 gallons (500 barrels) or more, and store a regulated substance as defined by TWC, §26.343.

Re: Docket No. 2022-0989-RUL

The bill also created a new General Revenue–Dedicated Performance Standards for Safety at Storage Vessels Program Account and requires the TCEQ to establish certification fees in amounts sufficient to cover program costs for deposit to the account.

A.) Summary of what the rulemaking would do:

The proposed rules would establish the ASVS Program. The rulemaking provides the standards (incorporation by reference of federal statutes/regulations and national consensus standards) that must be complied with by owners/operators of applicable storage vessels. The rulemaking also establishes a registration/certification program, along with providing the fee structure that would be needed to fund the program.

B.) Scope required by federal regulations or state statutes:

This rulemaking is not required to satisfy any federal regulations. However, the rulemaking is needed to implement SB 900 bill language.

C.) Additional staff recommendations that are not required by federal rule or state statute:

There are no additional staff recommendations provided in this rulemaking that are beyond what is required by state statute.

Statutory authority:

The rulemaking would be proposed under TWC, §5.013, General Jurisdiction of Commission; TWC §5.102, General Powers; TWC §5.103, Rules; TWC §5.105, General Policy; TWC §5.120, Conservation and Quality of Environment; TWC §26.041, Health Hazards; Texas Health and Safety Code (THSC) §382.017, Rules; THSC §382.002 Policy and Purpose; THSC §382.011 General Powers and Duties; THSC §382.012 State Air control Plan; and THSC §382.016 Monitoring Requirements; Examination of Records. The rulemaking is also proposed under TWC §7.002, Enforcement Authority; TWC §7.032, Injunctive Relief; and TWC §7.303 Grounds for Revocation or Suspension of License, Certificate, or Registration.

Effect on the:

A.) Regulated community:

The proposed rulemaking is anticipated to result in fiscal implications for businesses or individuals that are owners or operators of affected storage vessels located at a petrochemical plant, a petroleum refinery, or a bulk storage terminal. Proposed §338.22 provides for an annual fee set by the executive director not to exceed \$2,000.00 per storage vessel. The executive director estimates there are approximately 36,000 storage vessels that would be impacted by this rulemaking.

B.) Public:

The public would not be adversely affected by the proposed changes. The public benefit anticipated would be compliance with state law and the additional protection of groundwater and surface water resources in the event of an accident or natural disaster.

C.) Agency programs:

This is a new program that the Agency must implement. Before the program is fully in place it is estimated that the agency would need an additional 73 FTEs and would need funding to develop

Re: Docket No. 2022-0989-RUL

the electronic registration/certification system well before the September 1, 2027, program start date.

Stakeholder meetings:

The commission held three informal stakeholder meetings in July 2022 related to this rulemaking. There are six public hearings planned, which will be held in Fort Worth, Beaumont, Houston, Corpus Christi, Midland, and Austin, during the comment period.

Potential controversial concerns and legislative interest:

The rulemaking is to implement SB 900. Updates on the implementation of this bill have been requested by the legislators during interim hearings and it can be expected that legislative interest in this new program would continue.

Would this rulemaking affect any current policies or require development of new policies? Yes, this is a new program for the Agency.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If the proposed rules are not adopted, the agency would not be implementing a statutory requirement, which has been assigned specifically to the agency.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: February 22, 2023

Anticipated *Texas Register* publication date: March 10, 2023

Anticipated public hearing dates: Fort Worth March 23, 2023, Beaumont March 28, 2023, Houston March 29, 2023, Corpus Christi April 3, 2023, Midland April 6, 2023, and Austin April 10, 2023

Anticipated public comment period: March 10, 2023 - April 10, 2023

Anticipated adoption date: August 9, 2023

Agency contacts:

Keith Sheedy, Critical Infrastructure Division, (512) 239-1556

Michael Parr, Staff Attorney, (512) 239-0611

Cullen McMorrow, Staff Attorney, (512) 239-0607

Barrett Hollingsworth, Staff Attorney, (512) 239-0657

Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

Attachments: None

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Keith Sheedy
Michael Parr
Cullen McMorrow
Barrett Hollingsworth
Gwen Ricco