

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, 334.425 - 334.428, 334.451 - 334.463, and 334.465 - 334.467. The commission also adopts new §§334.401, 334.451, §334.454, and 334.455; and amendments to §334.407 and §334.424. Sections 334.401 and 334.451 are adopted *with changes* to the proposed text as published in the September 28, 2001, issue of the *Texas Register* (26 TexReg 7500). Sections 334.407, 334.424, 334.454, and 334.455; and the repeal of §§334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, 334.425 - 334.428, 334.451 - 334.463, and 334.465 - 334.467 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts changes to Chapter 334 to implement new provisions in Texas Water Code (TWC), Chapter 37, which were created by House Bill (HB) 3111 of the 77th Legislature, 2001. Texas Water Code, Chapter 37, requires the commission to consolidate administrative requirements and establish uniform procedures for the occupational licensing and registration programs administered by the commission. House Bill 3111 requires the commission to establish rules for the occupational licensing programs by December 1, 2001. New 30 TAC Chapter 30, Occupational Licenses and Registrations, which is concurrently adopted in this issue of the *Texas Register*, consolidates the administrative requirements for the ten licensing and registration programs administered in the Compliance Support Division (CSD). Chapter 30 will establish uniform procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval for all of the licensing programs managed by the CSD.

The adopted rules will remove the requirements and procedures for issuing and renewing licenses and registrations, setting terms and fees, enforcement activities, and training approval for licenses and registrations from Chapter 334 because these requirements and procedures will be specified in the new Chapter 30. Additional sections in Chapter 334 are amended to accommodate transferring the licensing requirements to Chapter 30, to amend references to the licensing requirements, and to specify additional requirements for the license and registration holders.

SECTION BY SECTION DISCUSSION

Subchapter I - Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration

The commission has amended the title of Subchapter I from “Underground Storage Tank Contractor Registration and Installer Licensing” to “Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration,” to eliminate the reference to installer which is the same as an on-site supervisor, and to make the title consistent with the text. These changes are required to implement HB 3111 and provisions of TWC, Chapter 37.

Sections 334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, and 334.425 - 334.428 are repealed because the licensing and registration requirements for contractor registration and installer licensing are being transferred to new Chapter 30.

Adopted new §334.401, License and Registration Required, clarifies who would be required to hold a license or registration issued by the commission and to identify the requirement to comply with Chapter 30. Adopted new §334.401(a) clarifies who is required to hold a license for supervising the

installation, repair, or removal of an underground storage tank (UST) under Chapter 30. Since publication of the proposed rules, the commission has added a sentence to clarify that all references to the term “installer” are consistent with the term “on-site supervisor” used throughout this chapter. This added language also clarifies that an on-site supervisor must be on the job site during all times of the critical juncture. Adopted new §334.401(b) clarifies who is required to hold a registration as a UST contractor.

Adopted §334.407, Other Requirements for Certificate of Registration, amends the title of this section to “Other Requirements for an Underground Storage Tank Contractor” to clarify the requirements for compliance by UST contractors. Subsection (a) is deleted because the requirement is now identified in Chapter 30. Subsection (b) is relettered to subsection (a) and adds “insurance and net worth” and deletes “financial” to explain what financial requirements are needed throughout the period the contractor holds a registration. This subsection adds §30.315 as a cross-reference and changes “agency” to “executive director” to be consistent with commission definitions. Also, this section deletes “certificate of” because the term has been deleted from Subchapter A. Subsection (c) is relettered to subsection (b) and changes a reference from Chapter 313 to Chapter 213 relating to the Edwards Aquifer, because of a typographical error in the previous rule. Subsection (d) is relettered to subsection (c). New subsection (d), which was previously §334.414(d), is transferred with new language to improve readability and to clarify the requirement. New subsection (e), which was previously §334.401(c), is transferred with new language to improve readability and to clarify the requirements of this section.

Adopted §334.424, Other Requirements for a License A and License B, amends the title of this section to “Other Requirements for an On-Site Supervisor” to clarify the requirements for compliance by on-site supervisors. Subsection (a) is deleted because the requirement is now identified in Chapter 30. Subsections (b) - (d) are relettered, and the phrase “installer or” is deleted because an installer or an on-site supervisor is the same person and the term is not needed.

Subchapter J - Leaking Petroleum Storage Tank Corrective Action Specialist Registration and Project Manager Licensing

The commission has amended the title of Subchapter J from “Registration of Corrective Action Specialist and Project Managers for Product Storage Tank Remediation Projects” to the correct title, which is “Leaking Petroleum Storage Tank Corrective Action Specialist Registration and Project Manager Licensing.” This title is amended to eliminate the term registration when referring to project managers.

Sections 334.451 - 334.463, and 334.465 - 334.467 are repealed because the licensing and registration requirements for corrective action specialists and project managers are being transferred to new Chapter 30.

Adopted new §334.451, Applicability of Subchapter J, is transferred from §334.454 which is repealed. Portions of the new language are transferred with changes. The adopted new language refers applicants to Chapter 30 to incorporate the new provisions from TWC, Chapter 37. New language was added to explain that the terms registered and licensed have the same meaning when referring to corrective

action project managers within this chapter. Since publication of the proposed rules, the commission has added new subsection (a) to clarify that when referring to corrective action project managers within this chapter, the terms registered and licensed have the same meaning. In addition the reference to the title of Subchapter E in Chapter 30 has been corrected. These changes are required to implement HB 3111 and provisions of TWC, Chapter 37.

Adopted new §334.454, Exception for Emergency Abatement Actions, is transferred from repealed §334.454. Portions of the new language are transferred with the following changes. “Licensed” was added when referring to corrective action project manager to incorporate the new requirements from TWC, Chapter 37. The phrase “this subchapter” was deleted to correct a cross-reference.

Adopted new §334.455, Notice to Owner or Operator, is transferred from repealed §334.455. Portions of the new language are transferred with changes. The phrase “this subchapter” was deleted in three places to correct a cross-reference. Section 334.455(c)(5) adds “licensing requirements for” to incorporate the new requirements from TWC, Chapter 37.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the rules is to consolidate the requirements for the various occupations licensed or registered by the commission into one chapter; not

to protect the environment or human health. Protection of human health and the environment may be a by-product of the rules, but it is not the specific intent of the rules. Furthermore, the adopted rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would primarily consolidate existing rule language into one chapter. Thus, the adopted rules do not meet the definition of a “major environmental rule” as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission into one chapter. The adopted rules would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational license or registration including procedures for the initial application, examinations, and renewal applications. The adopted rules do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or

authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

Therefore, the rulemaking is not subject to the CMP.

HEARING AND COMMENTERS

The commission held a public hearing in Austin on October 11, 2001. The public comment period closed on October 22, 2001. No oral or written comments were received.

STATUTORY AUTHORITY

The repeals are adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The repeals will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for leaking petroleum storage tanks (LPST) corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

Furthermore, TWC, Chapter 37 provides the commission the authority to establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the

commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code (THSC).

**SUBCHAPTER I: UNDERGROUND STORAGE TANK CONTRACTOR
REGISTRATION AND INSTALLER LICENSING**

§§334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, 334.425 - 334.428

§334.401. Certificate of Registration for UST Contractor.

§334.402. Application for Certificate of Registration.

§334.403. Issuance of Certificate of Registration.

§334.404. Renewal of Certificate of Registration.

§334.405. Grounds for Denial of Certificate of Registration.

§334.406. Fee Assessments for Certificate of Registration.

§334.408. Exception to Registration Requirements.

§334.409. Revocation, Suspension, or Reinstatement of Certificate of Registration and License.

§334.410. Notice of Hearings.

§334.411. Procedures for Revocation, Suspension, or Reinstatement of a Certificate of Registration and License.

§334.412. Definitions.

§334.414. License for Installers and On-site Supervisors.

§334.415. License A and License B.

§334.416. Requirements for Issuance of License A and License B.

§334.417. Application for License A and License B.

§334.418. Notification of Examination.

§334.419. License A and License B Examination.

§334.420. Issuance of License A or License B.

§334.421. Renewal of License.

§334.422. Grounds for Denial of License A or License B.

§334.423. Fee Assessments for License A and License B.

§334.425. Exceptions to License A and License B Requirements.

§334.426. Revocation, Suspension, or Reinstatement of a License A and License B.

§334.427. Notice of Hearings.

§334.428. Procedures for Revocation, Suspension, or Reinstatement of a License A and License B.

**SUBCHAPTER I: UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR
LICENSING AND CONTRACTOR REGISTRATION**

§§334.401, 334.407, 334.424

STATUTORY AUTHORITY

The amendments and new section are adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The amendments and new section will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

The amendments and new section are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The amendments and new section are implemented under TWC Chapter 37, which gives the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§334.401. License and Registration Required.

(a) An individual supervising the installation, repair, or removal of an underground storage tank (UST), as defined in §334.2 of this title (relating to Definitions), must hold an on-site supervisor license issued by the commission in accordance with Chapter 30 of this title (relating to Occupational Licenses and Registrations). An on-site supervisor must be present at the site at all times during the critical junctures of the installation, repair, or removal, as defined in §30.307 of this title (relating to Definitions). All references to installer throughout this chapter is the same as on-site supervisor.

(b) Any person or business entity that offers to undertake, represents itself as being able to undertake, or does undertake the installation, repair, or removal of a UST, as defined in §334.2 of this title, must hold a UST contractor registration issued by the commission in accordance with Chapter 30 of this title.

§334.407. Other Requirements for an Underground Storage Tank Contractor.

(a) A registered underground storage tank (UST) contractor is required to maintain insurance and net worth requirements, as required by §30.315 of this title (relating to Qualifications for an Initial Registration), throughout the period that the contractor holds a valid registration from the executive director.

(b) A UST contractor subject to the provisions of this subchapter employed or otherwise engaged by a UST owner or operator (or by any other person representing to be the UST owner or operator) to conduct the installation, repair, or removal of a UST shall comply with all applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 213 of this title (relating to Edwards Aquifer).

(c) Compliance with the provisions of this subchapter by a registered contractor shall not relieve such contractor from the responsibility of compliance with all applicable regulations legally promulgated by the EPA, United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Department of Health, Texas Department of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural Resource Conservation Commission, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(d) A UST contractor must have an on-site supervisor who is licensed by the agency under this subchapter at the site at all times during the critical junctures of the installation, repair, or removal, as defined in §30.307 of this title (relating to Definitions).

(e) A UST contractor must prominently display the UST contractor registration number on all bids, proposals, offers, and installation drawings.

§334.424. Other Requirements for an On-Site Supervisor.

(a) A licensed on-site supervisor subject to the provisions of this subchapter that is engaged in the installation, repair, or removal of underground storage tanks (USTs) shall be required to comply with all applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 213 of this title (relating to Edwards Aquifer).

(b) Compliance with the provisions of this subchapter by a licensed [installer or] on-site supervisor shall not relieve such licensee from the responsibility of compliance with all applicable regulations legally promulgated by the EPA, United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Department of Health, Texas Department of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural Resource Conservation Commission, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(c) A licensed on-site supervisor who offers to undertake, represents to undertake, or does undertake the installation, repair, or removal of a UST shall either be registered as a UST contractor in accordance with this subchapter, or be employed by a registered UST contractor.

**SUBCHAPTER J: REGISTRATION OF CORRECTIVE ACTION
SPECIALISTS AND PROJECT MANAGERS FOR PRODUCTS
STORAGE TANK REMEDIATION PROJECTS**

§§334.451 - 334.463, 334.465 - 334.467

STATUTORY AUTHORITY

The repeals are adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The repeals will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

Furthermore, TWC, Chapter 37 provides the commission the authority to establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§334.451. Applicability of Subchapter J.

§334.452. Exemptions from Subchapter J.

§334.453. General Requirements and Prohibitions.

§334.454. Exception for Emergency Abatement Actions.

§334.455. Notice to Owner or Operator.

§334.456. Application for Certificate of Registration for Corrective Action Specialist.

§334.457. Application for Certificate of Registration for Corrective Action Project Manager.

§334.458. Review and Issuance of Certificates of Registration.

§334.459. Continuing Education Requirements for Corrective Action Project Managers.

§334.460. Renewal of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager.

§334.461. Denial of Certificate of Registration.

§334.462. Other Requirements.

§334.463. Grounds for Revocation or Suspension of Certificate of Registration.

§334.465. Procedures for Revocation or Suspension of a Certificate of Registration.

§334.466. Reinstatement of a Certificate of Registration.

§334.467. Fee Assessments for Certificates of Registration.

**SUBCHAPTER J: LEAKING PETROLEUM STORAGE TANK CORRECTIVE ACTION
SPECIALIST REGISTRATION AND PROJECT MANAGER LICENSING**

§§334.451, 334.454, 334.455

STATUTORY AUTHORITY

The new sections are adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§334.451. Applicability of Subchapter J.

(a) When referring to corrective action project managers within this chapter, the terms “registered” and “licensed” have the same meaning.

(b) All corrective action services covered by this chapter must be performed by or be coordinated by a person or entity registered as a corrective action specialist.

(c) All corrective action services covered by this chapter must be supervised by a licensed corrective action project manager according to Subchapter E of Chapter 30 of this title (relating to Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists).

§334.454. Exception for Emergency Abatement Actions.

(a) An owner or operator or other person may undertake such corrective action as may be necessary to abate any immediate threat to human health and safety or the environment caused by a release or threatened release without a registered corrective action specialist or a licensed corrective action project manager; and a person who is not registered under §30.190 of this title (relating to Qualifications for Initial Registration), or §30.180 of this title (relating to Qualifications for Initial License) may provide or perform such services provided that the action is in compliance with this section.

(b) For this section to apply, the owner or operator or other person must:

(1) demonstrate that the actions taken were necessary to protect against imminent danger to human health and safety by mitigating fire, explosion, and vapor hazards, by removing free product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the executive director;

(2) notify the executive director of the emergency occurrence within 24 hours of commencing emergency abatement action;

(3) notify the local fire marshal (or state fire marshal if no local authority is available) within 24 hours of commencing emergency abatement action; and

(4) obtain the services of a registered corrective action specialist within ten days of commencing emergency action.

§334.455. Notice to Owner or Operator.

(a) A notice of corrective action must be provided by the corrective action specialist, in accordance with this section for any corrective action services which are commenced on or after October 1, 1994.

(b) The notice requirements of this section apply regardless of whether or not the person offering the services is working directly for an owner or operator. The notice of corrective action must be given to the owner or operator prior to the time when the offer to perform corrective action services is accepted.

(c) The notice must contain the following:

(1) whether the person or entity is registered in accordance with Chapter 30 of this title (relating to Occupational Licenses and Registrations);

(2) the person or entity's registration number;

(3) proof of commercial liability insurance required in §30.190 of this title (relating to Qualifications for Initial Registration); and

(4) the disclaimer required in subsection (f) of this section; and

(5) a statement signed by the owner or operator and by a representative of the corrective action specialist which indicates both parties are aware of the registration requirements for corrective action specialists and licensing requirements for corrective action project managers set forth in Chapter 30 of this title, and that reimbursement will be in accordance with the provisions of

Subchapter H of this chapter (relating to Reimbursement Program) and in accordance with the published agency reimbursable cost guidelines.

(d) The notice of corrective action must be on a form provided by the executive director. The person contracting with the owner or operator shall provide the owner or operator with a copy of the signed notice of corrective action.

(e) Within 15 days of the date on which the offer to perform corrective action services is accepted, the corrective action specialist shall submit to the executive director a copy of such written notice signed by the authorized representative of the corrective action specialist and by the owner or operator or their duly authorized agent.

(f) Any bid, proposal, or offer that indicates a company or person is a corrective action specialist must reproduce in its entirety the following disclaimer. The disclaimer must be a part of any notice required by this section.

(1) The registration of a corrective action specialist with the agency does not constitute endorsement, licensing, or promotion of any corrective action specialist. Registration does not imply that the agency guarantees the quality of the work performed or that the cost of the work may be reimbursed.

(2) Reimbursement for approved work is subject to the eligibility requirements set forth in Subchapter H of this chapter and the agency's reimbursable cost guidelines. Charges exceeding the amount determined as reimbursable for that particular work item shall not be reimbursed by the agency.