

SUBCHAPTER L: OVERPAYMENT PREVENTION
§§334.530 - 334.538
Effective November 18, 2004

§334.530. Purpose and Applicability of the Subchapter.

(a) Purpose. The purpose of this subchapter is to establish procedures regarding the audit of money expended from the Petroleum Storage Tank Remediation Account, to assure the most efficient use of the money available and to provide the most effective protection to the environment and public health and safety.

(b) Applicability. This subchapter applies to all corrective actions, paid for in whole or in part by the Petroleum Storage Tank Remediation Account.

Adopted October 27, 2004

Effective November 18, 2004

§334.531. Cooperation with Audit; False Submittals.

(a) The party who has entered into a contract with the agency in accordance with this chapter to perform corrective action work, eligible owner or operator, and any party who received reimbursement under §334.302(k) of this title (relating to General Conditions and Limitations Regarding Reimbursement), any Registered Corrective Action Specialist, and any contractor or subcontractor whose invoices or other documents are submitted, or are required to be submitted, with the Application for Reimbursement shall cooperate fully with any audit or investigation by the agency regarding the work performed, the costs charged, and/or amounts paid and shall provide copies of all documents relating to an audited claim to the agency on request and at no charge.

(b) If the documentation or information requested by the agency under subsection (a) of this section to support an audited claim is not provided, the unsupported portion of the claim will be the subject of a Notice of Overpayment under §334.534 of this title (relating to Notice of Overpayment).

(c) No person shall knowingly submit false information to the agency as part of any materials required to be submitted under this subchapter.

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§334.532. Payments.

(a) Payment by the agency of a claim for money from the Petroleum Storage Tank Remediation Account means that the claim is subject to post-payment audit.

(b) By making payment of claims to eligible persons (see §334.310 of this title (relating to Requirements for Eligibility)), the executive director makes no statement or admission that the payments are for necessary, reimbursable, or allowable costs, as those terms are defined by this

chapter, nor that the corrective action taken was not in excess of agency cleanup standards for effective protection of the environment and public health and safety.

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§334.533. Audits.

(a) Audits of claims and associated documents will be conducted in accordance with auditing standards as provided by Texas Water Code, §26.35735. Such audits may occur prior to or after claims have been paid. Such audits may include an investigation into whether activities performed and/or the amounts claimed were:

(1) eligible to be paid as provided by Texas Water Code, §26.3573, and allowable under Subchapters H and M of this chapter (relating to Reimbursement Program; and Reimbursable Cost Specifications for the Petroleum Storage Tank Reimbursement Program);

(2) reimbursable under Subchapter H of this chapter, §334.560 of this title (relating to Reimbursable Cost Specifications), and §334.309 of this title (relating to Reimbursable Cost) (for work performed on or after June 6, 1993), or reasonable (for work performed prior to June 6, 1993); and

(3) actual costs in §334.306(b)(6) of this title (relating to Form and Contents of Application). For the purposes of this subchapter, actual cost is the actual amount paid for actual work performed, net of any discounts, offsets, or other reductions to the amount paid. Actual cost includes associated overhead and reasonable profit.

(b) An audit may also include an investigation into whether, and by what means, the amounts claimed have been paid in full by the claimant to the person(s) who actually performed the corrective action work for the claimed amount. The investigation may include a review of any and all documents relating to the payment of any amounts claimed, including those of any subcontractors who performed any of the corrective action work. Upon conclusion of the audit, any amounts the audit reveals have not been actually paid to the person(s) performing the corrective action work, rather than evidenced only by a promise to pay, must be included in the Notice of Overpayment issued under §334.534 of this title (relating to Notice of Overpayment).

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Effective November 18, 2004

§334.534. Notice of Overpayment.

(a) If the agency conducts an audit or investigation and concludes that payment of a claim was for an amount which exceeded the amount provided for under this chapter, the agency shall prepare a notice of overpayment. The notice of overpayment shall briefly summarize the findings of the audit and identify the amounts which were overpaid. If the executive director determines that the overpayment was the result of incorrect, incomplete, or inaccurate documentation submitted by the claimant, then the executive director may include in the notice of overpayment a charge for the claimant to pay interest, calculated at New York Prime, plus two points, dating from the date of overpayment by the Texas Commission on Environmental Quality (TCEQ), or its predecessor agency, to the date of repayment to

the TCEQ. Interest shall be calculated each month using the interest rate determined on the first business day of each month.

(b) The notice of overpayment will be delivered to the claimant (either the party who contracted directly with the TCEQ for corrective action work, the eligible owner or operator, or the party assigned the reimbursement right under §334.302(i) - (k) of this title (relating to General Conditions and Limitations Regarding Reimbursements; Assignments)).

(c) Upon receipt of a notice of overpayment, the recipient shall submit a check returning the amount of overpayment to the TCEQ.

(d) All checks rendered to return overpayments shall be made out to "The State of Texas-Petroleum Storage Tank Remediation Account" and mailed to the address specified on the notice of overpayment.

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§334.535. Objections to the Notice of Overpayment and Formal Petition for Hearing.

(a) If any person receiving the notice of overpayment disputes any portion of the amount to be repaid to the commission, he or she must, within 30 days of receipt of the notice of overpayment, file a petition for hearing with the chief clerk in the manner prescribed generally by this title for filing petitions with the commission and shall serve a copy of the petition on the executive director.

(b) The petition must assert which funds the party is entitled to retain, and why such funds represent claims paid under the requirements of this chapter. At hearing, the petitioner must prove that the audited claims or portions of claims were for amounts paid under the requirements of this chapter.

(c) If a person does not object to a notice of overpayment, in whole or in part, as prescribed by this section, then all objections to the notice are waived.

(d) Any amount not specifically disputed in accordance with this section must be returned within 30 days of receipt of the notice of overpayment.

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§334.536. Hearing by the Commission.

Following receipt of a petition, the commission shall conduct a hearing on the petition. The proceedings shall be governed by the rules of the commission.

§334.537. Failure to Return Overpayment or Cooperate with Audit or Investigation.

(a) If the overpayment has not been returned to the agency, or objected to by the recipient, in accordance with the requirements of this subchapter, the executive director shall file a petition seeking an order from the commission to compel payment.

(b) All commission orders issued pursuant to this subchapter shall be enforceable in the same manner as any order issued pursuant to the Texas Water Code, Chapter 26, including administrative penalties of up to \$10,000 per day of violation.

(c) The executive director may seek an order from the commission to compel cooperation with an audit or investigation at any time.

Adopted November 1, 2000

Effective November 23, 2000

§334.538. Administrative Penalties and Other Actions.

Nothing in this subchapter precludes the commission from issuing orders, assessing administrative penalties, or taking any other action permitted by law against any person for violation of the Texas Water Code, commission rules, or orders of the commission.