

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: May 20, 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.: 2010-1684-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 334, Underground and Aboveground Storage Tanks
Subchapter M, Reimbursable Cost Specifications for the Petroleum
Storage Tank Reimbursement program
Rule Project No. 2011-004-334-CE

Background and reason(s) for the rulemaking:

On August 4, 2010, the Texas Commission on Environmental Quality received a petition for rulemaking from Grissom & Thompson, L.L.P., representing Talon/LPE, Grimes & Associates, and Ranger Environmental Services, Inc. (the Petitioner). The Petitioner requested amendments to 30 Texas Administrative Code §334.560 "Reimbursable Cost Specifications" pertaining to: (1) off-site access fees charged by municipalities; (2) waste disposal costs; and (3) per diem costs.

At the September 29, 2010 Commissioners' Agenda, the commission directed staff to initiate rulemaking to address the concerns raised by the Petitioner.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking would amend 30 TAC Chapter §334.560 "Reimbursable Cost Specifications" to increase certain reimbursable amounts relating to: (1) offsite access fees charged by municipalities; (2) waste disposal costs; and (3) per diem costs.

B.) Scope required by federal regulations or state statutes:

The changes are not specifically required by federal or state statute.

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

Re: Docket No. 2010-1684-RUL

There are no additional recommendations.

Statutory authority:

- Texas Water Code (TWC), §5.012, which 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, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks.
- TWC §26.3573, which states that the commission shall administer the petroleum storage tank remediation account and by rule adopt guidelines and procedures for the use of and eligibility for that account and which states that the commission may by rule adopt: (1) guidelines the commission considers necessary for determining the amounts that may be paid from the petroleum storage tank remediation account; and (2) guidelines concerning reimbursement for expenses incurred by an eligible owner or operator.
- TWC, §26.011, which requires the commission to control the quality of water by rule.

Effect on the:

- A.) Regulated community:** The regulated community will benefit in that eligible owners and operators of Leaking Petroleum Storage Tank (LPST) sites will receive higher reimbursements that more accurately represent current market rates for performing corrective action activities.
- B.) Public:** The public will benefit in that eligible owners and operators will have more incentive to continue to perform expeditious cleanups of LPST sites.
- C.) Agency programs:** The rule amendment is only expected to impact the Office of Compliance and Enforcement, Remediation Division, PST program. The overall impact may be positive in the sense that owners and operators for eligible reimbursement sites will continue to diligently perform remedial action as required; however, appropriations for the reimbursement program have been reduced in recent

Commissioners

Page 3

May 20, 2011

Re: Docket No. 2010-1684-RUL

years. An increase in reimbursement rates for certain cost items may result in less available funds at eligible LPST sites.

Stakeholder meetings:

A public meeting was held November 4, 2010. No changes were made in response to the meeting.

Public comment:

A public hearing was held on March 3, 2011 and the public comment period ended on March 13, 2011. No comments were received.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

No legislative interest has been expressed. The only potentially controversial concerns would be from parties who may wish that the Reimbursable Cost Specifications (RCS's) be increased in other ways not contemplated in this rulemaking.

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?

LPST contractors working on reimbursement-eligible sites must either cover costs themselves or must require the LPST owners or operators to compensate them for costs that exceed current reimbursable cost specifications.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: February 11, 2011

Anticipated Texas Register publication date: June 24, 2011

Anticipated effective date: June 30, 2011

Six-month Texas Register filing deadline: August 11, 2011

Commissioners

Page 4

May 20, 2011

Re: Docket No. 2010-1684-RUL

Agency contacts:

Jonathan Walling, Rule Project Manager, 239-2295, Remediation Division

Cullen McMorrow, Staff Attorney, 239-0607, Litigation Division

Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel
Jonathan Walling
Cullen McMorrow
Michael Parrish