

The Texas Natural Resource Conservation Commission (commission) adopts amendments to Chapter 334, Subchapter C, Technical Standards, §334.54, Temporary Removal From Service; Subchapter J, Registration of Corrective Action Specialists and Project Managers for Product Storage Tank Remediation Projects, §334.460, Renewal of Certificate of Registration for Corrective Action Project Manager; and Subchapter K, Storage, Treatment, and Reuse Procedures For Petroleum-Substance Contaminated Soil, §334.503, Reuse of Petroleum-Substance Waste. Section 334.503 is adopted *with changes* to the proposed text as published in the April 20, 2001 issue of the *Texas Register* (26 TexReg 2945). Sections 334.54 and 334.460 are adopted *without changes* to the proposed text and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules will correct errors that were made in the major Chapter 334 rulemaking as published in the June 2, 2000 issue of the *Texas Register* (25 TexReg 5152), which culminated in a rule package that went into effect November 23, 2000. The corrections remove internal inconsistencies from each rule section at issue so that they will function as intended and remove confusion concerning the proper requirements under the rules.

#### SECTION BY SECTION DISCUSSION

##### *Subchapter C. Technical Standards.*

Adopted §334.54, Temporary Removal from Service is amended. At the proposal stage of the recent major Chapter 334 rulemaking, §334.54(d) and (e) was published correctly in the June 2, 2000 issue of the *Texas Register* (25 TexReg 5152). At the adoption stage, no public comment was received on this

language and the commission intent was to adopt these rule subsections with the same language as at the proposal stage. While the fact that the language was not meant to change from proposal was reflected in the text of the adoption as published in the November 17, 2000 issue of the *Texas Register* (25 TexReg 11442), the actual rule text adopted at the commission's November 1, 2000 agenda was incorrect due to an administrative error. Language in §334.54(d)(1) - (3) that was to be deleted was instead maintained, and the proposed language for that same subsection was deleted. The current adopted amendment would correct this error, so §334.54(d)(1) will read, "All regulated substances have been removed as completely as possible by the use of commonly-employed and accepted industry procedures." Section 334.54(d)(2) will read, "Any residue from stored regulated substances which remains in the system (after the completion of the substance removal procedures under paragraph (1) of this subsection) shall not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3% by weight of the system at full capacity." Section 334.54(d)(3) will read, "The volume or concentration of regulated substances remaining in the system would not pose an unreasonable risk to human health and safety or to the environment if a release occurs during the period when the system is temporarily out of service."

Correcting the errors in §334.54 restores the provisions which define the term "empty system" as it applies to temporarily out-of-service tanks. This should in turn reduce the likelihood of contamination because, without those provisions, excessive amounts of regulated substances or residues could leak into the environment after being left for extended periods in an unmonitored out-of-service tank. This contamination can have adverse effects on human health and safety through its entrance into public water supplies, private water wells, utility spaces, etc. Making the rule clear and enforceable

concerning the term “empty system” should increase the compliance rate with the rule.

*Subchapter J. Registration of Corrective Action Specialists and Project Managers for Product Storage Tank Remediation Projects.*

Adopted §334.460, Renewal of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager, is amended. Among the amendments made to this rule section during the recent Chapter 334 rulemaking were changes concerning a transition from a one-year to a two-year certificate renewal schedule. Section 334.460(a) contained language intended to explain how the transition period would work. Due to ambiguous sentence construction, there has been confusion concerning the last sentence in this subsection. Section 334.460(a) has been amended so that, in the last sentence, the word “issued” has been changed to “renewed”; the word “subchapter” has been changed to “section”; and the phrase “original date of issuance or two years from the” has been deleted, such that the final sentence will read, “Following this designated period, each certificate of registration renewed under this section shall expire two years from the last date of expiration.” This change greatly clarifies the intent of the rule. Section 334.460(f)(2) has been amended to correct a typographical error in the second sentence in this paragraph, the number of days has been amended to read “30” rather than “60.” This correction will make the paragraph consistent with the remainder of the rule section and thus clarify the section as a whole. Since the certificate is required by law for certain corrective action activities to be performed, it is vital to these contractors that there be a clear procedure for the timelines associated with license renewal. Correcting the errors will remove the internal inconsistency from the rule and thus ensure a predictable timeline. This also reduces the chances that a member of the public would hire such a contractor, only to find that his certificate was not in effect for part of the corrective

action project (which could have implications for monetary reimbursements from the Petroleum Storage Tank Reimbursement Fund for the party hiring the contractor).

*Subchapter K, Storage, Treatment, and Reuse Procedures For Petroleum-Substance Contaminated Soil.*

Adopted §334.503, Reuse of Petroleum-Substance Waste, is amended. Section 334.503(c)(3)(E) concerns when it is appropriate for petroleum substance-waste to be used as fill and gives procedures for how this is determined. The current language could be read to give the mistaken impression that the subparagraph is speaking to a status of the waste called “clean” as something separate and apart from the appropriate use of the waste as fill. Consequently, to clarify this rule consistent with its intent, the phrase in the first sentence which reads, “will be considered clean, and” has been deleted. Correcting the error in this rule section should increase the compliance rate with the rule. Exposure to this waste may have adverse impacts on human health and safety, so it is vital that the proper procedures are followed for determining how this waste may be used. Administrative changes have been made from proposal to adoption for *Texas Register* purposes.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition,

jobs, the environment or the public health and safety of the state or a sector of the state. The adopted rules are not anticipated to adversely affect in a material way the economy, a sector 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 adopted rules are intended to simply correct errors from the Chapter 334 rulemaking that went into effect November 23, 2000. Correction of these errors removes internal inconsistencies from these rule sections and thus make them easier to read and understand.

#### TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. The specific purpose of this rulemaking is simply to correct errors from the recently completed Chapter 334 rulemaking (which became effective November 23, 2000). Correction of these errors removes internal inconsistencies from these rule sections and thus make them easier to read and understand. This action does not create a burden on private real property, and does not burden, restrict, or limit an owner's right to property. The corrections in this rulemaking also will not be the cause of a reduction in market value of private real property, and do not constitute a takings under the Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the

CMP.

#### HEARINGS AND COMMENTERS

The public comment period closed on May 21, 2001 and no comments were received.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which provides the commission authority 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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amendment is also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an UST or aboveground storage tank; and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors, and continuing education requirements for installers and on-site supervisors.

**SUBCHAPTER C: TECHNICAL STANDARDS**

**§334.54**

**§334.54. Temporary Removal from Service.**

(a) Applicability. An underground storage tank (UST) system shall be considered to be temporarily out of service, regardless of whether or not regulated substances remain in the UST system, when the following conditions apply.

(1) The normal operation and use of the UST system is deliberately, but temporarily, discontinued for any reason.

(2) The infrequent use of the UST system cannot be adequately justified as part of its purpose.

(3) The operation, maintenance, and/or release detection procedures are determined to be inadequate or otherwise inconsistent with the monitoring procedures normally associated with in-service systems of similar type and purpose.

(b) All UST systems. Regardless of whether or not regulated substances remain in the UST system, the owner or operator shall assure that the UST system is maintained in compliance with the following requirements for the balance of time that the UST system remains temporarily out of service.

(1) All vent lines shall be kept open and functioning.

(2) All other piping, pumps, manways, tank access points (e.g., fill risers, automatic tank gauging risers, Stage I vapor recovery risers) and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons.

(c) Protected and monitored systems. Any UST system may remain out of service indefinitely so long as the following requirements are met during the period that the UST system remains temporarily out of service.

(1) The UST system shall be adequately protected from corrosion in accordance with the applicable requirements of §334.49 of this title (relating to Corrosion Protection).

(2) Unless the UST system has been emptied of all regulated substances (as described under subsection (d) of this section) at the time it is temporarily removed from service, the UST system shall be monitored for releases in accordance with the applicable requirements of §334.50 of this title (relating to Release Detection).

(3) Returning UST system to service.

(A) When a protected and empty UST system that has been temporarily out of service for longer than six months is placed back into service, the owner or operator shall ensure the

integrity of the system by the performance of tank tightness and piping tightness tests that meet the requirements of §334.50(d)(1)(A), and as applicable, (b)(2)(A)(ii)(I), or (B)(i)(I), of this title, prior to bringing the system back into operation; and

(B) When either a protected and monitored or a protected and empty UST system is placed back into service, the owner or operator shall also ensure that the UST system either is in compliance or is brought into compliance with all applicable release detection, and spill and overfill prevention requirements of §334.50 of this title and §334.51 of this title (relating to Spill and Overfill Prevention and Control).

(d) Empty system. For the purposes of this section only, and specifically for the purpose of exempting certain UST systems (when temporarily out of service) from the release detection requirements of this chapter, an UST system shall be considered empty when the following provisions have been met:

(1) All regulated substances have been removed as completely as possible by the use of commonly-employed and accepted industry procedures.

(2) Any residue from stored regulated substances which remains in the system (after the completion of the substance removal procedures under paragraph (1) of this subsection) shall not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3% by weight of the system at full capacity.

(3) The volume or concentration of regulated substances remaining in the system would not pose an unreasonable risk to human health and safety or to the environment if a release occurs during the period when the system is temporarily out of service.

(e) Other requirements.

(1) Releases. If a release of a regulated substance is suspected or confirmed, the owner or operator of an UST system which is temporarily out of service shall comply with all release reporting, investigation, and corrective action requirements in Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(2) Registration. At the time an UST system is temporarily taken out of service and at the time an UST system is brought back into service, the owner shall comply with the applicable tank registration requirements in §334.7 of this title (related to Registration for Underground Storage Tanks (USTs) and UST Systems).

(3) Fees. An UST which is temporarily out of service in accordance with this section shall remain subject to the agency's UST fees in Subchapter B of this chapter (relating to Underground Storage Tank Fees).

(4) Recordkeeping for temporary removal from service.

(A) Owners and operators shall maintain records adequate to demonstrate compliance with the requirements in this section, in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

(B) At a minimum, the following records shall be maintained for at least five years after the UST system is temporarily removed from service:

- (i) date that the UST system was temporarily removed from service;
- (ii) name, address, and telephone number of the person who prepared the UST system for the period of non-use;
- (iii) documentation of the procedures used to prepare and empty the UST system;
- (iv) copies of all documentation relative to any requests and approvals of extensions of time;
- (v) name, address, and telephone number of the person who conducted the tank and piping tightness tests, prior to returning the UST system to service;
- (vi) results of any tank and piping tightness tests; and

(vii) date that the UST system was returned to service.

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

**§334.460**

**STATUTORY AUTHORITY**

The amendment is adopted under Texas Water Code (TWC), §5.103, which provides the commission authority 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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amendment is also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an UST or aboveground storage tank; and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors, and continuing education requirements for installers and on-site supervisors.

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

(a) As of the effective date of this rule, the agency will transition to renewal of certificates of registration on a two-year basis. For one year after the effective date of this subsection, existing

certificates with even registration numbers will be renewed for one year and certificates with odd registration numbers will be renewed for two years. Following this designated period, each certificate of registration renewed under this section shall expire two years from the last date of expiration.

(b) The executive director shall notify each registered corrective action specialist and corrective action project manager in writing of the impending registration expiration at least 60 days prior to the expiration of the certificate of registration.

(c) The executive director shall provide application forms for renewal of corrective action specialist and corrective action project manager registration.

(d) The renewal application must be accompanied by all information needed for the application to be complete, including the required financial documentation, and any other information necessary for the agency to complete the renewal process.

(1) An application for renewal of registration for a corrective action specialist is considered complete when the executive director has received an application for renewal on a form provided by the executive director, which has been completed in a manner acceptable to the executive director; certification that the company has continued to meet the financial requirements of §334.456(2)(D) of this title (relating to Application for Certificate of Registration for Corrective Action Specialist); and payment for applicable fees as provided by §334.467 of this title (relating to Fee Assessments for Certificates of Registration).

(2) An application for renewal of registration for a corrective action project manager is complete when the executive director has received an application for renewal on a form provided by the executive director, completed in a manner acceptable to the executive director; certificates of completion of continuing education requirements for the corrective action project manager as required under §334.459 of this title (relating to Continuing Education for Project Managers); and payment of applicable fees as provided by §334.467 of this title.

(e) The executive director shall review, return, file, or deny an application for renewal in the same manner as an original application for registration.

(f) A properly completed application for renewal (including but not limited to proper payment of renewal fees, certification of adequate financial requirements as prescribed in §334.456(D)(2)(i) of this title, and documentation of completion of required continuing education) shall be submitted to the executive director at least 30 days prior to the expiration date of the certification of registration.

(1) If the applicant has not been notified by the executive director of the renewal decision by the time the certification of registration expires, and a complete renewal application was received by the deadline given above, then the certification of registration is considered provisionally renewed during that interim period between that expiration date and the date the executive director notifies the applicant of the renewal decision.

(2) If a complete application for renewal is not filed at least 30 days prior to the

expiration date of the current registration and the executive director has not processed the renewal application, the current registration shall expire and will not be considered provisionally renewed. The registration may be renewed within 30 days of the expiration date. Corrective action services performed after expiration, but before renewal, shall be considered to have been performed without a proper registration under this subchapter.

(g) If a corrective action specialist has not met all requirements for renewal of registration within 30 days from the expiration date, all information required by §334.456 of this title must be resubmitted. If a corrective action project manager has not met all requirements for renewal of registration within 30 days from the expiration date all information required by §334.457 of this title (relating to Registration of Corrective Action Project Manager) must be resubmitted.

(h) Upon proper completion of the certificate renewal process, the executive director shall issue a documentation of approval indicating the new expiration date.

**SUBCHAPTER K: STORAGE, TREATMENT, AND REUSE PROCEDURES FOR  
PETROLEUM-SUBSTANCE CONTAMINATED SOIL**

**§334.503**

**STATUTORY AUTHORITY**

The amendment is adopted under Texas Water Code (TWC), §5.103, which provides the commission authority 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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amendment is also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an UST or aboveground storage tank; and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors, and continuing education requirements for installers and on-site supervisors.

**§334.503. Reuse of Petroleum-Substance Waste.**

(a) Wastes that are intended for reuse are subject to all the applicable provisions of this subchapter, including, but not limited to, the following requirements. Sections 334.482, 334.496 - 334.500, and 334.502 of this title (relating to General Prohibitions; Shipping Procedures Applicable to

Generators of Petroleum-Substance Waste; Recordkeeping and Reporting Procedures Applicable to Generators; Shipping Requirements Applicable to Transporters of Petroleum-Substance Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; Record-keeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; and Design and Operating Requirements of Stockpiles and Land Surface Treatment Units).

(b) Petroleum-substance waste may be reused in accordance with §350.36 of this title (relating to the Relocation of Soils Containing COCs for Reuse Purposes). Recordkeeping and reporting requirements for any person who intends to reuse petroleum-substance wastes shall be in accordance with §350.36 of this title except under the conditions of subsection (c)(3)(A) - (C) of this section as the requirements of §350.36(b)(4) and (c)(4) of this title will not apply. Under the conditions of subsection (c)(3)(A) - (C) of this section, the person must maintain records and provide to the agency when requested such information deemed necessary by the agency to ensure compliance with the requirements of this subsection.

(1) For releases reported to the agency on or after September 1, 2003, the information that must be maintained under subsection (c)(3)(A) - (C) of this section includes, but is not limited to:

(A) identification, address, and name of the authorized representative of the generating facility;

(B) identification, address, and name of the authorized representative for the receiving facility or location;

(C) identification of the landowner of the receiving location or facility;

(D) the quantity, type, and contaminant levels of the reused wastes;

(E) documentation of the reuse methods and dates of reuse;

(F) documentation that asphalt mix or road base mix meets the specifications required by the final user; and

(G) documentation that the landowner of the receiving location has approved the use of the reused wastes on his property.

(2) For releases reported to the agency on or before August 31, 2003, the recordkeeping and reporting requirement for any person who intends to reuse petroleum-substance wastes must require that person to maintain records and provide to the agency when requested such information deemed necessary by the agency to ensure compliance with the requirements of this subsection. This information shall include, but is not limited to:

(A) identification, address, and name of the designated representative of the

generating facility;

(B) identification, address, and name of the designated representative for the receiving facility or location;

(C) identification of the landowner of the receiving location or facility;

(D) the quantity, type, and contaminant levels of the reused wastes;

(E) documentation of the reuse methods and dates of reuse;

(F) documentation that asphalt mix or road base mix meets the specifications required by the final user; and

(G) documentation that the landowner of the receiving location has approved the use of the reused wastes on his property.

(c) Reuse requirements are as follows.

(1) For releases reported to the agency on or before August 31, 2003, any person who intends to utilize petroleum-substance wastes for reuse must obtain written approval from the landowner of the land on which the wastes will be placed and from the agency as specified by this subsection. The

landowner's approval shall be submitted to the agency upon request.

(2) Petroleum-substance wastes shall be reused only in manners which are in accordance with §334.482 of this title and at contaminant levels specified by the agency.

(3) Petroleum-substance wastes may be reused under the following conditions.

(A) Petroleum-substance wastes may be utilized in cold-mix-emulsion bituminous paving at a cold-mix asphalt-producing facility registered under the terms of this subchapter. The petroleum-substance waste shall be mixed with aggregate or other suitable materials at a rate which will result in a mixture meeting or exceeding the specifications required by the final user.

(i) For releases reported to the agency on or before August 31, 2003, the petroleum-substance waste will contain less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes prior to mixing. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste must not exceed levels which are protective of

human health and the environment as generally determined in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program), and must not be at concentrations which compromise the integrity of the cold-mix asphalt product. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

(B) Petroleum-substance wastes may be utilized in asphalt mix at hot-mix asphalt-producing facilities registered under this subchapter.

(i) For releases reported to the agency on or before August 31, 2003, the petroleum-substance waste will contain less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes prior to mixing. The petroleum-substance waste must be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste must not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title, and must not be at such concentrations which compromise the integrity of the hot-mix asphalt product.

The petroleum-substance waste must be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized shall be obtained prior to laying the asphalt.

(C) Petroleum-substance wastes may be utilized in road base or parking lot stabilized base when the base will be covered with concrete or asphalt.

(i) For releases reported to the agency on or before August 31, 2003, the contaminant levels of the soil prior to mixing into the stabilized base are less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes, and less than 500.0 mg/kg total petroleum hydrocarbons or at contaminant levels otherwise specified by the agency. The base must be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized road base must meet the criteria for clean soil as specified by the agency to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste shall not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title,

and must not be at such concentrations which compromise the integrity of the stabilized base. The base must be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized road base must meet the criteria for clean soil as specified by the agency to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(D) For releases reported to the agency on or before August 31, 2003, petroleum-substance wastes may be utilized, if appropriate, in road base or parking lot stabilized base when the base will not be covered with asphalt or concrete. To determine if the soil to be reused is appropriate for the application, analysis for contamination must be conducted as specified by this agency. The agency will give written approval for the particular reuse after ensuring that the implementation will, in the opinion of agency staff, adequately protect human health, safety, and the environment. The base must be mixed according to the specifications required by the final user. The base must be professionally mixed by a facility registered under the terms of this subchapter. Soil which is not mixed into stabilized road base must meet the criteria for clean soil to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(E) For releases reported to the agency on or before August 31, 2003, petroleum-substance wastes may, if appropriate, be used as fill. To determine if the soil to be reused is appropriate for the application, analysis for contamination must be conducted as specified by this agency. The agency will give written approval for the particular reuse after ensuring that the

implementation will, in the opinion of agency staff, adequately protect human health, safety, and the environment. The landowner at the receiving site (if different from the original owner of the petroleum substance contaminated soil) must give written consent for this activity. Fill for tank hold bedding and backfill for tank systems must meet the requirements of §334.46(a)(5) of this title (relating to Installation Standards for New Underground Storage Tank Systems).