



TEXAS CHEMICAL COUNCIL



TEXAS OIL & GAS ASSOCIATION | SINCE 1919

April 10, 2023

Ms. Gwen Ricco
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, TX 78753

Via electronic submission to TCEQ eComments

RE: Written Comments on TCEQ’s Proposed Rulemaking Chapter 338, to implement Senate Bill 900, 87th Texas Legislature, which requires the establishment of the Aboveground Storage Vessel Safety Program in the state Rule Project No. 2022-015-338-CE.

Ms. Ricco,

The Texas Chemical Council (“TCC”) and Texas Oil and Gas Association (“TXOGA”) appreciate the opportunity to submit these comments on the above-referenced proposal by Texas Commission on Environmental Quality (TCEQ) regarding the establishment of the Aboveground Storage Vessel Safety Program in the state.

TCC represents approximately 70 companies who own or operate more than 200 manufacturing and research facilities across the state of Texas. Our members have invested more than \$150 Billion in physical assets in the state, directly employ more than 75,000 Texans, and indirectly employ over 500,000 Texans. The Texas chemical industry represents the #1 non-energy Texas export with over \$50 Billion in exports annually and pays more than \$1.5 Billion in state and local taxes each year.

TXOGA is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces in excess of 80 percent of Texas’ crude oil and natural gas, operates over 80 percent of the state’s refining capacity, and is responsible for the vast majority of the state’s pipelines. In fiscal year 2022, the oil and natural gas supported 443,000 direct jobs and paid \$24.7 billion in state and local taxes and state royalties, funding our state’s schools, roads and first responders.

TCC and TXOGA acknowledge and support the comments submitted by the Texas Industry Partnership.

Applicability of 30 TAC Chapter 388 to a Tank that Stores Mixtures?

1. The rule and legislature don't specify whether the requirements of 30 TAC chapter 338 apply to storage tanks holding mixtures. Please clarify that 30 TAC Chapter 338 does not apply to mixtures. TCEQ should consider defining a mixture similar to the Risk Management Plan (RMP) regulation. Alternatively, please clarify that "regulated substance" refers to a chemical substance which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient (similar to the language in the RCRA rules at 40 CFR 261.33). Alternatively, provide a de minimis concentration for CERCLA regulated substances that are components of stored mixtures.

The Definition of Petrochemical Plant is Unclear.

2. The definition of petrochemical plant uses terms that are not clearly defined. This definition needs to be clearly defined and/or referenced if already defined elsewhere. Specifically, please clarify the definitions of the following:

- "basic" chemicals
- "intermediate" chemicals
- "allied" chemical products

The proposed definition language does not include a facility that manufactures "allied chemical products". TCC requests that TCEQ clarify the definition of petrochemical plant.

Applicability to Performance Standards

3. TCC requests that TCEQ clarify that various performance standards as specified in 30 TAC section 338.5. Specifically, seeks clarification in the applicability section of proposed Section 338.5(a) to make clear that the performance standards listed in subsections (b) and (c) only apply when two criteria are met: (1) the vessel is a Storage Vessel under Texas law (namely has a capacity of 21,000 gallons or more and contains a regulated substance as defined by 338.2(7) of the new rule), and (2) the vessel is subject to the listed performance standards in subsections (b) and (c). TIP recommends that Section 338.5(a) be amended as follows:

- (a) The performance standards identified in subsections (b) and (c) are applicable when both of the following criteria are met: (i) the vessel meets the definition of Storage Vessel as defined in Section 338.2(8); and (ii) the Storage Vessel is subject to the performance standard.

This change will clarify TCEQ's intent not to expand the scope of the listed performance regulations beyond the statutory phrasing "as delineated in the applicability section" of the federal rules and national consensus standards.

Risk Management Plan (RMP)

4. As written, it is not clear that TCEQ intends this to apply only to a vessel already governed by Risk Management Plan (RMP) Rules. RMP is a "process-based" standard however it is being applied solely to storage tanks, regardless of the process it may be part of. RMP's contain information about the entire process which is outside of the scope of SB900. It is not clear how TCEQ will limit their investigations in the future to just the tanks portion of the RMP.

5. When incorporating the federal Risk Management Plan, TCEQ's proposed rule seems to be completely ignoring TWC 26.3442(d) and proposed section 338.5(a), which limits applicability to the applicability section in each regulation, and, instead, the proposed language replaces the provisions in the RMP applicability section 68.10 with TWC 26.343 and a threshold of 21,000. TCC and TXOGA have concerns that this drastically expands the population of tanks in Texas that would be subject to the RMP provisions listed in the proposal.

6. The proposed rule should be clear that EPA RMP requirements incorporated-by-reference are applied, under these TCEQ rules, just to the storage vessel and not to ancillary equipment or other parts of the facility. TCC and TXOGA would suggest the following definitions be added to the proposed rule:

§ 338.5(b): "(b) Storage Vessels in service before or on September 1, 2027. For an existing storage vessel, as defined in § 338.2 of this title (relating to Definitions) that is in service before or on September 1, 2027, all of the following performance standards for safety shall apply to the storage vessel (but not ancillary equipment or unrelated facilities at the site):"

§ 338.5(c): "(c) Storage vessels placed into service after September 1, 2027. For a new storage vessel placed into service after September 1, 2027, all of the following performance standards for safety shall apply to the storage vessel (but not ancillary equipment or unrelated facilities at the site):"

Proposed Clause (i)

7. TCC has concerns regarding proposed clause (i) which states that the regulated substances that are listed in section 338.2 in the definition of a storage vessel, should be used instead of the regulated substances referenced in 40 CFR § 68.10. TCC believes this language is ambiguous relating to RMP and recommends that TCEQ verify whether RMP applies.

The Rule Should Not Expand the Applicability of API 653

8. TCC and TXOGA would like to clarify that a tank will be subject to API 653 if it doesn't store a regulated substance and is not subject to API 653 today. Clarification is needed on why the definitions of Bulk Storage Terminal, Petroleum Refinery, and Petrochemical Plant do not align with official SIC definitions. TCC suggests that TCEQ include a de minimis threshold of a regulated substance. Additionally, some standards referenced in 30 TAC § 338.5 have different requirements based on the date of construction (e.g., API 653), TCEQ should clarify in the rule that the intent of the rule is for standards to be required as they are applicable in each underlying standard, and not to expand applicability of any referenced standard or to alter the protocol provided in the standard. Once a tank has been determined to be subject to a standard, the protocols in that standard may provide additional factors regarding how the tank will comply with the standard based upon the specific use, age and history of the tank. For example, the tank inspection frequency considerations include several factors that may vary interval between inspections and should be evaluated on a tank by tank basis.

Clarity on Fee Schedule

9. TCC and TXOGA request TCEQ to provide clarity on how it structured the fee schedule.

On-Site Testing of Vessels

10. Section 338.7(b)(1) as proposed states that TCEQ may enter at reasonable times to a facility in which a storage vessel is located. TCC and TXOGA would like clarification from TCEQ as to whether TCEQ can come onto any site with a storage vessel or only those registered.

11. Section 338.7(b)(3) as proposed states that TCEQ can come on site to test the storage vessel. TCC has strong concerns regarding TCEQ personnel performing tests on TCC equipment. To remain congruent with what TCEQ does in other program areas, the rule language should be changed to give the TCEQ the authority to require the Owner/Operator to do testing and certify compliance.

Reasonable Cause

12. Section 338.7(e) as proposed does not state what constitute “reasonable cause to believe that a release has occurred”. TCC and TXOGA request clarity on what constitutes “reasonable cause”.

Change to Registration Notification

13. TCC has concerns regarding section 338.20(e) as proposed. A thirty-day notification requirement for changes to registration information is not realistic. TCC recommends a longer time closer to 6 months or an initial notification and then more details later. TCC would like to point out that some of this information is temporary and/or conditional during these kind of changes, and would not necessarily have all data right away.

MACT Program at Part 63

14. TCC and TXOGA are concerned about the omission of MACT standards from the proposed rule. Without including a reference to these standards in the rule, TCC is concerned that facilities will not be able to utilize MACT subpart WW which allows for “in-service” inspections of internal floating storage tanks. TCC and TXOGA recommend including a reference to the MACT program part 63 standard in the rule.

Recordkeeping

15. Section 338.9 removes the five-year record retention requirement in RMP and is standard for most environmental records and replaced it with a requirement to keep records “for the operational life of the aboveground storage vessel.” This includes all original and amended registrations and certifications. TCC has concerns that this requirement is excessive and recommends retaining the five-year retention period.

16. Section 338.9(a)(2) of the proposed rule requires that records be kept “in a secure location on the facility premises” unless that is unreasonable. The wording should be changed to permit electronic storage of records off-premises (for example, on a company’s server network), while keeping the wording requiring the owner/operator to make the records readily available in an inspection. TCC and TXOGA would offer the following language to address this matter:

§ 338.9(a)(3): “(3) If an owner or operator cannot reasonably maintain copies of the required records on the facility’s premises, then As an alternative to keeping physical records onsite, the owner or operator may maintain the records electronically or at a readily accessible alternate site, provided that the records are: (A) readily accessible for reference

and use by the owner or operator; and (B) readily accessible and available for inspection upon request by executive director personnel or an executive director-designated agent.”

Inspections Sampling

17. Section 338.7(b)(2) gives TCEQ the right to “inspect and obtain samples of a regulated substance contained in the storage vessel. The proposed rule currently does not provide any basis for what these samples will be used for; what analysis will be done; how confidential business information will be respected for these samples; or how facilities are supposed to grant TCEQ sufficient access to obtain the sample “contained in the storage vessel”. TCC recommends that TCEQ provide clarity on these matters. TCC and TXOGA also raise the issue that most facilities have sampling stations in process lines prior to storage tanks, not within the tanks themselves.

Registration

18. Section 338.20 requires that new tanks be registered within 30 days after start of operation and update of a tank registration within 30 days of any change, including change of operation. The phrase “operational status” is not defined in the proposed rule. TCC recommends defining the term “operational status” to add clarity for the regulated community. Additionally, TCC requests clarification on whether “operational status” applies to swing tanks and whether a facility can register multiple materials. The proposed rule should be amended to make clear that, for tanks such as swing tanks, the initial registration could list multiple materials that will be handled from time to time by the storage vessel, so that a new notification is not required every time a tank routinely switches from handling one substance to the other. TCC would like to point out that safety measures applied to a swing tank do not change when a different substance is sent to the tank and stored, and therefore it should not be necessary to notify TCEQ every time this occurs. Furthermore, the standards referenced by SB 900, including RMP and SPCC, allow for up to six months for making the required updates for new sources and/or changes. TCC recommends that TCEQ allow more time for making these updates, especially for facilities which have a large number of tanks. TCC would offer the following language to address this matter:

§ 338.20(e)(2): “Changes or additional information. The owner or operator of a storage vessel must provide notice to the executive director of any changes to the registration for the facility within 30 days of the occurrence of the change. The owner or operator must provide the notice using the method authorized by the executive director. Changes that require notification include but are not limited to: . . . (2) the substance stored in any storage vessel (provided, however, that a tank may be registered to store multiple products, in which case notice is not required for a switching between registered products);”

Cancellation of Tank Registration

19. Section 338.20(h) of the proposed rule provides that an owner or operator must certify that a vessel “is decommissioned and is no longer subject to the definition of storage vessel” in order to cancel a tank’s registration in the program. This provision is too narrow to cover the range of circumstances in which a tank should be deregistered (for example, a tank that changes service and newly meets an exemption in § 338.3 should be deregistered even if it has not been decommissioned and still otherwise meets the definition of storage vessel). TCC would suggest the following language to address this matter:

§ 338.20(h): “(h) to cancel a registration, the owner or operator must provide notice and certify that the vessel is decommissioned, qualifies for an exemption under § 338.3 of this title, or and is no longer subject to the definition of storage vessel as defined in §338.2 of this title...”

Fees

20. The preamble for this section has two different values for the “per bbl” additional charge. In the paragraph on page 40 it says the value is \$0.0024 per barrel but in the table immediately below (Table 1: Proposed Preliminary Fee Schedule) that the fee is listed as \$0.0027 per barrel. Which is correct?

Out of Service

21. The language in Section 338.21(b) of the proposed rule would seem to indicate that it is TCEQ’s intention to require that every existing storage tank subject to this regulation be taken out of service during the period of September 1, 2027, to September 1, 2037. Further this seems to indicate that each tank will be required to be taken out of service every 10 years. TCC and TXOGA have concerns that this is excessive for fixed roof storage tanks, which typically operate with a 20-year inspection cycle as allowed by API 650/653.

22. Proposed section 338.21(b) requires the owner/operator to certify compliance for a preexisting tank no later than 9/1/37 and appears to apply regardless of whether the tank is in service on that date. If a tank is out of service on that date, then there should be no need for its compliance to be certified until immediately before it reenters service. It is possible that some tanks will be temporarily out of service on this date and therefore not present a risk until brought back into service. TCC and TXOGA would suggest the following language to provide clarity on this matter:

§ 338.21(b): “For storage vessels constructed and brought into service on or before September 1, 2027, an owner or operator shall certify compliance under §338.5 of this title upon completion of the next regularly scheduled out-of-service maintenance of the storage vessel, but no later than September 1, 2037. If the next regularly scheduled out-of-service maintenance of the storage vessel is ongoing on September 1, 2037, then the compliance certification may be deferred until immediately prior to the storage vessel reentering service after September 1, 2037.”

23. The proposed requirement to certify compliance by 9/1/37 (§ 338.21(b)) also assumes that most or all tanks will be on a 10-year schedule between out-of-service maintenance activities. Under API 653 (5th ed.) as referenced in the proposed rule, some well-equipped storage tanks can go up to 30 years between out-of-service maintenance activities due to their low risk of a release and therefore may not need to have a scheduled out-of-service maintenance by 9/1/37. If this rule program forces all such tanks to go out of service by 9/1/37, it will effectively accelerate the tank cleaning and degassing activities in doing so, which can be the highest rate of VOC and other air emissions from storage tank operations. The TCEQ should design the rule program to encourage operators to design and equip tanks so that they are both safer and qualify for the longer intervals between out-of-service maintenance (and therefore experience lower overall air emissions). To do so consistent with SB900, the TCEQ should revise the proposal to invite temporary exemptions for such tanks. TCC would suggest the following language to address this matter:

§ 338.3(b): “The owner or operator of an affected storage vessel may submit a written request to the executive director for a specific storage vessel to be exempted from the requirements of this chapter. For a storage vessel whose next scheduled out-of-service maintenance interval can be deferred until after September 1, 2037 under the relevant industry consensus standard(s), the request should so state, and the executive director should promptly issue a temporary exemption until the end of the next scheduled out-of-service interval. Otherwise, the request must provide a demonstration that the storage vessel presents a sufficiently low risk of floods, storm surges, hurricanes, accidents, fires, explosions, or other hazards so that it does not warrant regulation under this chapter. The executive director must provide written approval before the storage vessel is considered to be exempt from the requirements of this chapter.”

PHMSA DOT Tanks

24. The proposed rule package states that PHMSA DOT tanks are excluded, TCC requests that TCEQ clarify that TRRC regulated breakout tanks are also excluded.

Methane Condensate Gathering

25. The proposed rule package does not provide a definition for methane condensate gathering. TCC requests that TCEQ provide a definition. Additional clarification is needed with regard to application to central gathering points downstream of E&P Activity.

API 2350

26. The proposed rule package references API 2350 regarding the need for automated overflow protection systems. TCC requests that TCEQ clarify that AOPS will only be required per API 2350 (API 2350 assessment protocol defined in TWC section 26.3442(e)(1)(B)(b)(iv)), and not on all tanks.

NFPA 30 Ch. 22 and API 2001

27. The proposed rule package references NFPA 30 Ch. 22 and API 2001 regarding the need for fire suppression systems. TCC requests that TCEQ clarify that fixed and semi-fixed fire suppression is only required when specified per the protocol in the applicable standard and not on all tanks. Additionally, these standards may have different requirements based on the date of construction, for example, amendments to a specific standard may not be retroactively applied to facilities, equipment or installations built prior to the effective date of the new standard, except where specified in the standard. TCEQ should clarify in the rule that the intent of the rule is for standards to be required as they are applicable in each underlying standard, and not to expand applicability of any referenced standard or to alter the protocol provided in the standard.

12F Tanks

28. TCC requests that TCEQ clarify whether the language in the proposed rulemaking package is intended to forbid the usage of 12F tanks for tanks greater than 500 bbls. TCC would also point out that the industry standard is for tanks up to 750 bbls.

29. The proposed rule’s incorporation-by-reference of API 650 (§ 338.5(c)(2)) could be misinterpreted to prohibit use of a small tank manufactured to API 12F (generally, tanks up to 750

barrels). Accordingly, the proposed rule should be revised to acknowledge API 12F as an alternative for such tanks. TCC would suggest the following language to address this issue:

§ 338.5(c)(2): “(2) API 650: Welded Tanks for Oil Storage, Thirteenth Edition, March 2020 (Errata 1, January 2021), and any applicable Annex (or, for storage vessels up to 750 barrels in capacity, API 12F) (or, at the owner or operator’s option, a more recent version of either such standard) are incorporated by reference and...”

Facility Response Plan

30. TCC has concerns that the reference to the Facility Response Plan in the proposed rule package is an expansion of the list of the prescribed standards in SB 900.

Standards References

31. TCC and TXOGA have concerns that some standards referenced in section 338.5 have different requirements based on materials stored, size, etc. TCC recommends that TCEQ clarify in the rule that the intent of the rule is for standards to be required as they are applicable in each underlying standard, and not to expand applicability of any referenced standard.

32. The proposed rule incorporates by reference 40 CFR § 68.12. TCC is concerned that including this incorporation by reference will add confusion and goes against the intent behind SB 900 to improve the safety of tank operations regardless of what RMP Program level they might fall into.

33. The proposed rule incorporates by reference 40 CFR § 68.15. TCC requests verification from TCEQ that this section only applies to RMP Program 2 and 3 and clarification on whether the TCEQ intends to have this section apply to Program 1 also. TCC does not believe that this section tangibly improves the safety of tank operations.

34. The proposed rule incorporates by reference 40 CFR § 68.48. TCC does not believe that this incorporation tangibly improves safety. TCC believes that the references in this section are much more applicable to process equipment, not storage tanks.

35. The proposed rule incorporates by reference 40 CFR §§ 68.50 and 68.67. TCC does not believe that hazard reviews for storage tanks need to be required if the Recognized and Generally Accepted Good Engineering practices (RAGAGEP) detailed in the proposed rule is followed. The RAGAGEP was developed as a result of incidents that happening and addresses the hazards of tank operation.

36. The proposed rule incorporates by reference 40 CFR § 68.56. TCC and TXOGA do not believe there is a need for this incorporation from the RMP. Maintenance for storage tanks is covered by API 653 which is referenced later in the rule.

37. The proposed rule incorporates by reference 40 CFR § 68.65. Process safety information as a whole contains a large amount of material that is not relevant to the improvement of safety tank operations such as block flow diagrams / process flow diagrams, process chemistry information, ventilation system design, and material / energy balances. Furthermore, the majority of PSI requirements that apply to safety tank operations are captured through API 650 and 653.

38. The proposed rule incorporates by reference 40 CFR § 68.73. TCC does not believe this incorporation is necessary as all of the requirements therein are covered under API 653 which is addressed elsewhere in the proposed rule. TCC and TXOGA would suggest that TCEQ only incorporate those parts of section 68.73 that pertain to storage vessel safety and that are not addressed by API standards being incorporated.

39. The proposed rule incorporates by reference 40 CFR Part 68, Subpart G. TCC has concerns with the interaction of this incorporation and the proposed rule as a whole. This incorporated language would, in its application, eliminate the purpose of the proposed rule and require facilities to comply with RMP.

40. The proposed rule incorporates by reference 40 CFR Part 68, Subpart H. TCC has concerns that no parts of the incorporated language tangibly improve the safe operations of tanks. Furthermore, the audit section in this subpart is already covered by other portions of the proposed rule. TCC also has concerns regarding potential security concerns by increasing the amount of information made publicly available.

41. The proposed rule incorporates by reference 40 CFR Part 112. TCC and TXOGA believe that this incorporated language is already being complied with and is redundant and unnecessary in the proposed rule.

42. The proposed definition of “regulated substance” does not include a substance regulated as a hazardous waste. Because of this definition, there will be no storage tanks that share applicability with both 30 TAC section 338 and 40 CFR Part 264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The incorporation by reference of 40 CFR 264 is unnecessary and may lead to confusion. TCC requests that the incorporation of 40 CFR 264 be removed.

43. The proposed rule states at § 338.5(a) that applicability of a standard incorporated-by-reference is “based on the applicability section” of such standard. However, the proposed rule refers to standards in subsections 338.5(c) and (d), when in fact the referenced standards are in subsections (b) and (c). The cross-reference should be adjusted to reflect the intent of the rule. TCC offers the following language to provide clarity on this matter:

§ 338.5(a): “(a) For the standards provided in this section, applicability is based on the applicability section for each of the incorporated by reference standards provided in subsections (c) and (d) (b) and (c) of this section.”

44. The proposed rule references several industry consensus standards by reference to a specific edition. The final rule should be revised to allow an operator to use either the specific edition referenced in the rule text or, at the owner/operator’s option, a more recent edition of the same standard.

Bulk Storage Terminal

45. The proposal defines a “bulk storage terminal” to exclude “breakout vessels” but does not provide a definition. SB900 § 26.3442(a)(2) defined a “bulk storage terminal” to exclude “breakout tanks”. The proposal should be revised to refer to “breakout tanks” and further to specify that “breakout tanks” are as defined by PHMSA regulations at 49 C.F.R. § 195.2. Such a clarification is appropriate both for consistency with SB900 and to avoid federal law preemption. Federal law, in the form of the Pipeline Safety Act, at 49 USC § 60104(c), preempts the TCEQ from regulating any part of a pipeline system, whether interstate or intrastate, that is included in PHMSA’s regulations. This includes all “breakout tanks” as defined in 49 CFR § 195.2 whether connected to interstate or intrastate pipeline systems, and whether inspected by PHMSA or the Texas Railroad Commission. For this reason, SB900 was drafted to avoid regulating such breakout tanks. TCC and TXOGA would suggest that the proposed rule contain the following definition: § 338.2(1) “(1) Bulk storage terminal—A site in the state, including end-of-line pipeline storage terminals (excluding breakout vessels tanks as defined by federal law at 49 CFR § 195.2), refinery storage terminals, for-hire storage terminals, rail storage terminals, and barge storage terminals.”

RMP Operating Procedures

46. TXOGA has concerns regarding the proposed rule package and the RMP rule references. Specifically, in the RMP rule, section 68.75(e), Management Change, references section 68.69, Operating Procedures. However, section 68.69 is not one of the included RMP sections in the proposed rule package. This creates ambiguity as to whether that Operating Procedures section is now part of the proposed rule. TXOGA recommends that TCEQ make a clear statement that the listed rules, and only the listed rules, are applicable.

Federal Register RMP References

47. TXOGA has concerns that the specific Federal Register references on the RMP rules could be problematic. If the EPA updates the RMP, and the TCEQ does not update Chapter 338, a site could be put in a situation where they have to manage dual RMP programs to be in compliance, one for the tanks and one for the rest of the site.

Direct Upload of Information

48. TCC and TXOGA recommends that TCEQ work with industry so that information can be uploaded to the agency directly from existing facility equipment databases.

Vapor Space

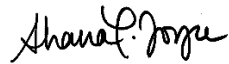
49. TCC has concerns regarding Section 338.3(a)(4) of the proposed rule. Specifically, TCC requests clarification by TCEQ on what it considers to be the vapor space of the vessel. For a fixed roof tank with internal floating roof or external floating roof tank, is the vapor space the space above the floating roof or the space between the liquid surface and the floating roof? The rule should be revised to add certainty on this point, and that the vapor space in this context would be the space above the floating roof.

TCC and TXOGA appreciate the opportunity to comment on this proposal. If you have any questions, please do not hesitate to contact Shea Pearson at (512) 646-6403 or pearson@texaschemistry.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shea', with a long horizontal flourish extending to the right.

Shea Pearson
General Counsel & Director of Regulatory Affairs
Texas Chemical Council

A handwritten signature in black ink, appearing to read 'Shana Gooch Joyce', written in a cursive style.

Shana Gooch Joyce
Director of Government and Regulatory Affairs
Texas Oil & Gas Association