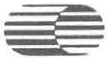


Thure Cannon

Attached please find comments filed by Thure Cannon on behalf of the Texas Pipeline Association re: SB 900: Performance Standards for Safety at Storage Vessels Program - RPN 2022-015-338-CE. Thank you for for the opportunity to comment. Please let us know if you have any questions or need additional information.



Texas Pipeline Association

Thure Cannon
President

April 10, 2023

Via <https://tceq.commentinput.com/>

Gwen Ricco
MC 205
Office of Legal Services
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Rule Project No. 2022-015-338-CE; Chapter 338, Aboveground Storage Vessel Safety Program

Dear Ms. Ricco:

The Texas Pipeline Association (TPA) appreciates the opportunity to submit the following comments regarding Rule Project No. 2022-015-338-CE, proposing a new Chapter 338 of Title 30, Texas Administrative Code. This rulemaking establishes an Aboveground Storage Vessel Safety (ASVS) Program to implement SB 900, enacted during the 87th Texas Legislature. TPA is an organization comprised of 39 members who gather, process, treat, and transport natural gas and hazardous liquids materials through intrastate pipelines in Texas and whose facilities and operations would be affected by this rulemaking.

As an initial matter, TPA wishes to express its great appreciation to TCEQ staff for its effective and hard work during the legislative process and now in this rulemaking. SB 900 represents an important legislative effort and TCEQ staff has been diligent throughout the legislative and rulemaking process in ensuring that the goals of Senator Alvarado's bill are met. Ensuring the safety of operations and facilities is of utmost importance to our members, and we therefore agree with and support the intent and goals of SB 900. We submit the following comments in an attempt to clarify the obligations that TCEQ's rules would impose on industry and to ensure that the rules accurately reflect the language of SB 900 and carry out its intent.

1. Proposed section 338.20(e) would require notice to the Executive Director of certain changes to a storage vessel's registration, including to the storage vessel's "operational status." This is a somewhat vague term that could have several different meanings. It would be helpful for the rules to define the sort of "operational status" changes that would trigger this notification requirement. Similarly, section 338.20(e)'s notification requirement would also be triggered by a

change in the substance stored in a vessel, which could create complications and unduly onerous requirements for swing tanks which typically handle various types of materials. We suggest that the proposed rule be amended 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. The 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.

2. At proposed section 338.3(a)(4), the rule language would add to the text of SB 900, as follows: “...(4) a storage vessel operating above 0.5 pounds per square inch gauge (psig), as measured with a pressure gauge in the vapor space of the vessel or calculated as the total mixture vapor pressure at the storage temperature at the storage temperature converted to gauge pressure” The proposed additional language presents the possibility for confusion. In particular, TCEQ should make clear what it is considered to be the vapor space of the vessel. While this may be straightforward for a fixed-roof tank without a floating roof, it would not be so clear for a fixed-roof tank with an internal floating roof or an external floating roof tank. Questions could arise as to whether the vapor space was the space above the floating roof or the space between the liquid surface and the floating roof. We believe 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.

3. Proposed section 338.5(b)(1)(B) would incorporate by reference 40 CFR § 68.10. While SB 900 directs TCEQ to include safety elements from *inter alia* the EPA Risk Management Plan (RMP) Rules, the law does not direct TCEQ to include specific provisions from those RMP rules and in fact the law provides that TCEQ must include “only those critical safety elements that are applicable to a storage vessel, and that the commission determines to be critical in this state” to protect water resources.¹ We believe that a number of the aspects of the RMP rules proposed to be incorporated in these new TCEQ rules do not meet that test and that TCEQ should review carefully the RMP rules that would be incorporated to ensure that the final rules do not go beyond the intent of SB 900.

For example, the applicability section of the RMP Rules, at 40 CFR § 68.10, does not appear to include provisions that qualify as a critical safety elements critical to water protection in Texas. This section is aimed *inter alia* at determining whether a site is in Program 1, 2, or 3, and all three programs require RMP plans to be submitted to the regulatory agency. We do not understand the intent of SB 900 to have been to require implementation of RMP requirements generally on aboveground storage tanks, but rather to incorporate only those particular rule provisions that are most relevant to improving the safety of the storage vessels covered by the law. It is questionable whether determination of program level status and submission of RMP plans are critical to ensuring storage vessel safety and water protection. Therefore, TCEQ should reconsider the current proposal to incorporate 40 CFR § 68.10 in its entirety into the ASVS Program.

Similarly, the proposed rules incorporate by reference 40 CFR § 68.12. This section *inter alia* requires the submission of management plans and begins the delineation of requirements depending on whether a facility is in Program 1, 2, or 3. Introducing these requirements into the

¹ Tex. Water Code § 26.3442(d).

TCEQ rules runs the risk of injecting confusion and increasing burden without commensurate safety improvements. For example, if a storage vessel at a facility is covered by Program 1 while another is covered by Program 2, it is unclear whether the TCEQ rules would treat them differently from a safe operations perspective, even if they were similarly sized and storing similar products. Adding to the potential confusion is the fact that 40 CFR § 68.12, proposed to be incorporated by reference into the TCEQ rules, itself contains numerous instances of incorporation by reference of other federal provisions, resulting in layers of incorporation by reference that would be difficult to follow.

Incorporation of other provisions poses similar potential issues. For example, the incorporated-by-reference standards in 40 CFR § 68.48 are much more applicable to process equipment than to storage vessels. In addition, the section generally references the recognized and generally accepted good engineering practices (RAGAGEP) that facilities would be required to follow, which are laid out in more detail in other sections of the rules being incorporated by TCEQ. Accordingly, we urge TCEQ to reconsider whether it is necessary or appropriate to incorporate 40 CFR § 68.48 into this rulemaking.

With respect to 40 CFR § 68.56, federal maintenance standards, we believe that maintenance specific to storage vessels is adequately covered by API 653, which TCEQ is proposing to incorporate by reference into the ASVS rules. Incorporating both the API standard and the federal rule standard could lead to inconsistency and undue burden, and we submit that the rules might benefit from focusing on the API standard, which is comprehensive and tailored to storage vessels, rather than the more general provisions of 40 CFR § 68.56.

With respect to the proposed incorporation by reference of 40 CFR § 68.65, we note as stated below that it is only applicable to Program 3 facilities, making its potential applicability to other facilities covered by these TCEQ rules a potential point of confusion. Beyond that, several components of the section 68.65 process safety information program might not be applicable to the storage vessel safety requirements at which SB 900 was directed, such as block flow diagrams / process flow diagrams; process chemistry information, ventilation system design, and material / energy balances. Most of the other process safety information requirements would be captured by the rule's incorporation by reference of API 650 / 653 standards. Adherence to API 653 standards would also result in compliance with the bulk of the section 68.73 mechanical integrity standards, resulting in further potential redundancy and possible confusion and conflict between the EPA standards and the API standards being incorporated in the same set of TCEQ rules. We 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.

4. As stated above, the proposed rules would incorporate 40 CFR § 68.10. One of the things that section does is establish whether a site is covered by Program 1, 2, or 3. Later in the proposed rules, TCEQ incorporates by reference other federal provisions, *e.g.* 40 CFR §§ 68.15, 68.48, 68.50, 68.56, 68.65, 68.67, 68.73, 68.75, 68.77, 68.90, 68.93, 68.95, and 68.96, which do not apply generally but rather only if a site is covered by one of the three programs listed above. To take one example, 40 CFR § 68.65 only applies to a site subject to Program 3, yet it is proposed to be incorporated by reference without qualification into the TCEQ rules at section 338.5(b)(1)(H). The question would become: If a site qualifies as Program 1 under incorporated-

by-reference section 40 CFR § 68.10, does it nonetheless have to comply with incorporated-by-reference section 40 CFR 68.65? The current scheme of incorporation by reference in general is potentially confusing and may be hard to navigate, and we request clarification of the rules in this regard.

5. Proposed section 338.5(b)(3) would incorporate by reference a number of federal rules pertaining to owners and operators of hazardous waste facilities (40 CFR Part 264). Those federal rules contain numerous stringent requirements appropriately tailored to facilities dealing with hazardous waste. However, if a storage vessel covered by these TCEQ rules is not handling hazardous waste as defined by the rules, then presumably it is not TCEQ's intent to require that storage vessel to comply with the Part 264 provisions being incorporated by reference. Currently the draft TCEQ rules are not clear on this point, and we would request further clarification by TCEQ in the final rule and/or preamble that a storage vessel covered by these SB 900 rules would only have to comply with the Part 264 provisions being incorporated by reference if that storage vessel was handling the type of hazardous waste covered by Part 264 and otherwise met the Part 264 applicability criteria. We appreciate TCEQ's statement in proposed section 338.5(a) that "applicability of the requirements is based on the applicability section for each of the referenced standards,"² but this leaves some room for doubt and, in any event, as stated elsewhere in these comments, the proposed section 338.5(a) language only references subsections (c) and (d) of section 338.5, while the federal rules in question, such as those in Part 264, are incorporated by reference in subsection (b) of section 338.5.

In addition, with regard to the Part 264 standards being incorporated into these TCEQ rules, the provisions of section 264.15, general inspection requirements, are very broad and contain provisions that would go beyond storage vessels in their applicability. Because of this, and because the API 653 standards being incorporated specifically cover inspection standards applicable to storage vessels, we would urge TCEQ to reconsider the broad incorporation by reference of section 264.15 and to consider whether the currently proposed incorporation of API 653 standards would be sufficient to carry out the purposes and intent of SB 900.

6. The proposed definition of "bulk storage terminal" in section 338.2(1) is "[a] site in the state, including end-of-line pipeline storage terminals (excluding breakout vessels), refinery storage terminals, for-hire storage terminals, rail storage terminals, and barge storage terminals." Unnecessary vagueness and potential confusion is introduced by inclusion of the introductory phrase "a site in the state, including ..." Although it is obviously not the intent of the provision, a strict reading of the definition would be that any "site in the state" is a bulk storage terminal under the rules, including but not limited to those described in the subsequent definition language. It would be clearer to simply define bulk storage terminal with reference to the particular kinds of terminals listed, without the introductory "site in the state, including" language.

7. There appears to be an error on Table 1: Proposed Preliminary Fee Schedule. The explanation above Table 1 states that the proposed preliminary fee schedule would be a flat fee of \$200 per vessel and an additional \$0.0024 per barrel of capacity for vessels over 20,000 barrels. Yet the per barrel fee listed in Table 1 is \$0.0027 per barrel. In addition, the \$48 and \$248 figures in Table 1 appear to be erroneous. Also, in proposed section 338.9(b)(2)(H), the reference to

² 48 Tex. Reg. 1411 (March 10, 2023).

section 338.5(b) was probably intended to reference 338.5(b)(7), rather than just subsection (b) generally, and should be corrected.

8. Proposed section 338.5(a) is somewhat unclear and it may contain an error. It refers to the basis for applicability for incorporated-by-reference standards but only refers to subsections 338.5(c) and (d), and not 338.5(b). Numerous standards are incorporated by reference in subsection (b), while few if any standards are incorporated by reference in subsection (d). We ask that TCEQ clarify the meaning of section 338.5(a) and correct any errors that may exist in the current language of the section.

Again, we state our appreciation for TCEQ staff's work on these issues and staff's willingness to engage with the stakeholder community in addressing the issues covered by SB 900. We also thank Senator Alvarado and her staff for their hard work in identifying storage vessel safety issues and drafting legislation appropriately addressing those issues. We appreciate the opportunity to submit these comments.

Yours truly,

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

Thure Cannon
President