

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** February 4, 2011

Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: John Sadlier, Deputy Director
Office of Compliance and Enforcement

Docket No.: 2010-0380-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 334, Underground and Aboveground Storage Tanks
PST Operator Training
Rule Project No. 2010-017-334-CE

Background and reason(s) for the rulemaking:

The purpose of this rulemaking is to incorporate the Underground Storage Tank (UST) facility operator training requirements contained in the federal Energy Policy Act of 2005.

Scope of the rulemaking:

A) Summary of what the rulemaking will do:

The rules create a new subchapter in Title 30, Texas Administrative Code, Chapter 334 for UST facility operator training requirements. In addition, other clarifying changes were made to the existing technical rules that relate to secondary containment, sumps, and corrosion protection.

B) Scope required by federal regulations or state statutes:

The new subchapter incorporates requirements from the federal Energy Policy Act of 2005 that require the training of persons responsible for the on-site operation and maintenance of UST systems by August 8, 2012.

C) Additional staff recommendations that are not required by federal rule or state statute:

The amendments to the existing technical rules in Subchapter C specify which existing and new sumps and manways need to be inspected, monitored or tested and kept free of liquid or debris; increase the amount of time allowed for the removal of liquid and debris from sumps and manways from 72 to 96 hours; increase the amount of existing underground line that can be replaced without having to secondarily contain it from 20% to 35%; limit the maximum amount of existing underground line that must be secondarily contained during replacement; clearly specify that submerged metal components such as submersible pump housings, which are in contact with water, must be protected from corrosion by means other than just coating or wrapping them; and eliminate the requirement for large airports that use extensive fuel hydrant systems to comply with automatic line leak detection requirements because there are no practical methodologies available.

Statutory authority:

In addition to the Energy Policy Act of 2005, which requires States with authorized UST programs to adopt operator training consistent with federal law and EPA guidelines, the following Texas statutes provide authority for the proposed rulemaking: Texas Water Code (TWC), §5.012, which

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provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which requires the commission to establish and approve, by rule, all general policy of the commission; TWC, §26.011, which requires the commission to control the quality of water by rule; §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from committing any other act or engaging in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; Authority to propose new and amended rules is also provided by TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding USTs; and TWC, §26.3475, which requires underground storage tank systems to comply with commission requirements for tank release detection equipment and spill and overfill equipment.

Effect on the:

A) Regulated community:

The new operator training requirements will impact owners and operators of regulated UST facilities. Although the specific costs of training operators cannot be quantified at this time, they are not expected to be unreasonable. These new requirements as well as the amendments to technical standards will have an overall positive effect on the regulated community as they will increase compliance, and potentially prevent releases.

B) Public:

The principal benefit to the public would be the prevention or mitigation of future releases of contamination from UST systems resulting from better-trained UST facility operators.

C) Agency programs:

The rules are not anticipated to have a significant effect on the applicable agency programs:

- Remediation Division
- Field Operations Division
- Permitting and Registration Support Division
- Enforcement Division

Stakeholder meetings:

A stakeholder meeting was held April 27, 2010. In general, the stakeholders did not object to the basic concept of requiring operator training and they generally supported the proposed minor changes to existing technical requirements related to secondary containment, sumps and corrosion protection.

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Public comment:

A public hearing was held on October 26, 2010, and the public comment period closed on November 1, 2010. Comments were received from the Texas Petroleum Marketers and Convenience Store Association (TPCA), Wal-Mart Stores, Inc. (Walmart), and Sam's Club (Walmart), a subsidiary of Wal-Mart Stores, Inc. The commenters indicated general support of the rule amendments, but suggested minor changes.

Significant changes from proposal:

Changes were made as follows to proposed new Subchapter N, Operator Training (§§334.601 - 334.606):

- Changed the maximum number of facilities a Class B Operator may be designated to oversee from 30 to 50 facilities in §334.602(a)(3) in response to comments.
- Expanded the requirements in §334.602(b)(2)(B) for third-party Class B Operators in response to comments. Specifically, a third-party Class B Operator must take a direct and active role in ensuring facility compliance and also must be a licensed UST On-Site Supervisor who holds a current "A" or "A/B" license and who either is, or is employed by a registered UST Contractor.
- Revised §334.602(b)(3)(A) to provide consistency in rule terminology, by changing the term "a person" to the term, "an individual." This change was made because a Class C Operator must be an individual, whereas the term, "person" could be interpreted to include business entities.
- Revised §334.603(a)(1) to add the phrase, "non-contracted provider" in order to clearly communicate the requirements for training providers not contracted by the TCEQ.
- Revised §334.603(a)(2)(B) to ensure that site-specific emergency procedures are maintained in an easily accessible location and are immediately available to a Class C operator at a UST facility, rather than requiring the posting of the emergency procedures, in response to comments.
- Revised §334.605(c) in response to comments to change the term, "substantial noncompliance" to "significant noncompliance" and defined the new term. Language was also added to limit retraining on the basis of significant noncompliance to a maximum of once every twelve month.
- Revised §334.606 in response to comments to allow owners and operators 72 hours instead of 48 hours following an investigation to provide training documentation to a TCEQ investigator or a TCEQ-authorized investigator.

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Potential controversial concerns and legislative interest remaining after proposal and public comment:

None.

Does this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If the rule is not adopted, the TCEQ would not be in compliance with the operator training requirements of the federal Energy Policy Act of 2005. No alternatives to rulemaking have been identified.

Key points in adoption rulemaking schedule:

***Texas Register* proposal publication date:** October 1, 2010
Anticipated *Texas Register* publication date: March 11, 2011
Anticipated effective date: March 17, 2011
Six-month *Texas Register* filing deadline: April 1, 2011

Agency contacts:

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Cullen McMorrow, Staff Attorney, 239-0607, Litigation Division
Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

Energy Policy Act, Section 1524, Operator Training
EPA Grant Guidelines for Operator Training

cc: Chief Clerk, 2 copies
Executive Director's Office
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Kevin Patteson
Curtis Seaton
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