



Senate Fiscal Agency
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Senate Bill 1169 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Curtis S. VanderWall
Committee: Environmental Quality

Date Completed: 12-19-22

RATIONALE

Underground storage tanks often contain petroleum products, such as gasoline. Part 211 (Underground Storage Tank Regulations) of the Natural Resources and Environmental Protection Act (NREPA) governs these tanks and grants the Department of Licensing and Regulatory Affairs (LARA), Bureau of Fire Services rulemaking authority. Administrative rules require underground storage tanks to meet, among other things, specified setback distances from many types of wells. Public Act 160 of 2022 codified these setback distances and allowed for exemptions to the setback distances for the replacement of active underground storage tanks under certain conditions. However, neither administrative rule nor NREPA allow LARA to exempt new underground storage tanks from setback distances, and some people believe that exemptions to setback distances should be extended to new tanks. Accordingly, it has been suggested that that an exemption to these distances be established for new tanks if certain requirements were met.

CONTENT

The bill would amend Part 211 (Underground Storage Tank Regulations) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- **Apply the current setback distances from water wells for the installation of a new underground storage tank to the replacement of an active, installed underground storage tank.**
- **Allow a person to install a new underground storage tank at a new location or an additional new underground storage tank at an existing location that did not meet current setback requirements if a professional engineer certified that no wells would be affected by a release from the tank.**
- **Prohibit a person from installing a new underground storage tank at a new location, an additional underground storage tank at an existing location, and a replacement to an active, installed underground storage tank within specified setback distances, such as 50 feet from a single-family drinking well.**

Replacement of an Existing Tank

Part 211 generally prohibits a person from installing an underground storage tank that is located within any of the following setback distances:

- The tank is within 2,000 feet of an existing type I community or type IIa noncommunity water well.
- The tank is within 800 feet of an existing type IIb or type III noncommunity public water well.
- The tank is within 300 feet of any other type of well not described above.

Under the bill, this prohibition would apply to a replacement to an active installed tank.

(Part 211 defines "underground storage tank system" as a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances (generally, hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act; petrochemicals; and hazardous air pollutants under the Clean Air Act), and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. See **BACKGROUND** for information concerning water well types.)

Part 211 allows a person who wishes to install an underground storage tank that does not meet the conditions described above to replace only an active underground storage tank if the following requirements are met:

- A professional engineer or qualified underground storage tank consultant certifies that a combination of the construction material of the underground storage tank and the leak detection used to monitor the underground storage tank is more likely to prevent and detect a release from the replacement underground storage tank than the existing underground storage tank.
- The facility where the active, existing underground storage tank is located was in compliance with Part 211 and the rules promulgated under Part 211.

Under the bill, the prohibitions and exceptions provided above would apply to the replacement of an existing, installed underground storage tank, instead of the installation of a new underground storage tank.

Installation of a New Tank

Under the bill, except as provided below, a person could not install a new storage tank at a new underground storage tank location or install an additional new underground storage tank at an existing underground storage tank location that was located within any of the setback distances described above.

The bill would allow a person that wished to install a new underground storage tank at a new underground storage tank location or an additional new underground storage tank at an existing underground storage tank location that did not meet the setback conditions and was not replacing an existing, installed underground storage tank to install a new underground storage tank at a new location or an additional new underground storage tank at an existing location only if a professional engineer certified that the proposed location where the underground storage tank would be installed was such that, if a release were to occur from the underground storage tank, no well would be affected by the release.

The bill specifies that a new underground storage tank at a new underground storage tank location or an additional new underground storage tank at an existing underground storage tank location, and a replacement to an active, installed underground storage tank as described above, could not be located within any of the following setback distances:

- Within 50 feet of a single-family drinking water well.
- Within 75 feet of an existing type IIb or type III noncommunity public water well.
- Within 200 feet of an existing type I community or type IIa noncommunity public water well.

MCL 324.21102a et al.

BACKGROUND

According to the Department of Environment, Great Lakes, and Energy, water wells are classified by the nature and size of the population they serve. Type I community water wells provide year-round service to at least 25 people or at least 15 living units. Type II noncommunity water wells serve at least 25 people for at least six months per year or at least 60 days per year, depending

on their usage. Type II wells are further classified based on their water production: 1) type IIa wells have an average production of 20,000 gallons or more per day during their peak month; and 2) type IIb wells have an average production of less than 20,000 gallons per day during their peak month. Type III noncommunity public water wells are any wells not considered type I or type II water wells that serve fewer than 25 people and 15 connections, or that operate for fewer than 60 days a year.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Emerging fuels, such as ethanol-15 (E15) or ethanol-85 (E85), are becoming more common. These fuels are created by blending ethanol (i.e. alcohol) made from plant materials, with gasoline in certain ratios; the number in E15 generally represents the approximate percentage of ethanol in the blend, 15%. According to the United States Environmental Protection Agency (EPA), not all underground storage tank systems are compatible with some emerging fuels. In its statement on E15's compatibility with underground storage tank systems, the EPA specifies that "storing and dispensing E15 at gas stations with equipment that is not compatible with higher blends of ethanol fuel can result in leaks and releases that contaminate land and groundwater".¹

Fueling stations are interested in offering more emerging fuel types, such as E15 or E85. Testimony before the Senate Committee on Environmental Quality indicates that there are many investment projects in Michigan, such as new gas stations, that need new underground storage tanks that can handle these fuel types. However, these projects cannot receive exemptions from setback distances for their proposed underground storage tank systems because a process for exempting new tanks does not exist. Exemptions to setback distances for new tanks would allow fueling stations to offer these emerging fuels safely and increase the likelihood that these investment projects come to fruition in more communities.

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Jonah Houtz

¹ "E15's Compatibility with UST Systems," United States Environmental Protection Agency, January 2020. Retrieved 12-6-22.