

104TH CONGRESS
2D SESSION

S. 1537

To require the Administrator of the Environmental Protection Agency to issue a regulation that consolidates all environmental laws and health and safety laws applicable to the construction, maintenance, and operation of aboveground storage tanks, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 1996

Mr. ROBB (for himself, Mr. DASCHLE, and Mr. SIMPSON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To require the Administrator of the Environmental Protection Agency to issue a regulation that consolidates all environmental laws and health and safety laws applicable to the construction, maintenance, and operation of aboveground storage tanks, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Aboveground Storage
5 Tank Consolidation and Regulatory Improvement Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) improvement of Federal regulation of above-
2 ground storage tanks will lead to greater prevention
3 and containment of releases from aboveground stor-
4 age tanks and improvement of the environment;

5 (2) the Administrator of the Environmental
6 Protection Agency has not fully implemented any of
7 the 7 recommendations made in the 1989 report of
8 the General Accounting Office on inland oil spills;

9 (3) consolidation of Federal aboveground stor-
10 age tank provisions will lead to simplification of the
11 regulatory program and will allow the Administrator
12 to eliminate duplication and conflicting aboveground
13 storage tank regulations; and

14 (4) in order to promote environmental protec-
15 tion, aboveground storage tank secondary contain-
16 ment structures should meet a minimum permeabil-
17 ity standard.

18 **SEC. 3. PURPOSES.**

19 The purposes of this Act are—

20 (1) to promote protection of the environment;

21 (2) to streamline the offices in the Environ-
22 mental Protection Agency and other departments
23 and agencies that administer laws governing above-
24 ground storage tanks and underground storage
25 tanks;

1 (3) to consolidate the laws governing above-
2 ground storage tanks and eliminate duplicative regu-
3 lations; and

4 (4) to encourage release prevention and fire
5 protection measures in the operation of aboveground
6 storage tanks.

7 **SEC. 4. DEFINITIONS.**

8 In this Act:

9 (1) ABOVEGROUND PETROLEUM STORAGE
10 TANK.—The term “aboveground petroleum storage
11 tank”—

12 (A) means an aboveground storage tank
13 that—

14 (i) has a capacity of 42,000 gallons or
15 more; and

16 (ii) is or was at any time used to con-
17 tain any accumulation of a regulated pe-
18 troleum substance; but

19 (B) does not include an aboveground stor-
20 age tank that is used directly in the production
21 of crude oil or natural gas.

22 (2) ABOVEGROUND STORAGE TANK.—The term
23 “aboveground storage tank”—

24 (A) means a stationary tank, including un-
25 derground pipes and dispensing systems con-

1 needed to the stationary tank within the facility
2 in which the stationary tank is located, that is
3 or was at any time used to contain an accumu-
4 lation of a regulated substance, the volume of
5 which tank (including the volume of all piping
6 within the facility) is greater than 90 percent
7 above ground; and

8 (B) includes any tank that is capable of
9 being visually inspected; but

10 (C) does not include—

11 (i) a surface impoundment, pit, pond,
12 or lagoon;

13 (ii) a storm water or wastewater col-
14 lection system;

15 (iii) a flow-through process tank (in-
16 cluding a pressure vessel or process vessel
17 and oil and water separators);

18 (iv) an intermediate bulk container or
19 similar tank that may be moved within a
20 facility;

21 (v) a tank that is regulated under the
22 Surface Mining Control and Reclamation
23 Act of 1977 (30 U.S.C. 1201 et seq.);

24 (vi) a tank that is used for the stor-
25 age of products regulated under the Fed-

1 eral Food, Drug, and Cosmetic Act (21
2 U.S.C. 301 et seq.);

3 (vii) a tank (including piping and col-
4 lection and treatment systems) that is used
5 in the management of leachate, methane
6 gas, or methane gas condensate, unless the
7 tank is used for storage of a regulated sub-
8 stance;

9 (viii) a tank that is used to store pro-
10 pane gas;

11 (ix) any other tank excluded by the
12 Administrator by regulation issued under
13 this Act; or

14 (x) any pipe that is connected to a
15 tank or other facility described in this sub-
16 paragraph.

17 (3) ADMINISTRATOR.—The term “Adminis-
18 trator” means the Administrator of the Environ-
19 mental Protection Agency.

20 (4) DIRECTOR.—The term “Director” means
21 the Director of the Office.

22 (5) ENVIRONMENTAL LAW.—The term “envi-
23 ronmental law” means 1 of the following statutes
24 (and includes a regulation issued under any such
25 statute):

1 (A) The Clean Air Act (42 U.S.C. 7401 et
2 seq.).

3 (B) The Comprehensive Environmental
4 Response, Compensation, and Liability Act of
5 1980 (42 U.S.C. 9601 et seq.).

6 (C) The Federal Water Pollution Control
7 Act (33 U.S.C. 1251 et seq.).

8 (D) The Oil Pollution Act of 1990 (33
9 U.S.C. 2701 et seq.).

10 (E) The Solid Waste Disposal Act (42
11 U.S.C. 6901 et seq.).

12 (F) Any other statute administered by the
13 Administrator.

14 (6) MODEL FIRE CODE.—The term “model fire
15 code” means—

16 (A) fire code 30 or 30–a issued by the Na-
17 tional Fire Protection Association;

18 (B) the fire code issued by the Uniform
19 Fire Code Institute;

20 (C) the fire code issued by the Southern
21 Building Code Congress International; or

22 (D) the fire code issued by the Building
23 Offices and Code Administrators International.

24 (7) OFFICE.—The term “Office” means the Of-
25 fice of Storage Tanks established by section 5(a).

1 (8) PETROLEUM.—The term “petroleum”
2 means—

3 (A) crude oil; and

4 (B) any fraction of crude oil that is liquid
5 at standard conditions of temperature and pres-
6 sure (60 degrees Fahrenheit and 14.7 pounds
7 per square inch absolute).

8 (9) REGULATED PETROLEUM SUBSTANCE.—
9 The term “regulated petroleum substance” means—

10 (A) petroleum; and

11 (B) a petroleum-based substance com-
12 prised of a complex blend of hydrocarbons de-
13 rived from crude oil through processes of sepa-
14 ration, conversion, upgrading and finishing,
15 such as a motor fuel, jet fuel, distillate fuel oil,
16 residual fuel oil, lubricant, petroleum solvent, or
17 used or waste oil.

18 (10) REGULATED SUBSTANCE.—The term “reg-
19 ulated substance” means—

20 (A) a substance (as defined in section 101
21 of the Comprehensive Environmental Response,
22 Compensation, and Liability Act of 1980 (42
23 U.S.C. 9601)), but not including a substance
24 that is regulated as a hazardous waste under

1 subtitle C of the Solid Waste Disposal Act (42
2 U.S.C. 6921 et seq.); and

3 (B) a regulated petroleum substance.

4 (11) UNDERGROUND STORAGE TANK.—The
5 term “underground storage tank” has the meaning
6 stated in section 9001 of the Solid Waste Disposal
7 Act (42 U.S.C. 6991).

8 **SEC. 5. CONSOLIDATION OF OFFICES.**

9 (a) OFFICE OF STORAGE TANKS.—

10 (1) ESTABLISHMENT.—The Office of Under-
11 ground Storage Tanks of the Environmental Protec-
12 tion Agency is redesignated and established as the
13 Office of Storage Tanks.

14 (2) DIRECTOR.—The Office shall be headed by
15 a Director appointed by the Administrator.

16 (3) FUNCTIONS.—The Director shall perform—

17 (A) the functions that were vested in the
18 Director of the Office of Underground Storage
19 Tanks on the day before the date of enactment
20 of this Act; and

21 (B) the functions transferred to the Direc-
22 tor (or to the Administrator, acting through the
23 Director) by subsection (b).

24 (b) TRANSFERS OF AUTHORITY.—

1 (1) INTRA-AGENCY TRANSFERS.—There are
2 transferred to the Director all of the authorities of
3 the following officers of the Environmental Protec-
4 tion Agency, insofar as the authorities relate to the
5 regulation of aboveground storage tanks and under-
6 ground storage tanks under the environmental laws:

7 (A) The Assistant Administrator for Air.

8 (B) The Assistant Administrator for
9 Water.

10 (C) The Director of the Office of Emer-
11 gency and Remedial Response.

12 (D) Any other officer to whom the Admin-
13 istrator has delegated authority.

14 (2) TRANSFER FROM THE SECRETARY OF
15 LABOR.—There are transferred to the Adminis-
16 trator, acting through the Director, all of the au-
17 thorities of the Secretary of Labor, acting through
18 the Assistant Secretary for Occupational Safety and
19 Health, insofar as the authorities relate to the regu-
20 lation of aboveground storage tanks and under-
21 ground storage tanks under the Occupational Safety
22 and Health Act of 1970 (29 U.S.C. 651 et seq.) and
23 section 126 of the Superfund Amendments and Re-
24 authorization Act of 1986 (Public Law 99–499; 29
25 U.S.C. 655 note).

1 (3) TRANSFER FROM THE SECRETARY OF
2 TRANSPORTATION.—There are transferred to the
3 Administrator, acting through the Director, all of
4 the authorities of the Secretary of Transportation,
5 acting through the Administrator for Research and
6 Special Programs, acting through the Associate Ad-
7 ministrators for Pipeline Safety and the Associate
8 Administrator for Hazardous Materials Technology,
9 insofar as the authorities relate to the regulation of
10 aboveground storage tanks and underground storage
11 tanks under chapter 601 of title 49, United States
12 Code.

13 (c) TRANSFER AND ALLOCATIONS OF APPROPRIA-
14 TIONS AND PERSONNEL.—There are transferred to the
15 Environmental Protection Agency, in accordance with sec-
16 tion 1531 of title 31, United States Code—

17 (1) the assets, liabilities, contracts, property,
18 records, and unexpended balances of appropriations,
19 authorizations, allocations, and other funds em-
20 ployed, used, held, arising from, available to, or to
21 be made available in connection with the functions
22 transferred by subsection (b) (2) and (3); and

23 (2)(A) the personnel employed in connection
24 with those functions; or

1 (B) the amount of unexpended balances of ap-
2 propriations necessary to enable the Administrator
3 to employ persons in the number of full time equiva-
4 lent positions as the persons employed in connection
5 with those functions on the day before the date of
6 enactment of this Act,
7 as determined by the Director of the Office of Manage-
8 ment and Budget, in consultation with the Administrator,
9 the Secretary of Labor, and the Secretary of Transpor-
10 tation.

11 **SEC. 6. CONSOLIDATION OF APPLICABLE LAWS.**

12 (a) **RESTATEMENT IN CONSOLIDATED FORM.**—

13 (1) **IN GENERAL.**—Not later than 3 years after
14 the date of enactment of this Act, the Director, in
15 consultation with the States, shall evaluate all laws
16 (including regulations) administered by the Director
17 and, after notice and opportunity for public com-
18 ment, issue a regulation that restates those laws in
19 consolidated form and streamlines, to the extent
20 practicable, the application of those laws to owners
21 and operators of aboveground storage tanks and un-
22 derground storage tanks.

23 (2) **INTENT OF CONGRESS.**—In directing the
24 Director in paragraph (1) to restate the laws in con-
25 solidated form, it is not the intent of Congress to di-

1 rect or authorize the Director to modify the require-
2 ments of those laws in any way, except as necessary
3 or appropriate to eliminate any duplication or incon-
4 sistencies or to reduce any unnecessary regulatory
5 burdens and except as provided in subsections (b),
6 (c), and (d).

7 (b) MODEL FIRE CODES.—The regulation under sub-
8 section (a) shall be consistent with and based on the model
9 fire codes, as in effect on the date of enactment of this
10 Act or as they may be amended.

11 (c) RELEASES.—

12 (1) REPORTING REQUIREMENTS APPLICABLE
13 TO ALL ABOVEGROUND STORAGE TANKS.—The regu-
14 lation under subsection (a) shall require that an
15 owner or operator of an aboveground storage tank
16 shall report a release of 42 gallons or more of a reg-
17 ulated substance that occurs during a period of time
18 specified by the director, not to exceed 5 calendar
19 days, including a description of the corrective action
20 taken in response to the release, to the national re-
21 sponse center established under the Federal Water
22 Pollution Control Act (33 U.S.C. 1251 et seq.), un-
23 less the release is required to be reported, and is re-
24 ported, under other Federal law.

1 (2) ORDERS APPLICABLE TO ABOVEGROUND
2 STORAGE TANKS.—After a release from an above-
3 ground storage tank containing a regulated sub-
4 stance that is determined to be an imminent threat
5 to human health, public safety, or the environment,
6 the Administrator may issue an order prohibiting
7 the use or operation of all or any portion of a stor-
8 age tank farm within a facility in which the above-
9 ground petroleum storage tank is located, until the
10 Administrator determines that—

11 (A) the prohibition is not necessary to pro-
12 tect human health, public safety, or the envi-
13 ronment; or

14 (B) adequate corrective action has been
15 taken, in accordance with the law regulating
16 corrective action that is in effect on the date on
17 which the determination is made.

18 (d) CORRECTION OF DEFICIENCIES IN THE LAW AP-
19 PPLICABLE TO ABOVEGROUND PETROLEUM STORAGE
20 TANKS.—

21 (1) ADDITIONAL AUTHORITY.—In addition to
22 the authority transferred to the Director by section
23 5(b), the Director shall have authority to issue, and
24 shall include in the regulation under subsection (a),
25 release detection, prevention, and correction regula-

1 tions applicable to owners and operators of above-
2 ground petroleum storage tanks, as necessary to
3 protect human health and the environment.

4 (2) CORRECTION OF DEFICIENCIES.—In con-
5 ducting the evaluation of laws and issuing the regu-
6 lation under subsection (a), the Director shall—

7 (A) determine whether there are any defi-
8 ciencies in the law applicable to aboveground
9 petroleum storage tanks on the day before the
10 date of enactment of this Act, specifically with
11 reference to secondary containment, overfill pre-
12 vention, testing, inspection, compatibility, in-
13 stallation, corrosion protection, and structural
14 integrity of aboveground petroleum storage
15 tanks; and

16 (B) if the Director determines that any
17 such deficiencies exist—

18 (i) examine industry standards that
19 address the deficiencies;

20 (ii) give substantial weight to industry
21 standards in formulating the regulations
22 required by paragraph (1); and

23 (iii) design the regulation in the most
24 cost-effective manner to address the defi-
25 ciencies.

1 (e) ENFORCEMENT.—

2 (1) IN GENERAL.—The regulation under sub-
3 section (a) shall make clear the statutory enforce-
4 ment provisions and other statutory provisions that
5 apply to each provision of the regulation.

6 (2) ADDITIONAL AUTHORITY.—Any provision of
7 the regulation under subsection (c) or (d) that im-
8 plements authority conferred by this Act in addition
9 to authority under law in effect on the day before
10 the date of enactment of this Act shall be enforced
11 under and in accordance with the procedures stated
12 in section 9006 of the Solid Waste Disposal Act (42
13 U.S.C. 6991e).

14 **SEC. 7. REPORTS.**

15 (a) INTERIM REPORT.—Not later than 2 years after
16 the date of enactment of this Act, the Director shall sub-
17 mit to Congress a report describing the progress made and
18 any tentative conclusions drawn in the evaluation process
19 under section 6(a)(1).

20 (b) FINAL REPORT.—Simultaneously with the issu-
21 ance of the regulation under section 6(a)(1), the Director
22 shall submit to Congress a final report that—

23 (1) describes the evaluation made and the regu-
24 lation issued under section 6(a)(1); and

1 (2)(A) states the extent to which the regulation
2 implements the recommendations made in the 1989
3 report of the General Accounting Office on inland oil
4 spills and the 1995 report of the General Accounting
5 Office on the status of the Environmental Protection
6 Agency's efforts to improve the safety of above-
7 ground storage tanks; and
8 (B) to the extent that the consolidated regula-
9 tion does not implement the recommendations, de-
10 scribes the Director's plans regarding the rec-
11 ommendations.

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