

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §334.2, Definitions; §334.3, Exemption for Underground Storage Tanks (USTs) and UST Systems; §334.5, General Prohibitions for Underground Storage Tanks (USTs) and UST Systems; §334.6, Construction Notification for Underground Storage Tanks (USTs) and UST Systems; §334.8, Certification for Underground Storage Tanks (USTs) and UST Systems; §334.12, Other General Provisions; §334.45, Technical Standards for New Underground Storage Tank Systems; §334.47, Technical Standards for Existing Underground Storage Tank Systems; §334.50, Release Detection; §334.54, Temporary Removal from Service; §334.71, Applicability; §334.82, Public Participation; §334.201, Purpose and Applicability; §334.301, Applicability of this Subchapter; §334.302, General Conditions and Limitations Regarding Reimbursement; §334.303, When to File Application; §334.310, Requirements for Eligibility; §334.313, Review of Application; and §334.322, Subchapter H Definitions. Sections 334.82 and 334.302 are adopted *with changes* to the proposed text as published in the November 9, 2001 issue of the *Texas Register* (26 TexReg 9034). Sections 334.2, 334.3, 334.5, 334.6, 334.8, 334.12, 334.45, 334.47, 334.50, 334.54, 334.71, 334.201, 334.301, 334.303, 334.310, 334.313, and 334.322 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 implement the provisions of House Bill (HB) 2687 and duplicative provisions in TNRCC Sunset legislation in HB 2912, Article 14. These statutory provisions cover several areas that require rulemaking: the definition of a tank “owner” in the petroleum storage tank (PST) program was clarified; the scope of compliance self-certification (established by HB 2815 in the previous legislative session) was prospectively narrowed to exclude tanks containing regulated substances that are not motor

fuels; specific deadlines were attached to the existing general obligations that tank owners and operators have to perform corrective action activities at leaking petroleum storage tank (LPST) sites, with loss of reimbursement eligibility stemming from missed deadlines that are the fault of the tank owner or operator (or their agents, etc.); the long-standing legal fact that a person's liability to perform corrective action at LPST sites is unrelated to any possible reimbursements that a person may be eligible for was reiterated and emphasized in new statutory provisions; the Petroleum Storage Tank Reimbursement (PSTR) Account was extended through September 1, 2006, and new deadlines were created concerning applications for reimbursement from that fund. Other elements of the new legislation (e.g., fee schedules) do not require rulemaking, and are not included in this adoption. A minor amount of regulatory reform is contained in this adoption. For example, amendments are adopted to facilitate owner/operators of tanks temporarily out-of-service (under §334.54), bringing those tanks back into service without violating compliance self-certification regulations in §334.8(c). Typographical errors in the rules are also corrected.

## SECTION BY SECTION DISCUSSION

### *Subchapter A - General Provisions*

Several of the new legislative provisions (concerning the clarified tank owner definition, and the prospective narrowing of the scope of the compliance self-certification program) require changes to the regulations in this subchapter. Also, regulatory reform changes are adopted here concerning how tanks that are temporarily out-of-service in §334.54 may be brought back into service without violating compliance self-certification requirements. Also, some typographical errors in the subchapter were corrected.

Section 334.2, Definitions. Paragraph (27)(C) is amended by correcting the spelling of the word “tester.” The definition of “Owner” in §334.2(72) is amended to match the clarified definition of the term contained in the legislation being implemented by this rulemaking.

Section 334.3, Exemptions from Underground Storage Tanks (USTs) and UST Systems. Section 334.3(a)(10)(A) is amended to correct the spelling of the word “pipeline.”

Section 334.5, General Prohibitions for Underground Storage Tanks (USTs) and UST Systems. The text of subsection (b)(1)(C) is deleted, because the new legislation prospectively narrows the scope of the compliance self-certification program such that there will no longer be a phase-in concerning regulated substances that are not motor fuels, with the old subsection (b)(1)(D) language now becoming (b)(1)(C) (and including a correction of the spelling of the phrase “prima facie”). Section 334.5(b)(2) is amended by deletion of the parenthetical, because the new legislation narrows the scope of the compliance self-certification program such that there will no longer be a phase-in concerning regulated substances that are not motor fuels.

Section 334.6, Construction Notification for Underground Storage Tanks (USTs) and UST Systems. Section 334.6(b)(1)(C) is added to require that when an underground storage tank (UST) system has been taken temporarily out-of-service under §334.54 of this chapter, the owner or operator must first submit a construction notification form before returning the UST system to service. This change is implemented because under existing compliance self-certification rules in §334.8(c), owners/operators may experience difficulty in bringing these tanks back into service without violating those compliance

self-certification requirements. In the self-certification regulatory scheme, new and replacement tanks may receive a “temporary delivery authorization” from the commission under §334.8(c)(5)(D) once a construction notification form is received under this section. This temporary authorization functions as the required delivery certificate while preliminary testing is done on the tank systems (which includes placing motor fuels into them). The amendment plugs the temporarily out-of-service tanks into this system as well such that, once the construction notification form is received, the temporary authorization allows the owner/operator to perform the testing, etc. necessary to bring such a tank back into service prior to getting his standard delivery certificate as discussed in that portion of the Section by Section Discussion of this preamble. Concurrent changes to §334.8(c) and §334.54 are made to implement this change (see discussion in those sections).

Section 334.8, Certification for Underground Storage Tanks (USTs) and UST Systems. Section 334.8(c)(1)(A)(i) is amended by deleting the word “and” at the end of the provision, and the period at the end of §334.8(c)(1)(A)(iii) is changed to a semi-colon, since new items are being added to the list. Section 334.8(c)(1)(A)(iv), reading “USTs used for storing regulated substances that are not motor fuels (as defined in this subchapter); and” is added because new legislative provisions narrow the scope of the compliance self-certification program to exclude regulated substances that are not motor fuels. Section 334.8(c)(1)(A)(v), reading “USTs temporarily out-of-service under §334.54 of this title...” is added to clarify compliance self-certification requirements for this class of tanks. Section 334.8(c) is reorganized so that existing §334.8(c)(1)(B) language becomes §334.8(c)(2) language (with necessary cross-reference changes), while current §334.8(c)(2)(B) language becomes new §334.8(c)(1)(B) language. This reorganization of language is made because new legislative provisions narrow the scope

of the compliance self-certification program to exclude regulated substances that are not motor fuels. For this reason, there will no longer be a phase-in of the program for those substances that occurs in November of 2002. Section 334.8(c)(3)(B) is amended to correct the spelling of the phrase “self-certification.” The phrase “To ensure timely initial issuance by the agency of the UST delivery certificate,” is deleted from §334.8(c)(4)(A)(vi) as superfluous language. Section 334.8(c)(5)(D) is amended to facilitate tanks that are temporarily out-of-service under §334.54 being brought back into service without violating compliance self-certification requirements. These tanks are added to the list in §334.8(c)(5)(D)(i), and changes to clauses (ii) and (iii) are made to acknowledge this new item on the list (see full discussion in this preamble in the amendments to §334.6).

Section 334.12, Other General Provision. Section 334.12(a)(2) is deleted, because the statutory language can stand alone on these points. Section 334.12(a)(1) has been relettered to (a) and a cross-reference in (a)(1) was deleted.

### *Subchapter C - Technical Standards*

There are three categories of amendments for this subchapter: changes which serve to cross-reference new legislative special requirements for tank owners and operators with tanks located in areas containing certain aquifers, the specifics which will be contained in a separate rulemaking (Rule Log Number 2001-100-214-WS); changes to remove uncertainty in technical standards caused by HB 2912 language invalidating certain local ordinances; and changes to facilitate owner/operators of tanks temporarily out-of-service (under §334.54) who wish to bring those tanks back into service without violating compliance self-certification regulations in §334.8(c).

Section 334.45, Technical Standards for New Underground Storage Tank Systems. Section 334.45(d)(1)(C) is amended by inserting the following new language: “An UST system, at a minimum, shall incorporate secondary containment as specified in Texas Water Code, §26.3476, if the UST system is located in an area described in that provision.” The current language in subparagraph (C) would become a new subparagraph (D). These changes are to cross-reference new requirements for tanks located near certain aquifers that are contained in HB 2912, Article 13.

Section 334.47, Technical Standards for Existing Underground Storage Tank Systems. Section 334.47(d) is amended by inserting the following new language: “An UST system, at a minimum, shall incorporate secondary containment as specified in TWC, §26.3476, if the UST system is located in an area described in that chapter.” Subsection (d) becomes a new subsection (e). These changes are to cross-reference new requirements for tanks located near certain aquifers that are contained in HB 2912, Article 13.

Section 334.50, Release Detection. Section 334.50(d)(1)(B)(iii)(III) is amended by deleting the phrase “the local standards for meter calibration or within” and inserting the phrase “or less” after the word “six” to remove uncertainty caused by the new HB 2912, Article 14.10 which invalidates certain local ordinances, replacing it with a technically appropriate standard not dependant on local laws.

Section 334.54, Temporary Removal From Service. Section 334.54(c)(3)(B) is amended to change the period at the end of the sentence to “; and” to reflect a new item on the list. Section 334.54(c)(3)(C) is amended with new language reading “Before any UST system is returned to service under this

subsection, the owner or operator must first submit a construction notification form as specified under §334.6(b) of this title” to facilitate tanks that are temporarily out-of-service under this section being brought back into service without violating compliance self-certification regulations in §334.8(c) (see full discussion in §334.6 of this preamble).

*Subchapter D - Release Reporting and Corrective Action*

For many years, Texas Water Code (TWC), Chapter 26, generally, and Subchapter I specifically, have required tank owners and operators to perform corrective action activities concerning releases from their facilities. Assessment and necessary clean-up at the LPST site must be timely and properly performed until the commission is satisfied that the site can be closed. Wording in this subchapter and Subchapter G reiterates this statutory obligation, and provides the details on how it is to be accomplished.

New legislative language assigns specific calendar deadlines to corrective action milestones, and provides that missing one of these deadlines removes eligibility for reimbursement for those and future corrective action activities at that LPST site from the PSTR Account. The new TWC provisions go on to say that eligibility is only lost if the missed deadline is the fault of the tank owner or operator, or his agent, or contractor. The amendments to this rule subchapter are primarily designed to reflect these new specific deadlines which have been overlaid on the existing assessment/cleanup obligations, as well as to reference the reimbursement consequences for missing a deadline. In addition, amendments memorialize the commission practice of having the owner or operator provide the required notice to persons affected by a contamination release, as opposed to having a regulatory option that the

commission may choose to make the notification itself.

Section 334.71, Applicability. The title of this section is amended to “Applicability and Deadlines,” to reflect the insertion of the new legislative deadlines in this section. Section 334.71 is changed to §334.71(a), since other subsections are added to this section. New §334.71(b) is added to reflect the new corrective action milestone deadlines contained in HB 2687 and HB 2912, Article 14.03. New §334.71(c) is added to reflect the new legislative requirements concerning PSTR Account reimbursement consequences of missing a deadline, and to provide a cross-reference to Subchapter H where rules containing more detail on the matter are inserted via this rulemaking package.

Section 334.82, Public Participation. Previous rule language provided that either the owner or operator, or the agency (at its discretion), would provide the required notice to “those members of the public directly affected by the release and the planned corrective action.” In practice, the agency, with its limited resources, has consistently directed the owner/operator to make these notifications. Because the commission wishes to continue this practice, amendments to §334.82(a) and (b) regulatorily state that it will be the owner or operator that will always have this burden (unless the LPST site is being handled by the commission’s State-Lead Program). To this end, §334.82(a) is amended by substituting the phrase “owner or operator must” for the phrase “agency shall” in the first sentence. In the same subsection in the last sentence, the word “certified” is inserted to require that notification letters be sent certified mail, when that is the option of notification chosen by the owner or operator, to better allow the agency to ensure that the notification has been made. Also, the phrase “or businesses” is inserted after the word “households” in the last sentence of the subsection to acknowledge that an affected

person may sometimes be in a business as opposed to a residence. In §334.82(b), the phrase “executive director may require the” is deleted, as discussed in the rationale for amendments to subsection (a), to reflect that it will always be the owner or operator who will make the required notification. The phrase “must submit proof of the notification required under subsection (a) of this section to the agency within 30 days of either agency, or the owner or operator, determination that off-site assessment is required, whichever date is earlier” replaces the phrase “to perform or implement the public notices in this section and to verify that such activity has been satisfactorily completed” as clarification to provide an actual deadline in every case by which the owner or operator must prove to agency staff that the required notification has been made. This language was clarified from that published at the proposal stage, based on public comment received. In §334.82(c), the phrase “executive director” is replaced with the more general “agency,” per definitions in 30 TAC Chapter 3. Also in this subsection, the phrase “When corrective action is performed by the commission, the commission will provide the notification referenced in subsection (a) of this section” is added to reflect the fact that some LPST sites are handled in the commission’s State-Lead Program.

#### *Subchapter G - Target Concentration Criteria*

For many years, TWC, Chapter 26, generally, and Subchapter I specifically, have required tank owners and operators to perform corrective action activities concerning releases from their facilities.

Assessment and necessary clean-up at the LPST site must be timely and properly performed until the commission is satisfied that the site can be closed. Wording in this subchapter and Subchapter D reiterates this statutory obligation, and provides the details on how it is to be accomplished.

New legislative language assigns specific calendar deadlines to corrective action milestones, and provides that missing one of these deadlines removes eligibility for reimbursement for those and future corrective action activities at that LPST site from the PSTR Account. The new TWC provisions go on to say that eligibility is only lost if the missed deadline is the fault of the tank owner or operator, or his agent or contractor. The amendments to this rule subchapter are designed to reflect these new legislative requirements, and to provide a statement of applicability and a cross-reference to Subchapter D.

Section 334.201, Purpose and Applicability. The title of this section is amended to “Purpose, Applicability, and Deadlines” to reflect the addition of a new subsection concerning the new legislative deadlines for corrective action activities (see full discussion in this preamble in §334.71). New §334.201(c) is added to reflect the applicability of the new deadlines, and provide a cross-reference to Subchapter D where those deadlines are set out.

#### *Subchapter H - Reimbursement Program*

New legislation necessitates that three areas of amendments be made in this subchapter: HB 2687 and HB 2912, Article 14 extended the sunset date for the PSTR Account through September 1, 2006, and new deadlines were created concerning applications for reimbursement from that fund; the same legislation provided specific deadlines associated with existing corrective action duties for owners and operators, with missed deadlines affecting reimbursement eligibility; and the same legislation provided a clarified definition for “owner,” which necessitates matching amendments to the “eligible owner” definition in this subchapter. Also, a small number of regulatory reform amendments are made to

clarify the subchapter.

Section 334.301, Applicability of this Subchapter. Section 334.301(c) is amended by adding the phrase “No expenses for corrective action performed after September 1, 2005 will be reimbursed. No reimbursements will be made for corrective action expenses sought in claims submitted to the agency after March 1, 2006. Under no circumstances will any reimbursements be made on or after September 1 “2006,” with a deletion of “2003,” to reflect the new dates and restrictions concerning the PSTR Account contained in HB 2687 and HB 2912, Article 14.

Section 334.302, General Conditions and Limitations Regarding Reimbursement. Language in §334.302(c)(5) is deleted and replaced with “any expenses related to corrective action performed after September 1, 2005”; to reflect the new dates and restrictions concerning the PSTR Account contained in HB 2687 and HB 2912, Article 14. A new §334.302(c)(6), reading “any expenses related to corrective action contained in a reimbursement claim filed with the agency after March 1, 2006; or,” is added to reflect the new dates and restrictions concerning the PSTR Account contained in HB 2687 and HB 2912, Article 14. At adoption, this has been changed to “or” to properly reflect the nature of the list. A new §334.302(c)(7), reading “on or after September 1, 2006,” is added to reflect the new dates and restrictions concerning the PSTR Account contained in HB 2687 and HB 2912, Article 14. At proposal, this language ended with “and/or.”

Section 334.303, When to File Application. Section 334.303(a) is amended to insert the phrase “not after,” delete the phrase “prior to,” add the word “March,” delete the word “June,” add the year

“2006,” and delete the year “2003,” such that the provision reads “An application for reimbursement under this subchapter must be filed on or after January 17, 1990, but not after March 1, 2006,” to reflect the new dates and restrictions concerning the PSTR Account contained in HB 2687 and HB 2912, Article 14.

Section 334.310, Requirements for Eligibility. Section 334.310(a)(1) is amended to insert the parenthetical “(including, but not limited to, the restrictions under §334.302 of this title (relating to General Conditions and Limitations Regarding Reimbursement))” to provide a cross-reference to regulations where new rule language reflects the new dates and restrictions concerning the PSTR Account contained in HB 2687 and HB 2912, Article 14 (see full discussion in this preamble in §334.302). Section 334.310(a)(1)(E) is amended to insert the phrase “on or receives an assignment or deed in lieu of foreclosure” to more accurately reflect the requirements of TWC, §26.3571(b)(1)(C). Language in §334.310(b) is deleted and replaced with “If an otherwise eligible owner or operator misses a deadline under §334.71(b) of this title (relating to Applicability), and that missed deadline is the fault of that person, his agent or contractor, then that person shall no longer be eligible for reimbursement for those and future corrective action expenses at that site” to reflect the additional PSTR Account reimbursement eligibility requirements imposed by HB 2687 and HB 2912, Article 14 and to provide a cross-reference to rule amendments give more details on the specific corrective action deadlines required under the new statutory provisions (see discussion in this preamble in §334.71).

Section 334.313, Review of Application. Section 334.313(a)(1)(F) is amended to add the parenthetical “(though no reimbursement applications may be filed after March 1, 2006)” to reflect the new dates and

restrictions concerning the PSTR Account contained in HB 2687 and HB 2912, Article 14. Section 334.313(b) is amended by changing the date "June 1, 2003" to read "March 1, 2006" to reflect the new dates and restrictions concerning the PSTR Account contained in HB 2687 and HB 2912, Article 14. Section 334.313(d) is amended to insert the clarifying phrase "either, at the executive director's discretion" to reflect that the executive director must take one of the two actions listed, and to make the point that which of the two actions is taken on a particular application is at the discretion of the executive director.

Section 334.322, Subchapter H Definitions. Section 334.322(9) is amended so that the definition of "eligible owner" properly tracks the amendment to the tank "owner" definition contained in HB 2687 and HB 2912, Article 14.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the 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. Further, it does not meet any of the four applicability requirements listed in §2001.0225(a).

The vast majority of these adopted rule amendments reflect the new dates and restrictions concerning the PSTR Fund contained in HB 2687 and HB 2912, Article 14, rather than being specifically intended to protect the environment or reduce risks to human health from environmental exposure. The PSTR Fund was created many years ago by TWC, Chapter 26, Subchapter I, to provide a fee-driven pool of monies from which eligible owners and operators may apply for reimbursement for certain expenses associated with corrective action they are required to perform at LPST sites (the agency is also authorized to use the fund for certain expenses associated with operating the PST program). The new legislation attaches specific calendar deadlines to existing general obligations that tank owners and operators have under TWC, Chapter 26, Subchapter I and Subchapters D and G of this rule chapter to perform corrective action activities at LPST sites and bring those sites to closure, with loss of reimbursement eligibility stemming from missed deadlines that are the fault of the tank owner or operator (or their agents, etc.). The specific deadlines in the new statutory provisions are part of a legislative effort to wind down the PSTR Fund by its new sunset date of September 1, 2006. As the new statutory language reiterates, "a person's liability to perform corrective action under this chapter is unrelated to any possible reimbursements the person may be eligible for under Section 26.3571" of the TWC. That general liability predates the new legislation.

In addition, the adopted regulatory "owner" definition revision, also necessitated by the new statutory provisions, is intended as a clarification to better explain this important term and how the agency makes ownership determinations.

The exclusion of regulated substances that are not motor fuels from the compliance self-certification program was written into the new statutory provisions to narrow the prospective program scope. The self-certification program was created by HB 2815 in 1999, and following that session there was some question concerning legislative intent about the scope of the program. In implementing HB 2815, rules were promulgated in §334.8(c)(2) that would not phase the substances in question into the self-certification scheme until 2002. This was specifically done to allow the legislature, if it chose to, to address the applicability issue concerning these substances in the following session, which was done in HB 2687 and HB 2912, Article 14. With the applicability change, the "phase-in" period for these substances to enter the compliance self-certification program, scheduled for 2002, will not take place, and the amended rules reflect this. It should be noted that only a very small number of facilities would have been included in that phase-in group.

Also, the regulatory reform amendments in this rulemaking are intended to clarify rule requirements, rather than introduce new concepts. The amendments concerning the mechanics of how a tank that has been temporarily out-of-service under §334.54 can be brought back into service without violating the self-certification rules in §334.8(c) is essentially administrative in nature.

Any potential adverse economic effect caused by these adopted rules (specifically the specific calendar deadlines placed on corrective action milestones, and their resulting effect on reimbursement eligibility) should be offset by the extension in HB 2687 and HB 2912, Article 14 of the PSTR Fund sunset date for three additional years. Because of this extension, owners and operators will be able to apply for reimbursements for much longer than they could have under existing law and thus face fewer out-of-

pocket expenses when assessing and remediating LPST sites.

In addition, even if one of these amended rules was to be considered a "major environmental rule," a regulatory impact assessment is not required because the rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency.

These adopted amendments do not exceed a standard set by federal law. These adopted amendments also do not exceed an express requirement of state law because almost all of the amendments in this adoption are required by new legislation, and those amendments do not exceed the scope of those new statutory provisions. The regulatory reform amendments are either clarifications of existing rules or corrections of typographical errors. These adopted amendments are authorized as described in the "STATUTORY AUTHORITY" section of this preamble. These adopted amendments do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of federal government to implement a state federal program. One of the central elements of federal approval of the Texas PST program is the existence in state law of requirements concerning timely and proper assessment and clean-up of contaminated LPST sites (see 40 Code of Federal Regulations §281.35). A substantial part of the adoption reflects HB 2687/HB 2912, Article 14 requirements establishing specific calendar deadlines for assessment and clean-up of these sites. When the Texas program was approved, it already contained regulations concerning the duty for timely and proper LPST site corrective action. The new state legislation only places specific calendar deadlines on existing general obligations that tank owners and operators have to perform corrective action activities

at these sites. Also, the amended rules are not adopted solely under the general powers of the agency, but rather under program-specific state law.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these amendments under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to implement HB 2687 and HB 2912, Article 14 (with a small number of clarifying regulatory reform amendments adopted). This action will not create a burden on private real property. Most of the legislatively-driven changes relate to the operation of the PSTR Account. This fund was created many years ago by TWC, Chapter 26, Subchapter I, to provide a pool of monies from which eligible owners and operators may apply for reimbursement for certain expenses associated with corrective action they perform at LPST sites (the commission is also authorized to use the fund for certain expenses associated with operating the PST program). The existence of this fund facilitates timely and proper assessment and remediation of LPST sites by tank owners and operators. The new legislation extends the sunset date of the fund for three additional years. Consequently, this may increase the pace of clean-ups and closures at contaminated sites around the state. The small number of rules amended as part of the commission's regulatory reform effort also do not create a burden on private real property, since they are written to clarify existing rules. As a whole, this adoption will not be the cause of a reduction in market value of private real property, and does not create a burden on private real property and will not constitute a takings under Texas Government Code, §2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has prepared a consistency determination pursuant to 31 TAC §505.22, and has found that the adopted rulemaking is consistent with the applicable Texas Coastal Management Program (CMP) goals and policies. The rulemaking is subject to the CMP and must be consistent with applicable goals and policies which are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of Coastal Natural Resource Areas (CNRAs). This adoption implements HB 2687 and HB 2912, Article 14, and also includes a small number of regulatory reform changes. Most of the legislatively-driven changes relate to the operation of the PSTR Account. This fund was created many years ago by TWC, Chapter 26, Subchapter I, to provide a pool of monies from which eligible owners and operators may apply for reimbursement for certain expenses associated with corrective action they perform at LPST sites (the commission is also authorized to use the fund for certain expenses associated with the operating PST program). The existence of this fund facilitates timely and proper assessment and remediation of LPST sites by tank owners and operators. The new legislation extends the sunset date of the fund for three additional years. Consequently, this may increase the pace of clean-ups and closures at contaminated sites around the state. The new legislation also adds specific deadlines for corrective action milestones that owners and operators must follow in cleaning up LPST sites on the way to site closure. A missed deadline, which is the fault of the owner or operator (or agent, etc.), leads to a loss of reimbursement eligibility from the PSTR Fund, thus acting as an inducement for the deadlines to be met, which in turn expedites timely and proper assessment and remediation of contaminated sites. The adopted regulatory reform amendments clarify existing rules, or correct typographical errors. No CMP policies are applicable to this rulemaking.

For these reasons, the commission has determined that this rulemaking is consistent with the applicable CMP goal and will not have an adverse effect on the CNRAs.

#### HEARING AND COMMENTERS

A public hearing was not held for this proposal. A total of two commenters provided written comments both general and specific on the proposed rules. The following commented on the proposal: Darcy Environmental Group (Darcy); and Ranger Environmental Services, Inc. (Ranger).

#### RESPONSE TO COMMENTS

##### *General Comments*

While admitting that the proper legalities of *Texas Register* rule proposal notice were followed by the agency for this rulemaking, Ranger wants to have the proposal sent back for republication so that additional public comment can be submitted. The basis for this comment seems to be the allegation that public outreach was insufficient and that the commenter had difficulty accessing the proposed rules on the agency website. Ranger also finds it “very disturbing” that a particular agency mass-mailout concerning the new statutory deadlines “was sent out...two days after the date that the rules went to the *Texas Register*.”

**In response to these general comments, the commission declines to republish this rulemaking package in the *Texas Register* for additional public comment. As the commenter admits, the proper procedures for *Texas Register* publication for rulemaking proposals were followed for this package, and the Administrative Procedure Act does not require informal public outreach or**

posting of the proposed rules on the Internet. The commission does wish to point out, however, that extensive public outreach was in fact conducted for this rulemaking package. Beginning in the summer of 2001, stakeholders participated in discussions with agency staff prior to the proposal of these rules, including Texas Petroleum Marketers and Convenience Store Association; and Industry Council on the Environment, which are two groups representing members of the regulated community likely to be affected by these rules. Many PST-licensed contractors are members of one or more of these groups, and some of these contractors requested and received additional briefings on the new statutory deadlines and associated implementation issues. On September 26, 2001, the agency's Reimbursement & Technical Services Section provided a written synopsis of, and discussed, the new deadlines and associated implementation issues at an agency waste seminar in Houston. On November 12, 2001, a packet of information concerning the new deadlines was mailed by the agency's Responsible Party Remediation (RPR) Section to over 5,300 potentially affected parties. This mass mailing was a proactive attempt (not required by the new statutory language or any rule) to let everyone in the agency database of active LPST sites know about the new deadlines. The mailing occurred as soon after the effective date of the new legislation as it could be developed, finalized, and duplicated. The mailing informed these persons about the new statutory language and new agency guidance consistent with that language. To the extent the mailing might prompt someone to comment on these rules, the timing of the mailing would appear to allow ample time for such comments to be made within the public comment period (November 9, 2001 to December 10, 2001). Also starting around November 12, 2001, the RPR Section began, where appropriate, to include a reference to the deadlines in regular correspondence going to external parties pertaining to LPST sites. The commission is unsure why

**Ranger had difficulty accessing the proposed rules on the agency webpage, since the proposal was made available there according to standard agency procedures for such postings (in this case, posted on October 26, 2001 at <http://www.tnrcc.state.tx.us/oprd/rules/propadop.html>, which provided rule text and the dates for public comment).**

*Specific Comments*

*Comments on §334.71(b)(1)*

Darcy stated that the September 1, 2002 deadline contained in new statutory language in TWC, §26.351(f)(1) is inadequately defined in the proposed rule. Ranger stated that the proposed rule provided “no definition for what constitutes a ‘complete site assessment.’ ” Darcy then goes on to separate its comments into two sections: those associated with the idea of a “complete site assessment,” and those associated with the idea of a “complete risk assessment.” Concerning the former category, Darcy objects to one possible interpretation it feels the agency may make of a “complete site assessment,” one in which “NO reimbursable site assessment (i.e., installation of monitor wells or soil borings, excluding remediation-related assessment such as recovery wells) can be reported after 9/1/02.” Further, Darcy comments that, for responsible parties (RPs) who have not progressed very far toward site closure (e.g., “initial assessment activities were completed only within the past year, or have not been completed yet”), the deadline will be difficult to meet. Darcy goes on to give several reasons it believes that an RP might be in this situation. Similarly, Ranger objects that the rule will adversely affect RPs which have “cooperated fully in their corrective action process,” and further claims that this was not the legislature’s intent when the new statutory language was passed, suggesting that the intent was instead to “simply get the uncooperative RPs moving forward in the

corrective action process....not to penalize those parties who have cooperated and could simply be affected by either contamination migration, changes in groundwater flow direction or changes in TNRCC project coordinator.” Presumably implying that this proposal does not match that alleged intent, Ranger requested that rulemaking to be suspended until a group of regulated community representatives can talk to the legislature about “what the true legislative intent was of the statute.” Ranger then goes on to question the legislation itself, and asks why the legislature couldn’t have taken a different approach, such as informal negotiation or enforcement, which it claims would lead to the same result. Darcy then objects to the effects it feels will result in a scenario where groundwater sampling data is collected which may in turn call for additional assessment that cannot be completed before the September 1, 2002 deadline, adding that pre-approval time for the groundwater sampling plan could exacerbate the situation. According to Darcy, this will cause RPs to attempt to predict what “additional assessment” *might* be called for by the groundwater sampling data, and then attempt to gain pre-approval of that up front so as not to run afoul of the deadline. Darcy states it wants a “looser definition of complete site assessment.” Darcy appears to be saying that this “looser” definition would only require that a complete “Plan A Risk Assessment Report Form” be submitted by the September 1, 2002 deadline, with “Plan B Risk Assessment and establishment of site-specific target levels” not due until September 1, 2003 (which is the statutory corrective action plan deadline). Darcy states that this would allow these RPs from September 1, 2002 to September 1, 2003 to work on the rest of the assessment work and the corrective action plan. Both Darcy and Ranger claim this is how the agency in 1996 handled the deductible deadline contained in TWC, §26.3512(e), which they further claim is analogous to the proposed rule at issue. Moving to its second category of comments, Darcy claims that the term “complete risk assessment” needs to be further defined, and recommends that the definition be

the same as it suggested for the “looser” definition of “complete site assessment.” In the alternative, Darcy suggests a definition where all the RP has to do by the deadline is select target levels “in conjunction with identification of all potential/actual receptors. This could include calculation of site-specific target levels via Plan B Risk Assessment or by application of default target levels.” In neither case, Darcy suggests, would the RP be required “to install all required monitoring wells needed for full delineation of a contamination plume in order to establish target levels.” Similarly, Ranger objects to any interpretation of the rule which would require that the “entire plume....be defined to the extent no further drilling will be necessary after 9/1/02,” and cites an unspecified 1997 agency memorandum in support of its position. Darcy admits that “sometimes it is useful to utilize additional assessment to verify modeling results,” but claims that such assessment is not required. Ranger suggests a scenario where further site assessment might be found to be necessary after the September 1, 2002 deadline, when everyone involved (i.e., the RP, his/her consultants, and agency staff assigned to the case) believed before the deadline that no further assessment would be required. Ranger goes on to state that it believes the legislature did not intend reimbursement eligibility to be lost in such a situation. Ranger also suggests a scenario where the handling of an LPST site is reassigned from one agency case coordinator to another before the site has been brought to closure, and the new coordinator requires more assessment than the previous coordinator had indicated would be necessary, and this additional assessment could not be completed by the deadline. Ranger also claims that, in the past as to up-gradient and cross-gradient assessment, it “was not a TNRCC priority as these directions generally are not great areas of concern as they are not in the primary plume migration direction.” Ranger claims the agency will now reverse this position, and the commenter goes on to object to this claimed shift based on reimbursement eligibility consequences it believes will result.

In response to these comments, the commission declines to change the new rule language. This language tracks the statutory provision language, and it is appropriate that it do so. This rule is designed to deal with a wide variety of LPST sites, each with site-specific variables. The whole spectrum of these variables, and the corresponding appropriate corrective action activities to assess and remediate the sites, can never be completely captured in rule language. As was the case prior to the effective date of the new legislation, there will always be an element of informed judgment by agency experts when reviewing technical submissions from RP consultants for each LPST site that is evaluated on its way toward closure. The wording of the new rule, therefore, was not drafted in an attempt to comprehensively list every possible situation. In the statutory provision in TWC, §26.351(f)(1), the term “complete site assessment and risk assessment” is followed by the parenthetical “(including, but not limited to, risk-based criteria for establishing target concentrations).” This serves as a legislative statement as to an element that agency staff must require be adequately accounted for in the assessments submitted to the agency for review. The new rule tracks this language because to do otherwise would alter the meaning and effect of the statutory provision. The commenters state that the term “complete site assessment and risk assessment” is not adequately defined. Inherent in this comment is the idea that the parenthetical phrase quoted earlier in this paragraph is not a sufficient definition. The commission disagrees with this point. The parenthetical phrase, and the statement in the statute which reads “as determined by the executive director,” clearly indicate that the agency should write a rule to implement this statutory provision that includes the baseline element of “risk-based criteria for establishing target concentrations” and beyond that provides for agency case-by-case analysis of submissions from RP consultants, using its expertise. To do otherwise would alter the legislative

intent as manifested in the new statutory provision. As to the interpretation of “complete site assessment” that Darcy alleges the agency will take, the commission responds that it is *not* the case that there will be *no* circumstances where site assessment work performed after September 1, 2002 is reimbursed. New statutory language in TWC, §26.351(g), and corresponding new language in these rules in §334.310(b), contains the concept of “fault” in the application of the deadline. Agency staff will honor its obligations under the statute and rules to make good faith “fault” determinations, some of which could conceivably lead to site and risk assessment work performed after the deadline to nevertheless be reimbursed. Darcy’s statements about the negative effects the deadlines will have on RPs who haven’t progressed very far with corrective action are actually criticisms of the legislation itself. The central theme of the new legislation in TWC, §26.351(f) and (g), and associated cross-references, is the establishment of a system whereby the finite universe of RPs (i.e., whose releases were reported to the agency no later than December 22, 1998) must bring their sites to closure according to a specified timetable, with strict consequences (administrative penalties; loss of reimbursement eligibility) if they do not. Ranger’s similar comment suggests that the new statutory deadlines are not meant by the legislature to apply to RPs who are currently being cooperative in working with the agency. The commission responds that the new statutory language does not distinguish between “cooperative” and “uncooperative” RPs in the new corrective action requirements. It is clear that the statute applies to *all* RPs whose releases were reported to the agency by December 22, 1998. Ranger continues that the legislation was specifically not meant to include RPs “simply...affected by either contamination migration, changes in groundwater flow direction or changes in the TNRCC project coordinator.” In any of these examples, it may be that a missed deadline will lead to loss

**of eligibility. Inherent in the new statutory provisions is the idea that the finite group of RPs affected by the deadlines have had at least 3 1/2 years (and in many cases, much longer than that) to complete assessment phases of corrective action at their LPST sites, those who have delayed in moving toward site closure are anticipated to be at a disadvantage now, and some of those are anticipated to lose their reimbursement eligibility (with no recourse under TWC, §26.35731(b)). To read the legislation otherwise would not be giving the required effect to its plain meaning. In the exceptional cases, the legislature has built in the “fault” determinations to provide the agency some discretion when the deadline can truly be said to have been missed by no fault of the RP and/or his contractor or agent. The clear intent of the legislation, however, is for these deadlines to be applicable to the entire group of identified RPs, regardless of whether their recent behavior could be termed as “cooperative” and regardless of changed site conditions (except for the exceptional case under a “fault” determination). While a change in agency case coordinator will not be presumed to change the efficacy of the deadline, the agency will evaluate such cases in good faith as required by the new statute and rules.**

**The commission is bound to promulgate rules that effectively achieve the goals and mandates of this new legislative language. Ranger’s criticisms of the central concept of this particular rule (i.e., corrective action deadlines and corresponding reimbursement consequences) are later voiced in terms of criticism of the legislation itself, asking why the legislature could not have taken a different approach “such as informal negotiation or enforcement,” which the commenter claims would lead to the same result. The commission will not speculate on why other avenues were not chosen by the legislature, and responds that the intent of the language placed in the statute is**

clear, and the rules drafted pursuant to those provisions appropriately effectuate the statutory requirements.

Darcy suggests a scenario where groundwater sampling data is collected which (once results are in) may in turn call for additional assessment that cannot be completed before the September 1, 2002 deadline, adding that agency processing time for the groundwater sampling plan could worsen the situation. In response, the commission states that it is true that these cases could lead to a loss of reimbursement eligibility if the deadline is missed. Again, these RPs have had years to complete the assessment phases at their sites. Their delays early in the process will inherently make meeting the new deadlines more difficult, and in some cases, impossible. This is the natural effect of the new statutory scheme enacted by the legislature. Darcy adds, as to this scenario, that RPs will attempt to predict what “additional assessment” might be called for once the groundwater sampling data is submitted to the agency, and attempt to get pre-approval for that speculative additional assessment before the groundwater sampling data is even submitted. In response, the commission states that pre-approvals will be based on what corrective action activities are technically appropriate given the current available data about an LPST site. Reimbursement considerations cannot drive agency pre-approval decisions, because these decisions are always technical decisions. Further, the commission states here that the agency will insist on a reasonable amount of time to review groundwater sampling data in scenarios of this type (i.e., if the results are submitted too close to the September 1, 2002 deadline such that agency review and any subsequent additional assessment pre-approvals do not allow time for that additional assessment to be completed before the deadline, this will not be considered to justify a

**“fault” exception to the deadline). This will be the agency’s approach, in general, to addressing any of the new corrective action deadlines. Responsible parties will not be able to make last minute submissions to the agency, then demand a “fault” exception when the agency hasn’t responded in time for a deadline to be met (as long as the agency review time is deemed reasonable). Responsible parties and their consultants must build in reasonable time for agency review when planning corrective action activities at LPST sites.**

**The commission declines to adopt Darcy’s suggested “looser” definitions for a “complete site assessment” and a “complete risk assessment.” The new statutory language is clear in requiring these assessments to be done by September 1, 2002. A complete Plan A Risk Assessment Report Form does not categorically represent that full assessment has been done. Darcy’s suggestion that the agency could accept a Plan B Risk Assessment Report Form, and other assessment-related submissions, for reimbursement purposes through September 1, 2003 runs directly counter to the clear meaning of the statute. Completion of these forms does not in all cases mean that further assessment will not turn out to be necessary to close the site under the law. The commission does not believe its actions concerning the date contained in TWC, §26.3512(e) are, or should be considered, analogous to this new rule, as the wording of the two statutory sections are significantly different (in addition, the commission does not cede that the commenters have accurately summarized the nature of those past agency actions).**

**Darcy’s suggested alternative definition to “complete risk assessment” is inappropriate for much the same reasons, as it anticipates that the agency could allow the needed work to continue past its**

**September 1, 2002 deadline while still being categorically eligible for reimbursement. Like its other suggested definitions, Darcy's proposal would call for the agency to accept and reimburse partial work as complete work, thus giving the legislature's corrective action deadline only partial effect. The agency is not at liberty to promulgate such a rule, nor to interpret any rule in this manner.**

**Ranger states that it objects to any interpretation of the rule which would require that the "entire plume...be defined to the extent that no further drilling will be necessary after 9/1/02," and cites an unspecified 1997 agency memorandum in support of its position. The commission responds that it does not interpret this rule to say that monitor wells will not be needed after the September 1, 2002 deadline. As previously stated in this response, the variables of each site (consistent with the statutorily-required element of "risk-based criteria for establishing target concentrations") will determine when, in the expert opinion of the agency, sufficient assessment has been done. The September 1, 2002 deadline does not state, nor should it be read to imply, that assessment work will never have to be performed once the deadline has passed. The deadline is significant for reimbursement and enforcement purposes, and the agency will strictly enforce this deadline consistent with the statutory intent (and consistent with good faith "fault" determinations in exceptional cases). The extent of contamination at each LPST site must be delineated as appropriate, which is determined by agency experts in their review of submitted data, consistent with applicable statutes and rules. As discussed more extensively in the initial paragraph of this response, there will always be an element of agency case-by-case expert judgment in the handling of these sites, and the statutory provisions specifically reference this. In an effort to be proactive,**

the agency has from time to time issued guidance to help PST contractors understand how agency judgment in these technical areas has been used. One such guidance document, concerning plume delineations, was issued on February 10, 1997, though some of its contents were superceded by a memo issued November 1, 1999. Nothing in this guidance, however, supports Ranger's assertion that the agency will interpret the new rule so that the "entire plume...be defined to the extent that no further drilling will be necessary after 9/1/02." Darcy's statement that additional assessment, after modeling results are obtained, is sometimes "useful" but not required is one that the agency does not believe is accurate in all situations. Rather, modeling sometimes indicates that additional assessment is needed to appropriately define the plume. The decision is ultimately made by agency experts in the process of reviewing the technical submissions of the RP's consultant.

Ranger suggests a scenario where further site assessment might be found to be necessary after the September 1, 2002 deadline, when everyone involved (i.e., the RP, his/her consultants, and agency staff working on the case) believed before the deadline that no further assessment would be required. Ranger urges that the legislature did not intend for such scenarios to always lead to a loss of reimbursement eligibility. The commission responds that it does not intend that such a scenario would categorically lead to a loss of eligibility. Rather, the agency will in good faith evaluate arguments from RPs and their agents as to why a "fault" determination under TWC, §26.351(g) should be read to effectively extend the deadline for reimbursement purposes.

**Ranger's further comments concerning case reassignment within the agency and its possible effects on the deadlines have already been addressed earlier in this preamble. As a final point, Ranger states that in the past, concerning up-gradient and cross-gradient assessment, it "was not a TNRCC priority as these directions generally are not great areas of concern as they are not in the primary plume migration direction." Ranger goes on to state that the agency intends to reverse this alleged position, which the commenter then objects to. The commission disagrees with this characterization of its past position. The agency has always wanted these gradients properly accounted for, and will continue to require this in the future as part of ensuring appropriate plume delineation by the RP. The new statutory language anticipates that this review will take place as part of agency staff determining what is a "complete site assessment and complete risk assessment" when reviewing technical submissions from an RP.**

*Comments on §334.71(b)(4)*

Darcy states that it is actually commenting on this requirement as stated in agency guidance documents concerning the new statutory requirements, and claims that the guidance requirement has no basis in the new statutory language or in the proposed rule.

**While first arguing that the commission has no legal obligation to answer comments on agency guidance in this forum, the commission points out that the new TWC, §26.351(f)(4) creates an obligation to submit a "comprehensive and accurate annual status report" for a site which requires either a corrective action plan or groundwater monitoring, with a loss of reimbursement eligibility stemming from a failure to do so. The proposed rule tracks the statutory language.**

*Comments on §334.82*

Ranger claims that all changes to this rule section are “unnecessary” and “could potentially increase litigation unnecessarily, without enhancing protection to human health and the environment.”

**The commission responds that these changes serve to memorialize long-standing agency practice concerning which party will provide the required notification, as well as adding detail to ensure that such notifications are in fact made. In the past, the rules have allowed for either the agency or the RP, at the agency’s sole discretion, to make the required notification. In practice, the agency has elected to have the RPs make the notifications due to the limited resources available to the agency. The notification concept is not new. The commission asserts that it is good public policy to make minor adjustments to its notification requirements so that affected landowners (e.g., schools, hospitals, nursing homes) and other members of the affected public are actually made aware of these instances of PST contamination. While not ceding that the rule change would “unnecessarily” lead to increased litigation, the commission will say that such concerns are outweighed by the necessity of ensuring that members of the public are made aware of contamination that directly affects them. Effective notification can protect “human health and the environment,” for instance, by letting an adjacent landowner know of a possible threat to his/her water well.**

*Comments on §334.82(a)*

Ranger objects to the changes to this rule subsection because the existing option which allows owners/operators to use a “letter” as a method of notification would change to require a “certified

letter,” which it appears the commenter feels is too onerous.

**In response to the comment, the commission declines to change the new rule language. The “letter” method of notification is just one of several allowable under the rule. If the letter option is chosen, however, the commission believes it is appropriate to require that it be a certified letter to better provide for documenting (as required under subsection (b)) that the required notification has in fact been made. Sending letters certified is a common practice, and one that the commission does not believe to be too onerous in these situations.**

*Comments on §334.82(b)*

Ranger objects to the attachment of a 30-day deadline to the existing language concerning RP notification of the affected public, stating it “is not practical.” Though the comment is unclear, it appears the basis for this statement is that the commenter claims there is some uncertainty as to when the 30-day period begins, what a “confirmation of the release” means, and what kind/amount of “release” triggers the notification requirement. Ranger asks whether the agency intends the notification requirement to apply when high concentrations of contamination are found near an adjacent property which could suggest that the contamination extends off-site. If this rule section is adopted at all, Ranger asks for clarification on these points.

**In response to the comment, the commission adopts the new rule language with a clarification. As discussed earlier in this preamble, for many years the agency has elected to require the RPs to make the notifications, and the rule language has allowed the agency to do this. The new**

**language removes the option that the agency might choose to make the notifications itself, given that resources have not, do not, and likely will not allow the agency to elect to assume this burden. While it is true that the new rule language puts a 30-day deadline on proving to the agency that the notification has been made (as opposed to no express deadline in the current rule), the commission feels that this is an adequate and fair period of time to allot for that demonstration to be made. Ranger has not made a compelling case for why this time period is “not practical.” While the commenter’s rationale is unclear, the commission will attempt to answer the various points: long-standing subsection (a) language qualifies the notification requirements as being applicable to “each confirmed release that requires corrective action.” This has not historically been a problem, as RP’s consultants are familiar with what constitutes an LPST site requiring corrective action (including assessment and necessary remediation) under Subchapter D rules in this chapter. As to when the 30-day period begins, the commission agrees with the commenter that a clarification is warranted. To avoid any confusion, the adopted language states that the 30-day period begins when either the agency, or the owner/operator, determine that off-site assessment is needed, whichever date is earlier. This clarifies that the new rule does not mean that the 30-day period begins when the source-property release is first confirmed.**

*Comments on §334.310(b)*

Ranger does not believe it is sufficient that this language tracks the structure of the new statutory language in TWC, §26.351(g) and §6.3571(b) as to loss of reimbursement eligibility and RP fault. Instead, Ranger wants this rule (and unspecified other rules) to contain an affirmative statement that if the fault is the agency’s, then eligibility is retained.

**In response to the comment, the commission declines to change the new rule language. The new rule language tracks the statute in an appropriate manner, and provides a cross-reference to the rules containing the corrective action deadlines. It is clear, as a legal matter, that a “fault” determination centers around a judgment by the agency as to whether a corrective action deadline was missed at the fault of the RP or his contractor or agent. If the fault is found by the executive director to lie with some other party, be it the agency *or* some other extraneous entity, then the deadline is effectively extended for reimbursement and enforcement purposes. No further rule language is needed to make this point clear.**

*Comments on §334.322(9)*

While admitting that “the verbiage...was presented from the statute,” Ranger alleges that “this definition contradicts itself.” Ranger appears to be advocating a definition that would always look to the current landowner as the RP for LPST sites, based on a theory that the landowner “has a landlord responsibility for activities which occur on his property, or has due diligence requirements during the purchase of the land.” If the agency elects not to adopt Ranger’s suggested language, the commenter asks that the agency suspend the rulemaking and go to the legislature to “discuss the ambiguity of the definition and further clarify it.”

**In response to the comment, the commission declines to change the new rule language. The new legislation that went into effect on September 1, 2001 clarified the definition of a tank “owner.” As a result, it is necessary for the regulatory definition of a tank owner to track that statutory language. And, because the “eligible owner” definition tracked the old §334.2 owner definition**

**which is changing in this rulemaking package, it is necessary to make concurrent changes to this rule. The commenter admits that the changes to this rule follow the new statutory language. Legally, it is necessary for this to be the case. Ranger's objections are really, therefore, objections to the new statutory definition itself. Ranger urges for a definition that always looks to the current landowner for liability as an "owner." That is not the legal effect of the new statutory definition, and thus cannot be the legal effect of the new regulator "owner" and "eligible owner" definitions. The commission declines to approach the legislature, as Ranger urges, to question the meaning of the definition.**

*Comments on Fiscal Note*

Ranger claims the Fiscal Note is in error as to "adverse fiscal implications for businesses" for the following reasons: 1) commenter claims that RPs will have to perform more assessment activities than is currently the norm; 2) "monies for this extra drilling, which were not originally anticipated, have to be made available"; 3) "as the PST reimbursement staff will tell you, they do not reimburse costs required to perform tasks, they simply pay a specific amount towards the task....Sometimes these two items correspond, however, most often they do not"; and 4) "as the PST reimbursement program has now implemented the practice of back calculating the costs that they believe should have been required to perform tasks (and thus negating the entire pre-approval process), more often than not, they disallow costs for activities even though a consultant may be substantially under budget."

Finally, Ranger also claims that "a local economy may be affected in a material way....The economy is the tank owner/LPST community," and alleges that the Fiscal Note does not adequately account for

this. Later, Ranger includes local governments in its perception of what “local economy” includes. Ranger’s rationale for these arguments concerning local government impacts is unclear, but appears to have something to do with a failure to consider what Ranger alleges are “extensive increases in RP deductibles.”

**The agency disagrees that RPs will have to conduct more assessment activities or “extra drilling” under the new rules relative to the old rules. Nothing in the new statute or these rules promulgated to implement it changes the law concerning how much assessment the agency requires of an RP. The agency will continue to require that all LPST sites including those to which the new corrective action deadlines apply (i.e., sites reported to the agency by December 22, 1998), be fully and properly assessed as always according to agency rules, regulations, and guidance. The new deadlines do not function to increase the degree of assessment required by the agency. Because the degree of required assessment will not change, the agency disagrees that any additional PSTR monies are needed to reimburse extra drilling costs or other claimed extra assessment activities. The agency preapproves costs for corrective action activities per the reimbursement cost guidelines in Subchapters M and H of this chapter and TWC, Chapter 26, Subchapter I.**

**The agency does not see how Ranger’s statements concerning agency reimbursement calculation methodologies summarized as 3) and 4) as discussed earlier constitute a comment relevant to any possible fiscal impacts of this rule package.**

**Further, the agency is also unclear how statutory deductible deadlines that have been in TWC for years, and which have all passed years ago, are relevant to any possible fiscal impacts of this rule package on any definition of a “local economy.” For all these comments, the agency reiterates the points made in its Fiscal Note analysis for this rule package at the proposal publication.**

#### STATUTORY AUTHORITY

The amendments are adopted under 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 amendments are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding USTs; and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or an aboveground storage tank.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§§334.2, 334.3, 334.5, 334.6, 334.8, 334.12**

#### **§334.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Abandonment in-place** - A method of permanent removal of an underground storage tank (UST) from service where the tank is left in the ground after appropriate preparation and filling with an acceptable solid inert material in accordance with the requirements of §334.55 of this title (relating to Permanent Removal From Service).

(2) **Abatement** - The process of reducing in sufficient degree or intensity the source of the release or impacted area, and potential fire, explosion, or vapor hazards, such that immediate threats to human health no longer exist. This includes the removal, as necessary, of all regulated substances from any confirmed or suspected release source (including associated aboveground or underground tanks, individual tank compartments, or associated piping) and the removal of phase-separated regulated substances from the impacted area.

(3) **Aboveground release** - Any release to the surface of the land or to surface water, including, but not limited to, releases from the aboveground portion of an UST system and releases

associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of an UST system.

(4) **Aboveground storage tank (AST)** - A non-vehicular device, (including any associated piping), that is made of non-earthen materials; located on or above the surface of the ground, or on or above the surface of the floor of a structure below ground, such as mineworking, basement, or vault; and designed to contain an accumulation of petroleum products.

(5) **ACT** - A trademark of the former Association for Composite Tanks, now a licensed trademark of the Steel Tank Institute.

(6) **Allowable cost** - As defined by Subchapter H, §334.308 of this title (relating to Allowable Costs and Restrictions on Allowable Costs).

(7) **Ancillary equipment** - Any devices that are used to distribute, meter, or control the flow of petroleum substances or hazardous substances into or out of an UST, including, but not limited to, piping, fittings, flanges, valves, and pumps.

(8) **ANSI** - American National Standards Institute, a nationally recognized organization which provides certifications and standards for consumer products and services.

(9) **API** - American Petroleum Institute, a nationally recognized organization which provides certifications and standards for petroleum equipment and services.

(10) **Appropriate regional office** - The agency's regional field office which has jurisdiction for conducting authorized agency regulatory activities in the area where a particular UST system or AST system is located.

(11) **ASTM** - American Society of Testing and Materials, a nationally recognized organization which provides certifications and standards for products and services.

(12) **Backfill** - The volume of materials or soils surrounding the UST bounded by the ground surface, walls, and floor of the tank pit.

(13) **Below-ground release** - Any release to the subsurface of the land or to groundwater, including, but not limited to, releases from the below-ground portions of an UST system and releases associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of an UST system.

(14) **Beneath the surface of the ground** - Beneath the ground surface or otherwise covered with materials so that visual inspection is precluded.

(15) **Cathodic protection** - A technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell, normally by means of either the attachment of galvanic anodes or the application of impressed current.

(16) **CERCLA** - The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(17) **Change-in-service** - A method of permanent removal from service involving the permanent conversion of a regulated UST to a tank which is not regulated under this chapter, where all regulated substances are properly removed by emptying and cleaning, and the tank is left in the ground for the storage of materials other than regulated substances.

(18) **Closure letter** - A letter issued by the agency which states that, based on the information available, the agency agrees that corrective action has been completed for the referenced release in accordance with agency requirements.

(19) **Commingled** - A combination or mixture of a petroleum product and a substance other than a petroleum product (excluding soil and/or water).

(20) **Common carrier** - With respect to delivery prohibitions, a person (as defined in this section) who physically delivers a regulated substance into an UST directly from a cargo tank which is affixed or mounted to a self-propelled, towable, or pushable vehicle (e.g., wagon, truck,

trailer, railcar, aircraft, boat, or barge).

(21) **Composite tank** - A single-wall or double-wall steel tank, to which a fiberglass-reinforced plastic laminate or cladding has been factory-applied to the external surface of the outer tank wall.

(22) **Consumptive use** - (With respect to heating oil) the utilization and consumption of heating oil on the premises where stored.

(23) **Corporate Fiduciary** - An entity chartered by the Banking Department of Texas, the Savings and Loan Department of Texas, the United States comptroller of the currency, or the director of the United States Office of Thrift Supervision that acts as a receiver, conservator, guardian, executor, administrator, trustee, or fiduciary of real or personal property.

(24) **Corrective action** - Any assessment, monitoring, and remedial activities undertaken to investigate the extent of, and to remediate, contamination.

(25) **Corrective action plan (or remedial action plan)** - A detailed plan developed to address site remediation of soil, groundwater, or surface water contamination that provides for required protection of human health, safety, and the environment. The selection of the most effective and efficient remedial method will be dictated by the nature and location of the release, the site soils, hydrogeological conditions, and the required degree of remediation. The remedial method selection

should take into consideration such factors as cost, time, and state compliance requirements with each method. The title of any report which contains a corrective action plan must include the designation “remedial action plan.”

(26) **Corrosion specialist** - A person who, by reason of a thorough knowledge of the physical sciences and the principals of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks, and who is either:

(A) certified as a corrosion specialist or a cathodic protection specialist by NACE International; or

(B) licensed as a professional engineer by the Texas Board of Professional Engineers in a branch of engineering that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(27) **Corrosion technician** - A person who can demonstrate an understanding of the principals of soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements as relate to corrosion protection and control on buried or submerged metal tanks and metal piping systems; who is qualified by appropriate training and experience to engage in the practice of inspection and testing for corrosion protection and control on such systems, including the inspection and testing of all common types of cathodic protection systems; and who either:

(A) has been certified by NACE International as a corrosion technician, corrosion technologist, or senior corrosion technologist;

(B) is employed under the direct supervision of a corrosion specialist (as defined in this section), where the corrosion specialist maintains responsible control and oversight over all corrosion testing and inspection activities; or

(C) has been officially qualified as a cathodic protection tester, in strict accordance with the assessment and examination procedures prescribed by NACE International.

(28) **Date installation is complete** - The date any regulated substance is initially placed in an UST or the date any petroleum product is initially placed in an AST.

(29) **Dielectric material** - A material that does not conduct direct electrical current, as related to coatings, bushings, and other equipment and materials used with UST systems.

(30) **Electrical equipment** - Underground equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

(31) **Emergency generator** - A standby electrical generating system powered by an internal combustion engine (including a turbine), where such system is designed to supply temporary electrical service only when service from the normal or primary electrical source is disrupted. Such

systems include, but are not necessarily limited to, those providing emergency electrical service for hospitals, life support systems, and other medical service facilities; telephone and electrical utilities; heating, lighting, ventilation, security, elevator, fire control, and other essential building operations systems; uninterruptible power systems; essential air conditioning and refrigeration; and motors, machinery, and controls used for other essential or critical purposes.

(32) **Excavation zone** - The space containing the UST system and backfill material, which is bounded by the ground surface and the walls and floor of the pit and trenches into which the UST system is placed at the time of installation.

(33) **Existing UST system** - An UST system which is used or designed to contain an accumulation of regulated substances for which installation either had commenced prior to December 22, 1988, or had been completed on or prior to December 22, 1988. Installation will be considered to have commenced if the owner or operator had obtained all federal, state, and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either a continuous on-site physical construction or installation program had begun or the owner or operator had entered into contractual obligations (which could not be canceled or modified without substantial loss) which required that the physical construction at the site or installation of the tank system was to be completed within a reasonable time.

(34) **External release detection** - A method of release detection which includes equipment or procedures designed to effectively monitor or measure for the presence of regulated

substances in the excavation zone, soil, or other media outside of a single-wall or double-wall UST system.

(35) **Facility** - The site, tract, or other defined area where one or more UST systems or one or more AST systems are located.

(36) **Farm** - A tract or tracts of land (including all associated structures and improvements) which are principally devoted to the raising of agricultural or other types of crops, domestic or other types of animals, or fish for the production of food, fiber, or other products or for other useful purposes, including fish hatcheries, rangeland, and plant nurseries with growing operations, but not including timber-growing land and operations dedicated primarily to recreational, aesthetic, or other non-agricultural activities (e.g., golf courses and parks).

(37) **Farm tank** - A tank located on a farm where the stored regulated substance is or will be utilized directly in the farm activities.

(38) **Field-constructed tank** - A tank which is not factory-assembled, and which is principally constructed, fabricated, or assembled at the same facility where the tank is subsequently placed into service.

(39) **Flow-through process tank** - A tank through which regulated substances flow in a steady, variable, recurring, or intermittent manner during, and as an integral part of, a production

process (such as petroleum refining, chemical production, and industrial manufacturing), but specifically excluding any tank used for the static storage of regulated substances prior to their introduction into the production process and any tank used for the static storage of regulated substances which are products or by-products of the production process.

(40) **Free-product (or non-aqueous phase liquid)** - A regulated substance in its free-flowing non-aqueous liquid phase at standard conditions of temperature and pressure (e.g., liquid not dissolved in water).

(41) **Gathering lines** - Any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(42) **Hazardous substance** - Any substance defined or listed in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), §101(14), (42 United States Code §9601, et seq.), and which is not regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C, (42 United States Code §6921, et seq.).

(43) **Hazardous substance UST system** - An UST system that contains an accumulation of either a hazardous substance, a mixture of two or more hazardous substances, or a mixture of one or more petroleum substances with one or more hazardous substances, and which does not meet the definition of a petroleum UST system in this section.

(44) **Heating oil** - A petroleum substance which is typically used in the operation of heating, boiler, or furnace equipment and which either is one of the following seven technical grades of fuel oil: Number 1, Number 2, Number 4-light, Number 4-heavy, Number 5-light, Number 5-heavy, and Number 6; is a residual fuel oil derivative of the refining process (such as Navy Special and Bunker C residual fuel oils); or is another fuel (such as kerosene or diesel) used for heating purposes as a substitute for one of the above fuel oils or residual fuel oil derivatives.

(45) **Hydraulic fluid** - Any regulated substance that is normally used in a hydraulic lift system.

(46) **Hydraulic lift tank** - A tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air and hydraulic fluid to operate lifts, elevators, or other similar devices.

(47) **Impressed current system** - A method of cathodic protection where a rectifier is used to convert alternating current to direct current, where the current then flows in a controlled electrically connected circuit to non-sacrificial anodes, then through the surrounding soil or backfill to the protected metallic structure or component, and back to the rectifier.

(48) **In operation** - The description of an in-service UST which is currently being used on a regular basis for its intended purpose.

(49) **In service** - The status of an UST beginning at the time that regulated substances are first placed into the tank and continuing until the tank is permanently removed from service by means of either removal from the ground, abandonment in-place, or change-in-service. An in-service UST may or may not contain regulated substances, and may be either in operation or out of operation at any specific time.

(50) **Installer** - A person who participates in or supervises the installation, repair, or removal of USTs.

(51) **Inventory control** - Techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

(52) **Jacketed tank** - A factory-constructed tank consisting of a single-wall or double-wall steel internal (or primary) tank that is completely enclosed in an external secondary-containment jacket made of noncorrodible material, and which is designed so that releases of stored substances from the internal tank can be contained and monitored within a liquid-tight interstitial space between the internal tank and the external jacket.

(53) **Lender** - A state or national bank; a state or federal savings bank; a credit union; a state or federal savings and loan association; a state or federal government agency that customarily provides financing; or an entity that is registered with the Office of Consumer Credit Commissioner

pursuant to Chapter 7, Title 79, Revised Statutes (Texas Civil Statutes, Article. 5069-7.01, et seq.) if the entity is regularly engaged in the business of extending credit and if extending credit represents the majority of the entity's total business activity.

(54) **Liquid trap** - A collection device (such as a sump, well cellar, and other trap) which is used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids, and which either may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(55) **Leaking petroleum storage tank (LPST) site** - A site at which a confirmed release of a petroleum substance from an UST or AST has occurred. Petroleum substance contamination which results from multiple sources may be deemed as one LPST site by the agency.

(56) **Maintenance** - The normal and routine operational upkeep of UST systems necessary for the prevention of releases of stored regulated substances.

(57) **Monitoring well** - An artificial excavation constructed to measure or monitor the quantity or movement of substances, elements, chemicals, or fluids below the surface of the ground. The term does not include any monitoring well which is used in conjunction with the production of oil, gas, or any other minerals.

(58) **Motor fuel** - A petroleum substance which is typically used for the operation of internal combustion engines (including stationary engines and engines used in motor vehicles, aircraft, and marine vessels), and which is one of the following types of fuels: motor gasoline, aviation gasoline, Number 1 diesel fuel, Number 2 diesel fuel, or gasohol.

(59) **NACE** - NACE International (formerly National Association of Corrosion Engineers), a nationally recognized organization which provides certifications and standards for corrosion protection services.

(60) **New UST system** - An UST system which is used or designed to contain an accumulation of regulated substances for which installation commenced after December 22, 1988; or an underground storage system which is converted from the storage of materials other than regulated substances to the storage of regulated substances after December 22, 1988.

(61) **NFPA** - National Fire Protection Association, a nationally recognized organization which provides certifications and standards for fire protection equipment and services.

(62) **Non-aqueous phase liquid (NAPL)** - See “Free product (or non-aqueous phase liquid)” as defined in this section.

(63) **Non-commercial purposes** - (With respect to motor fuel) all purposes except resale.

(64) **Noncorrodible material** - A material used in the construction, maintenance, or upgrading of any component of an UST system which is designed to retain its physical and chemical properties without significant deterioration or failure for the operational life of the UST system when placed in contact with (and subjected to the resulting electrical and chemical forces associated with) any surrounding soil, backfill, or groundwater, any connected components constructed of dissimilar material, or the stored regulated substance.

(65) **Observation well** - A monitoring well or other vertical tubular structure which is constructed, installed, or placed within any portion of a UST excavation zone (including the tank hole and piping trench), and which is designed or used for the observation or monitoring of groundwater, or for the observation, monitoring, recovery, or withdrawal of either released regulated substances (in liquid or vapor phase) or groundwater contaminated by such released regulated substances.

(66) **Occurrence** - An incident, including continuous or repeated exposure to conditions, which results in a release from an UST or AST or tank system.

(67) **On the premises where stored** - (With respect to heating oil) refers to the consumptive use of heating oil on the same property or site where the heating oil is stored.

(68) **Operational life** - The actual or anticipated service life of an UST system, which begins when regulated substances are first placed into the tank system and which continues until the tank system is permanently removed from service by means of either removal from the ground,

abandonment in-place, or change-in-service.

(69) **Operator** - Any person in day-to-day control of, and having responsibility for the daily operation of the UST system or the AST system, as applicable.

(70) **Out of operation** - The description of an in-service UST which is not currently being used on a regular basis for its intended purpose.

(71) **Overfill** - A release that occurs when an UST system is filled beyond its capacity, thereby resulting in a discharge of a regulated substance to the surface or subsurface environment.

(72) **Owner** - Any person who holds legal possession or ownership of an interest in an UST system or an AST. For the purposes of this chapter, if the actual ownership of an UST system or an AST is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the UST system or the AST is located is considered the UST system or AST owner unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally-acceptable means that the UST system or AST is owned by another person. A person that has registered as an owner of an UST system or AST with the commission under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems) (or a preceding rule section concerning tank registration) after September 1, 1987, shall be considered the UST system owner and/or AST owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the UST system or AST was transferred to a different

person subsequent to the date of the tank registration. This definition is subject to the limitations found in Texas Water Code, §26.3514, Limits on Liability of Lender; §26.3515, Limits on Liability of Corporate Fiduciary; and §25.3516, Limits on Liability of Taxing Unit.

(73) **PEI** - Petroleum Equipment Institute, a nationally recognized organization which provides certifications and standards for petroleum equipment and services.

(74) **Permanent removal from service** - The termination of the use and the operational life of an UST by means of either removal from the ground, abandonment in-place, or change-in-service.

(75) **Person** - An individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States government.

(76) **Petroleum marketing facilities** - All facilities at which a petroleum substance is produced or refined and all facilities from which a petroleum substance is sold or transferred to other petroleum substance marketers or to the public.

(77) **Petroleum marketing firms** - All firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(78) **Petroleum product** - A petroleum substance obtained from distilling and processing crude oil that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including but not limited to motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and Number 1 and Number 2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

(79) **Petroleum substance** - A crude oil or any refined or unrefined fraction or derivative of crude oil which is liquid at standard conditions of temperature and pressure (except for any substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C, (42 United States Code §6921, et seq.)). For the purposes of this chapter, a petroleum substance is limited to one or a combination of the substances or mixtures in the following list:

(A) basic petroleum substances - crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(B) motor fuels - (see definition for "motor fuel" in this section);

(C) aviation gasolines - Grade 80, Grade 100, and Grade 100-LL;

(D) aviation jet fuels - Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(E) distillate fuel oils - Number 1-D, Number 1, Number 2-D, and Number 2;

(F) residual fuel oils - Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(G) gas-turbine fuel oils - Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(H) illuminating oils - kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(I) solvents - Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane;

(J) lubricants - automotive and industrial lubricants;

(K) building materials - liquid asphalt and dust-laying oils;

(L) insulating and waterproofing materials - transformer oils and cable oils; or

(M) used oils - (see definition for "used oil" in this section).

(80) **Petroleum UST system** - An UST system that contains, has contained, or will contain a petroleum substance (as defined in this section), a mixture of two or more petroleum substances, or a mixture of one or more petroleum substances with very small amounts of one or more hazardous substances. In order for an UST system containing a mixture of petroleum substances with small amounts of hazardous substances to be classified as a petroleum UST system, the hazardous substance must be at such a dilute concentration that the overall release detectability, effectiveness of corrective action, and toxicity of the basic petroleum substance is not altered to any significant degree.

(81) **Pipeline facilities (including gathering lines)** - New and existing pipeline rights-of-way, including any equipment, facilities, or buildings therein which are used in the transportation or associated treatment (during transportation) of gas or hazardous liquids (which include petroleum and other liquids as designated by the Secretary of the United States Department of Transportation), and which are regulated under the federal Natural Gas Pipeline Safety Act of 1968 (49 United States Code App. 1671, et seq.); the federal Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code App. 2001, et seq.); or (for intrastate pipeline facilities) the Texas Natural Resources Code, Chapters 111 or 117, or Texas Civil Statutes, Articles 6053-1 and 6053-2.

(82) **Piping** - All underground pipes in an UST system, including valves, elbows, joints, flanges, flexible connectors, and other fittings attached to a tank system through which regulated substances flow or in which regulated substances are contained or stored.

(83) **Piping trench** - The portion of the excavation zone at an UST facility which

contains the piping system and associated backfill materials.

(84) **Pressurized piping** - Product or delivery piping in an UST system which typically operates at greater than atmospheric pressure.

(85) **Professional engineer** - A person who is currently duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(86) **Qualified personnel** - Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally accepted industry standards for such activity.

(87) **Radioactive materials** - Radioactive substances or radioactive waste materials (e.g., high-level radioactive wastes and low-level radioactive cooling waters) which are classified as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), §101(14), 42 United States Code §9601, et seq., except for radioactive materials regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C, 42 United States Code §6921, et seq.

(88) **Regulated substance** - An element, compound, mixture, solution, or substance

that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. For the purposes of this chapter, a regulated substance is limited to any hazardous substance (as defined in this section), any petroleum substance (as defined in this section), any mixture of two or more hazardous substances and/or petroleum substances, and any other substance designated by the commission to be regulated under the provisions of this chapter.

(89) **Release** - Any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an UST or AST into groundwater, surface water, or subsurface soils.

(90) **Release detection** - The process of determining whether a release of a regulated substance is occurring or has occurred from an UST system.

(91) **Repair** - The restoration, renovation, or mending of a damaged or malfunctioning tank or UST system component.

(92) **Residential tank** - A tank located on property used primarily for dwelling purposes.

(93) **Retail service station** - A facility where flammable liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and where such dispensing is an act of retail sale.

(94) **Risk-based corrective action** - Site assessment or site remediation, the timing, type, and degree of which is determined according to case-by-case consideration of actual or potential risk to public health from environmental exposure to a regulated substance released from a leaking UST or AST.

(95) **Secondary containment** - A containment method by which a secondary wall, jacket, or barrier is installed around the primary storage vessel (e.g., tank or piping) in a manner designed to prevent a release from migrating beyond the secondary wall or barrier before the release can be detected. Secondary containment systems include, but are not limited to: double-wall tank and/or piping systems, and impervious liners, jackets, containment boots, sumps, or vaults surrounding a primary (single-wall) tank and/or piping system.

(96) **Septic tank** - A water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer.

(97) **Spill** - A release of a regulated substance which results during the filling, placement, or transfer of regulated substances into an UST or during the transfer or removal of regulated substances from an UST system.

(98) **Standard conditions of temperature and pressure** - A temperature of 60 degrees

Fahrenheit and an atmospheric pressure of 14.7 pounds per square inch absolute.

(99) **STI** - Steel Tank Institute, a nationally recognized organization which provides certifications and standards for steel tanks.

(100) **Stormwater collection system** - The piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation to and from retention areas and into natural or man-made drainage channels.

(101) **Suction piping** - Product or delivery piping in an UST system which typically operates below atmospheric pressure.

(102) **Sump** - Any man-made pit or reservoir that meets the definition of a tank (including any connected troughs or trenches) that serves to collect and temporarily store regulated substances.

(103) **Surface impoundment** - A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (but possibly lined with man-made materials) that is designed to hold an accumulation of regulated substances.

(104) **Tank** - A stationary device (generally exclusive of any associated ancillary equipment) designed or used to contain an accumulation of regulated substances which is constructed of a non-earthen material (e.g., concrete, steel, or plastic) that provides structural support.

(105) **Tank hole** - The portion of the excavation zone at an UST facility which contains the tanks and associated backfill materials.

(106) **Tank system** - An UST system.

(107) **Temporary removal from service** - The procedure by which an UST system may be temporarily taken out of operation without being permanently removed from service.

(108) **Tightness test (or tightness testing)** - A procedure for testing and analyzing a tank or piping system to determine whether the system(s) is capable of preventing the inadvertent release of a stored substance into the environment.

(109) **UL** - Underwriters Laboratories, Inc., a nationally recognized organization which provides certifications and standards for consumer products and services.

(110) **Underground area** - An underground room, basement, cellar, shaft, or vault, which provides enough space for physical inspection of the exterior of a tank or tank system situated on or above the surface of the floor.

(111) **Underground storage tank** - Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.

(112) **Underground storage tank system** - An UST, all associated underground piping and underground ancillary equipment, spill and overfill prevention equipment, release detection equipment, corrosion protection system, secondary containment equipment (as applicable), and all other related systems and equipment.

(113) **Unsaturated zone** - The subsurface zone containing water under pressure less than that of the atmosphere (including water held by capillary forces within the soil) and containing air or gases generally under atmospheric pressure. This zone is bounded at the top by the ground surface and at the bottom by the upper surface of the zone of saturation (i.e., the water table).

(114) **Upgrading** - The addition, improvement, retrofitting, or renovation of an existing UST system with equipment or components as required to meet the corrosion protection, spill and overfill prevention, and release detection requirements of this chapter.

(115) **Used oil** - Any oil or similar petroleum substance that has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities; and including spent motor vehicle and aircraft lubricating oils (e.g.,

car and truck engine oil, transmission fluid, and brake fluid), spent industrial oils (e.g., compressor, turbine, bearing, hydraulic, metalworking, gear, electrical, and refrigerator oils), and spent industrial process oils.

(116) **UST** - An underground storage tank (as defined in this section).

(117) **UST system** - An underground storage tank system (as defined in this section).

(118) **Vent lines** - All pipes including valves, elbows, joints, flanges, flexible connectors, and other fittings attached to a tank system, which are intended to convey the vapors emitted from a regulated substance stored in an UST to the atmosphere.

(119) **Wastewater collection system** - The piping, pumps, conduits, and any other equipment necessary to collect and transport domestic, commercial, or industrial wastewater to and from any facilities or areas where treatment of such wastewater is designated to occur.

(120) **Wastewater treatment tank** - A tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

**§334.3. Exemptions for Underground Storage Tanks (USTs) and UST Systems.**

(a) Complete exemption. The following underground tanks and containment devices (including any connected piping) are completely exempt from regulation under this chapter:

(1) farm or residential tank with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;

(2) tanks used for storing heating oil for consumptive use on the premises where stored;

(3) septic tank;

(4) surface impoundments, pits, ponds, or lagoons;

(5) stormwater or wastewater collection systems;

(6) flow-through process tanks;

(7) tanks, liquid traps, gathering lines, or other facilities used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas pursuant to the Natural

Resources Code, §91.101;

(8) transformers or other electrical equipment that contains a regulated substance and that is used in the transmission of electricity, to the extent that such a transformer or equipment is exempted by the United States Environmental Protection Agency under Title 40 Code of Federal Regulations, Part 280;

(9) storage tanks located in an underground area, including a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is located on or above the surface of the floor;

(10) pipeline facilities, including gathering lines, if such facilities are regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 United States Code, §§1671, et seq.); or

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code, §2001, et seq.);

(11) interstate pipeline facilities if such facilities are regulated under of the following state laws:

(A) the Natural Resources Code, Chapter 111;

(B) the Natural Resources Code, Chapter 117; or

(C) Texas Civil Statutes, Articles 6053-1 and 6053-2.

(b) Partial exemption. As provided under the Texas Water Code (TWC), §26.344(e), in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and which hold less than 100 gallons of hydraulic oil are exempt from regulation under this chapter, except that such lifts remain subject to the release reporting and corrective action requirements under the TWC, §26.351, and Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(c) Upon request by the agency, the owner and operator of a tank claimed to be exempted under this section must provide appropriate documentation or other information in a timely manner to support that claim.

**§334.5. General Prohibitions for Underground Storage Tanks (USTs) and UST Systems.**

(a) Design prohibitions. On or after September 1, 1987, no person may install or have installed an underground storage tank (UST) system for the purpose of storing or otherwise containing regulated substances unless such UST system, whether of single-wall or double-wall construction, meets the following standards.

(1) The UST system must prevent releases due to corrosion or structural failure for the operational life of the UST system.

(2) All components of the UST system must be either cathodically protected against corrosion, constructed of noncorrodible material, constructed of a steel material which has been clad with a noncorrodible material, or must be otherwise designed and constructed in a manner that prevents the release of any stored substances.

(3) The UST system must be constructed of or lined with a material that is compatible with the stored substance.

(b) Delivery prohibitions.

(1) Concerning UST systems which the tank owner or operator must self-certify under §334.8(c) of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems):

(A) Except as provided under subparagraphs (B) and (C) of this paragraph, no common carrier (as defined in §334.2 of this title (relating to Definitions)) shall deposit any regulated substance into a UST system regulated under this chapter unless he observes that the owner or operator has a valid, current delivery certificate issued by the agency covering that UST system.

(B) For new or replacement UST systems, only during the initial period ending 90 days after the date that a regulated substance is first deposited into the new or replacement system(s), a common carrier may accept, as adequate to meet the requirements of subsection (a) of this section, documentation that the owner or operator has a “temporary delivery authorization,” as defined in §334.8(c)(5)(D) of this title, issued by the agency for the facility at which the new or replacement UST system(s) exist.

(C) If in the exercise of good faith, a common carrier who deposits a regulated substance into an UST system is first presented with an apparently valid, current TNRCC delivery certificate (or temporary delivery authorization, if applicable) represented by the UST system owner or operator to meet the requirements of subsection (a) of this section, this will be considered prima facie evidence of compliance by that common carrier with this subparagraph.

(2) Concerning UST systems which are not required to be self-certified compliant at a given time under §334.8(c) of this title, but which are required to be registered under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems):

(A) Except as provided under subparagraph (B) of this paragraph, no person (as defined in §334.2 of this title) shall deposit any regulated substance into a UST system regulated under this chapter unless he observes that the owner or operator has a valid, current registration certificate issued by the agency covering that UST system.

(B) The prohibition referenced in subparagraph (A) of this paragraph is not applicable to deliveries into a new or replacement UST system occurring within 30 days of the first deposit of regulated substances.

(3) Concerning both types of delivery prohibition referenced in this subsection, the following documentation can be accepted as adequate:

(A) the original valid, current document issued by the agency; or

(B) a legible copy of the valid, current document issued by the agency.

**§334.6. Construction Notification for Underground Storage Tanks (USTs) and UST Systems.**

(a) General requirements.

(1) Beginning September 1, 1987, any person who intends either to install a new or replacement underground storage tank (UST), to remove an UST from the ground, or to conduct a permanent abandonment in-place of an UST must comply with the notification requirements of this section prior to initiating such activity.

(2) On or after September 29, 1989, any person who intends to perform any construction activity listed in subsection (b)(1) of this section must comply with the notification

requirements of this section prior to initiating such activity.

(3) In addition to the construction notification requirements of this section, the owner or operator of an existing or proposed UST system that is located or will be located in the designated recharge zone or transition zone of the Edwards Aquifer must also secure the requisite approval from the agency prior to conducting certain regulated UST activities, as prescribed under Chapter 213 of this title (relating to Edwards Aquifer).

(4) Any UST construction activity performed or completed pursuant to a notification submitted under the provisions of this section must meet the applicable technical standards and procedural requirements under Subchapter C of this chapter (relating to Technical Standards).

(5) In situations where a proposed UST construction activity is necessitated by a suspected or confirmed release of regulated substances, or where the activity contributes to or causes such a release, the owner or operator must comply with the release reporting, investigation, and corrective action requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(6) Construction notifications required under this section may be provided to the agency's central office in Austin or to the agency's appropriate regional office in the area of the activity, unless otherwise specified in this section. The official date of notification must be the date on which the notification is first received in an agency office.

(7) Construction notification required under this section must be provided by the owner or operator, or an authorized agent or representative of the owner or operator (e.g., a contractor or consultant who has contracted for such construction activity). Construction notifications filed by unauthorized persons are null and void.

(b) Notification for major construction activities.

(1) Applicable activities.

(A) For the purposes of this section, a major UST construction activity includes any of the following:

(i) installation of new or previously used tank systems at a new facility, and the addition or replacement of tanks at an existing facility;

(ii) removal of existing tank systems from the ground (either temporarily or permanently);

(iii) permanent abandonment in-place or change-in-service of existing tank systems;

(iv) tank repairs, including interior and exterior relining or recoating;

(v) installation of new or replacement piping for existing tanks;

(vi) addition of secondary containment equipment for new or existing tank or piping systems;

(vii) any tank integrity assessment or other activities requiring the entrance of any persons into a tank; and

(viii) addition or replacement of any of the following items at existing facilities, when such addition or replacement is necessary for compliance with the minimum upgrading requirements in §334.47(b) of this title (relating to Technical Standards for Existing UST Systems):

(I) cathodic protection systems;

(II) release detection systems;

(III) spill and overflow prevention equipment; or

(IV) monitoring well.

(B) The requirements of this section are not applicable to routine and minor maintenance activities related to the tank and piping systems, such as tightening loose fittings and

joints, adjusting and calibrating equipment, conducting routine inspections and tests, and the substitution or in-kind replacement of any obsolete or malfunctioning UST system component for any purpose other than required upgrading.

(C) When an UST system has been taken temporarily out-of-service under §334.54 of this title (relating to Temporary Removal from Service), the owner or operator must first submit a construction notification form before returning the UST system to service.

(2) Filing requirements. Except as provided under subsection (c) of this section, any owner or operator who intends to perform a major UST construction activity as described in paragraph (1) of this subsection must file a written notification with the agency at least 30 days prior to initiating the activity.

(A) Such notification should be submitted on the agency's authorized form, as described in paragraph (6) of this subsection.

(B) When requested by the agency, any person who intends to perform a major UST construction activity must also submit additional supporting information to assure that the construction activity is in compliance with the requirements of this chapter. Supporting information which may be requested by the agency includes, but is not limited to, the following items:

(i) detailed design plans and specifications (drawn to scale);

(ii) installation standards and operating instructions for major system components;

(iii) quality assurance plans;

(iv) compatibility data related to the stored substances and the materials of construction;

(v) specific geological, hydrological, and environmental site information;

(vi) qualifications and experience records of consultants, equipment installers, and contractors;

(vii) formal plan or procedures for tank removals, changes-in-service, and abandonments in-place;

(viii) disposal procedures for removed tanks;

(ix) general contingency plan for release abatement and the clean-up and disposal of any residual regulated substances, contaminated soils, or contaminated water (including wash water, groundwater, or surface water); and

(x) basis and description for any proposed change-in-service.

(C) Between 24 and 72 hours prior to the scheduled time of initiation of the proposed activity, the owner or operator must contact the agency's appropriate regional office in the area of the activity to confirm the time of the initiation of the proposed activity. Any revisions to the proposed construction start date must be in accordance with paragraph (3) of this subsection.

(3) Rescheduling. If after the submittal of the initial construction notification, the owner or operator determines that a revision to the previously reported scope or start date for the construction is necessary, the owner or operator must immediately report the revised construction information to the commission's appropriate regional office in the area of the activity.

(A) If an earlier start date is proposed, and if this date is less than 30 days from the original notification date, then the owner or operator must comply with the requirements of paragraph (4) of this subsection.

(B) An owner or operator may revise the proposed construction start to a later date as necessary, provided that the agency's appropriate regional office is notified, and provided that original written notifications are properly renewed upon expiration in accordance with paragraph (5) of this subsection.

(4) Waiver requests. Normally a notification period of at least 30 days is required prior to the initiation of any major UST construction activity. However, if after the submittal of the construction notification, the owner or operator has good cause for an accelerated construction schedule, then the owner or operator may request approval of an earlier construction start date. Such request must be made directly to the agency's appropriate regional office in the area of the activity. The regional director (or the director's designated representative) has the authority to approve or deny such requests, and such decision will be based on the following criteria:

(A) good cause shown by the owner or operator for an earlier construction start date; and

(B) the ability of agency personnel to arrange and schedule an adequate inspection of the activity.

(5) Expiration. A written construction notification for a major UST construction activity is valid for only 180 days after the original notification date or 150 days after the originally anticipated construction start date, whichever is earlier. If the proposed construction has not commenced within this period, the original notification will expire. If the owner or operator still plans to perform the construction after the expiration of this period, a new and updated construction notification form must be filed.

(6) Notification form.

(A) Any person who intends to perform a major UST construction activity (as described in paragraph (1) of this subsection) must provide all the applicable construction notification information indicated on the agency's authorized construction notification form.

(B) The construction notification form must be filled out completely and accurately. Upon completion, the form must be dated and signed by the owner, the operator, or the authorized representative of the owner or operator, and must be timely filed in accordance with subsection (a)(5) of this section.

(c) Alternative notification procedures.

(1) Only for UST construction activities involving situations described under paragraph (2) of this subsection, the owner or operator may comply with the following alternative notification and reporting procedures in lieu of the normal notification requirements of subsection (b) of this section.

(A) The owner or operator must provide verbal or written notification to the agency as soon as possible prior to initiating the construction activity. Such notification must be submitted directly to the agency's appropriate regional office in the area of the activity.

(B) After providing the construction notification prescribed under subparagraph (A) of this paragraph, the owner or operator may proceed with the construction activity, as directed by the regional director (or the regional director's designated representative). The owner or operator must

maintain detailed records of the construction. No later than 30 days after completion of the construction, the owner or operator must submit to the agency a detailed report describing the activity. If the agency determines that the information in such report is insufficient to assure compliance with the applicable requirements of this chapter, then the owner or operator may be required to submit additional information to demonstrate such compliance.

(2) The alternative notification procedures of paragraph (1) of this subsection may be used only when the following situations occur:

(A) when an owner or operator of an UST can demonstrate that a release or suspected release of a regulated substance has occurred or is likely to occur as a result of the operation of the UST, when such release is considered an immediate threat to human health or safety or the environment, and when the owner or operator can demonstrate that the expeditious initiation and completion of the proposed construction activity is necessary to prevent or abate such release;

(B) when an out-of-operation UST system is discovered during unrelated construction activities (e.g., the construction of building excavations, streets, highways, utilities, etc.), when the property owner can reasonably demonstrate no prior knowledge of the existence of the tank, when the expeditious removal or abandonment in-place of the tank is considered necessary or advisable for the completion of the unrelated construction activity, and where any delays in completion of the tank removal or abandonment in-place would cause unreasonable financial hardship due to contract schedules and completion times;

(C) when any duly authorized public official (e.g., any federal, state, or local fire or safety officer, health or environmental official, law officer, etc.) orders the immediate removal or repair of all or portions of an UST system which poses an immediate threat to human health, safety, or the environment;

(D) when the activity is necessary to maintain the operational readiness of an emergency generator, as defined by §334.2 of this title (relating to Definitions);

(E) in any other case where the agency determines that compliance with the notification provisions of subsection (b) of this section would be unreasonable or impractical, or could increase the threat to human health or safety or the environment.

**§334.8. Certification for Underground Storage Tanks (USTs) and UST Systems.**

(a) Underground storage tank (UST) construction activity certifications. The following UST construction activity certifications are required.

(1) Certification by installer or on-site supervisor. After September 29, 1989, any installer who is employed or otherwise engaged by an UST owner or operator to install or replace an UST system must also certify by signature that the installation methods are in compliance with §334.46 of this title (related to Installation Standards for New UST Systems).

(2) Filing requirements. The installation or construction certification information required under paragraph (1) of this subsection must be included in the appropriate sections of the agency's authorized UST registration form or UST registration and self-certification form, as applicable, in accordance with §334.7(e) of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems), and must be filed with the agency in accordance with the applicable tank registration time limits prescribed under §334.7 of this title.

(b) Financial assurance certification for USTs storing a petroleum substance. Owners and operators of UST systems regulated under this section must comply with the requirements of subsection (c) of this section.

(c) UST compliance self-certification requirements.

(1) Applicability. Except as provided in this paragraph, the requirements of this subsection are applicable to the owners and operators of USTs regulated under this chapter.

(A) The requirements of this subsection are not applicable to the following USTs:

(i) USTs which are completely exempt or partially exempt from regulation under §334.3 of this title (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems);

(ii) USTs which are completely excluded or partially excluded from regulation under §334.4 of this title (relating to Exclusions for Underground Storage Tanks (USTs) and UST Systems);

(iii) USTs into which deliveries or deposits of regulated substances are exclusively made by persons other than a common carrier, as defined in §334.2 of this title (relating to Definitions);

(iv) USTs used for storing regulated substances that are not motor fuels as defined in §334.2 of this title; and

(v) USTs temporarily out-of-service under §334.54 of this title (relating to Temporary Removal from Service).

(B) Nothing in this subsection affects the requirements under §334.7(d)(4) of this title.

(2) The agency will not provide an UST delivery certificate for USTs covered by the exceptions in paragraph (1)(A) of this subsection.

(3) Conditions and limitations.

(A) Filing of the UST registration and self-certification form does not relieve an owner or operator from the responsibility for timely compliance with other applicable filing requirements under this chapter.

(B) Completion of the UST registration and self-certification form in a manner that indicates compliance with applicable UST regulations (as specified in subparagraph (D) of this paragraph) will result in the agency's issuance of an UST delivery certificate for the tanks at the facility for which compliance is self-certified.

(C) The agency's issuance of a delivery certificate for an UST(s) does not constitute agency certification or affirmation of the compliance status of the tank(s) in question with agency UST technical and/or administrative requirements, and this issuance does not preclude the agency from investigating these tanks and pursuing enforcement actions under the Texas Water Code when apparent violations are discovered.

(D) The administrative requirements and technical standards that are the subject of the compliance self-certification shall include:

- (i) tank registration, as described in §334.7 of this title;

(ii) facility fees, as described in Subchapter B of this chapter (relating to Underground Storage Tank Fees);

(iii) financial assurance, as described in Chapter 37, Subchapter I of this title; and

(iv) technical standards, as described in §334.49 of this title (relating to Corrosion Protection), §334.50 of this title (relating to Release Detection), §334.51 of this title (relating to Spill and Overfill Prevention and Control), and §334.43 of this title (relating to Variances and Alternative Procedures) when a variance to all or part of one or more of the previous three sections has been granted by the agency in writing under the procedures described in §334.43 of this title (for the purposes of this clause only, certifying to the “technical standards” listed in this subparagraph includes a certification as to recordkeeping and reporting duties required under those regulations for only the 60 days prior to and including the date of certification).

(4) UST registration and self-certification form.

(A) Requirements for completion of the form.

(i) Each UST registration and self-certification form must be completed with all the applicable information requested on the agency’s authorized form for all regulated UST systems at the specified facility.

(ii) Owners or operators who own or operate regulated USTs at more than one facility must complete and file a separate UST registration and self-certification form for each facility.

(iii) The agency will not issue a delivery certificate based upon an incomplete submittal.

(iv) Upon completion, the UST registration and self-certification form must be dated and signed by either the UST owner (or the owner's legally authorized representative) or by the UST operator (or the operator's legally authorized representative).

(v) If additional information, drawings, or other documents are submitted with the UST registration and self-certification form, specific facility identification information (including the facility identification number) must be conspicuously indicated on each document and all these documents must be securely attached to and filed with the UST registration and self-certification form.

(vi) An owner or operator must submit the required UST registration and self-certification form (including any additional or supplemental information required under clause (v) of this subparagraph) to the agency no later than the following dates:

(I) For UST systems where the first storage of regulated substances was initiated before the effective date of this clause, the deadline for submission is 60 days after the effective date of this section.

(II) For UST systems where the date of the first storage of regulated substances was on or after the effective date of this section, the deadline for submission is no later than 30 days after the date of initial storage of regulated substances.

(vii) To ensure timely renewal of a previously issued UST delivery certificate, the deadline for submission is 30 days before the annual renewal date for the UST delivery certificate for that specific facility, as indicated in paragraph (5)(B)(iii) of this subsection.

(B) The facility owner and operator are both responsible for ensuring that the UST registration and self-certification form is fully and accurately completed, and that it is submitted to the agency in a timely manner. To minimize processing delays, the form should be mailed directly to the specific agency office, department, and mail code shown on the form.

(C) When tank ownership at a facility changes, a new certification under this subsection must be made within 30 days of the ownership change.

(5) UST delivery certificate.

(A) Certificate availability.

(i) The owner and operator of USTs regulated under this section must make available to a common carrier a valid, current Texas Natural Resource Conservation Commission (TNRCC) delivery certificate (or TNRCC temporary delivery authorization under subparagraph (D) of this paragraph, as applicable) before delivery of a regulated substance into the UST(s) can be accepted. The delivery certificate must cover each UST at the facility accepting a delivery. The bill of lading for the first delivery of regulated substance into any new or replacement UST at the facility must be attached to the temporary delivery authorization for that facility.

(ii) The owner and operator of USTs regulated under this section must make immediately available, upon request by agency staff, a valid, current TNRCC delivery certificate (or TNRCC temporary delivery authorization under subparagraph (D) of this paragraph, as applicable) for the USTs at a facility.

(iii) The owner and operator of USTs regulated under this section must ensure that a valid, current TNRCC delivery certificate (or TNRCC temporary delivery authorization under subparagraph (D) of this paragraph, as applicable) is posted at a facility. The posting must be in a location where the document is clearly visible at all times.

(B) Annual delivery certificate renewal.

(i) The initial delivery certificate issued for a tank(s) will be valid until the expiration date indicated on that certificate. The expiration will be based on the last digit of the official TNRCC owner identification number for the registered owner of the tank(s) in question, as described in clause (ii) of this subparagraph. It is the responsibility of the tank owner and operator to ensure that an application for renewal of that certificate is properly and timely filed.

(ii) A delivery certificate is renewed by timely and proper submission of a new UST registration and self-certification form to the agency. For each facility, to allow time for processing of the renewal request, the agency must have received the properly completed form at least 30 days before the expiration date of the delivery certificate in question. The agency will not issue a renewed delivery certificate based on improper submission of renewal documents.

(iii) Annual expiration and renewal dates for delivery certificates are determined by the last digit of the official TNRCC owner identification number for the registered owner of the tank(s) in question, and the first renewal for all owners and operators is due in calendar year 2002, and for each year thereafter on the dates indicated below:

(I) If owner number ends in "1" delivery certificate expires on January 31, and renewal is due February 1;

(II) If owner number ends in "2" delivery certificate expires on the last day of February, and renewal is due March 1;

(III) If owner number ends in "3" delivery certificate expires on March 31, and renewal is due April 1;

(IV) If owner number ends in "4" delivery certificate expires April 30, and renewal is due May 1;

(V) If owner number ends in "5" delivery certificate expires on May 31, and renewal is due June 1;

(VI) If owner number ends in "6" delivery certificate expires on June 30, and renewal is due July 1;

(VII) If owner number ends in "7" delivery certificate expires July 31, and renewal is due August 1;

(VIII) If owner number ends in "8" delivery certificate expires August 31, and renewal is due September 1;

(IX) If owner number ends in "9" delivery certificate expires September 30, and renewal is due October 1; and

(X) If owner number ends in "0" delivery certificate expires October 31, and renewal is due November 1.

(C) Identifying tanks. Within 30 days of the effective date of this section, the owner and operator of USTs regulated under this section are responsible for ensuring that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the facility. That tag, label, or marking must clearly and legibly show the designated UST identification number of that UST at that facility and that identification number must be identical to the UST identification number listed on the UST registration and self-certification form filed with the agency under this subsection. All UST identification numbers at a given facility must be numeric, must begin with the number one (1) and must proceed sequentially without skipping numbers (i.e.: 1, 2, 3...). In addition, for each compartmented UST where a single UST has a separate fill tube for each internal compartment; the numeric UST identification number must be the same for each fill tube serving that single UST, however, to allow differentiation between compartments on the UST registration and self-certification form and at the facility, that common UST identification number must also be followed by a single additional alphabetic identifier for each compartment, beginning with the letter "A" and proceeding sequentially without skipping letters (i.e.: 1A, 1B, 1C...).

(D) Temporary delivery authorization.

(i) Upon receipt of a TNRCC construction notification form indicating the pending installation of a new or replacement UST system(s), or indicating that an UST system temporarily out-of-service under §334.54 of this title will be returned to service, the agency will issue a temporary delivery authorization for those tank systems.

(ii) The temporary delivery authorization is valid for no more than 90 days after the first delivery of regulated substance into the UST system described in clause (i) of this subparagraph.

(iii) The UST owner and operator are responsible for maintaining complete and accurate records of the date of the first deposit of regulated substances into the UST system(s), as well as the date that the initial 90 day period expires. The bill of lading for the first delivery of regulated substance into the UST system at the facility must be attached to the temporary delivery authorization for that facility.

(6) Revocation of Delivery Certificate.

(A) Grounds for revocation of delivery certificate. The commission may revoke a delivery certificate for reasons including, but not limited to:

(i) when the executive director determines that any of the information contained or referenced in the compliance self-certification portions of the UST registration and self-

certification form was inaccurate at the time the self-certification was made;

(ii) when the tank owner and/or operator submits compliance self-certification information to the executive director which he knows or reasonably should have known to be false or deceptive; and

(iii) for any other reason which the commission finds to constitute good cause for revocation.

(B) Procedures for revocation of delivery certificate.

(i) A proceeding to revoke a delivery certificate must be commenced by:

(I) the executive director through the filing of a petition; or

(II) the commission on its own motion.

(ii) If the executive director determines good cause exists to revoke a delivery certificate, the executive director shall file a petition with the chief clerk and provide notice to the owner and operator of the tank(s) in question. To the extent possible, the procedures required to assess administrative penalties under Chapter 70 of this title (relating to Enforcement) shall be followed

to revoke a delivery certificate under this subchapter.

(iii) In response to a petition, or on its own motion to revoke a delivery certificate, the commission may:

(I) revoke a certificate; and

(II) issue any other orders permitted by law.

(iv) Revocation of a delivery certificate is cumulative of any other remedies available to the agency by law.

**§334.12. Other General Provisions.**

(a) Other regulations. Compliance with the provisions of this chapter by an owner or operator of an underground storage tank (UST) system or aboveground storage tank (AST) system does not relieve such owner or operator from the responsibility of compliance with any other regulations directly and/or indirectly affecting such tanks and the stored regulated substances, including, but not necessarily limited to, all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, United States Nuclear Regulatory Commission, United States Department of Energy, Texas Department of Health, State Board of Insurance, Texas Commission on Fire Protection, Railroad

Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural Resource Conservation Commission, and any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(b) Owner and operator responsibility.

(1) Owners and operators are responsible for any violations or noncompliant activities resulting from the actions or inactions by any installer, contractor, operator, or other person who is employed or otherwise engaged by an owner or operator of an UST or AST.

(2) The commission shall consider the person who is in day-to-day control of a petroleum storage tank system at a site that is in violation of applicable statute or agency regulations to be the:

(A) person primarily responsible for taking corrective action, for corrective action costs, for receiving a notice of violation, or for paying a penalty assessed; and

(B) primary subject of an enforcement action or order.

(3) The liability of certain taxing units as owners or operators of USTs and ASTs is conditionally and specifically limited, in accordance with the provisions and conditions of TWC, §26.3516 (relating to Limits on Liability of Taxing Units).

(4) The liability of certain lenders as owners or operators of USTs and ASTs is conditionally and specifically limited, in accordance with the provisions and conditions of TWC, §26.3514 (relating to Limits on Liability of Lender).

(5) The liability of certain corporate fiduciaries as owners or operators of USTs and ASTs is conditionally and specifically limited, in accordance with the provisions and conditions of TWC, §26.3515 (related to Limits on Liability of Corporate Fiduciary).

(c) Inspections, monitoring, and testing.

(1) For the purposes of developing or assisting in the development of any regulation, conducting any study, or enforcing this chapter, an owner and/or operator of an UST or AST, on the request of the agency, must:

(A) furnish information relating to the tank, including tank equipment and contents; and

(B) permit a designated agent or employee of the agency at all reasonable times to have access to and to copy all records relating to the tanks.

(2) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing the provisions of this chapter, the agency's designated agent, or

employee may:

(A) enter at reasonable times an establishment or place in which an UST or  
AST is located;

(B) inspect and obtain samples of a regulated substance contained in the tank  
from any person; and

(C) conduct monitoring or testing of the tanks, associated equipment, contents,  
or surrounding soils, air, surface water, or groundwater.

(3) The agency may order an owner or operator of an UST or AST to conduct  
monitoring and testing if the agency determines that there is reasonable cause to believe that a release  
has occurred in the area in which the UST or AST is located.

## **SUBCHAPTER C: TECHNICAL STANDARDS**

### **§§334.45, 334.47, 334.50, 334.54**

#### **STATUTORY AUTHORITY**

The amendments are adopted under 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 amendments are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding USTs; and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or an aboveground storage tank.

#### **§334.45. Technical Standards for New Underground Storage Tank Systems.**

(a) General requirements.

(1) Any new underground storage tank (UST) system installed on or after the effective date of this subchapter shall be in compliance with the provisions of this section during the entire operational life of the UST system.

(2) Any new UST system shall be designed, installed, and operated in a manner that will prevent releases due to structural failure or corrosion for the operational life of the UST system.

(3) The surfaces of all components of the new UST system which are in direct contact with a regulated substance shall be constructed of or lined with materials that are compatible with such regulated substances.

(4) All components of the new UST system which convey, contain, or store regulated substances shall be properly protected from corrosion in accordance with the applicable provisions in §334.49 of this title (relating to Corrosion Protection).

(5) All tanks, piping, and other ancillary equipment in a new UST system shall be installed in accordance with the requirements of §334.46 of this title (relating to Installation Standards for New Underground Storage Tank Systems).

(b) Technical standards for new tanks.

(1) Tank design and construction. Each new tank shall be properly designed, constructed, and protected from corrosion in accordance with one or more of the methods listed in subparagraphs (A) - (G) of this paragraph, and in accordance with specific codes and standards of practice developed by nationally recognized associations and independent testing laboratories, as referenced in the following subparagraphs:

(A) The tank may be constructed of fiberglass-reinforced plastic. Tanks constructed under this method shall meet UL Standard 1316, “Standard for Safety for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures;

(B) The tank may be constructed of coated steel and equipped with a factory-installed cathodic corrosion protection system. Any tank constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be equipped with a factory-installed cathodic corrosion protection system meeting the appropriate design and operational requirements in §334.49(c)(1) of this title, and shall meet the following standards:

(i) UL Standard 58, “Standard for Safety for Steel Underground Tanks for Flammable and Combustible Liquids”; and

(ii) Part I of UL Standard 1746, “Standard for Safety for External Corrosion Protection Systems for Steel Underground Storage Tanks”, or STI Standard, “Specification for sti-P<sub>3</sub> System of External Corrosion Protection of Underground Steel Storage Tanks.”

(C) The tank may be constructed of coated steel and equipped with a field-installed cathodic corrosion protection system. Any tank constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be equipped with a field-installed cathodic protection system meeting the appropriate design and operational requirements in §334.49(c)(2) of this

title, and shall meet the following standards:

(i) UL Standard 58, “Standard for Safety for Steel Underground Tanks for Flammable and Combustible Liquids”; and

(ii) NACE International Standard RP0285-95, “Corrosion Control of Underground Storage Tank Systems by Cathodic Protection.”

(D) The tank may be factory-constructed either as a steel/fiberglass-reinforced plastic composite tank, or as a steel tank with a bonded fiberglass-reinforced plastic external cladding or as a steel tank with a bonded fiberglass reinforced polyurethane coating. Any tank constructed under this method is not required to be equipped with a cathodic protection system, provided that the tank meets the following requirements:

(i) The tank shall be equipped with a factory-applied external fiberglass-reinforced plastic or fiberglass reinforced polyurethane cladding or laminate which has a total dry film thickness of 100 mils minimum and 125 mils nominal;

(ii) The tank shall be operated and maintained in accordance with the requirements of §334.49 of this title;

(iii) The tank shall be designed and fabricated in accordance with one or more of the following standards:

(I) Part II of UL Standard 1746, "Standard for Safety for External Corrosion Protection Systems for Steel Underground Storage Tanks";

(II) Steel Tank Institute (STI) ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks"; or

(III) any other UL, or STI, or Underwriters' Laboratories of Canada (ULC) standard which incorporates the requirements contained in the standards listed in either subclause (I) or (II) of this clause; and

(iv) The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods utilized in accordance with applicable industry standards.

(E) The tank may be factory-constructed as a steel tank with a bonded polyurethane external coating. Any tank constructed under this method is not required to be equipped with a cathodic protection system, provided that the tank meets the following requirements:

- (i) The tank shall be equipped with a factory-applied external polyurethane coating which has a minimum dry film thickness of 70 mils;
- (ii) The tank shall be operated and maintained in accordance with the applicable requirements of §334.49 of this title;
- (iii) The tank shall be designed and fabricated in accordance with one or more of the following standards:
  - (I) Part IV of UL Standard 1746, “Standard for Safety for External Corrosion Protection Systems for Steel Underground Storage Tanks”;
  - (II) Steel Tank Institute (STI) ACT-100-U, “Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks”; or
  - (III) any other UL, or STL, or Underwriters’ Laboratories of Canada (ULC) standard which incorporates the requirements contained in the standards listed in either subclause (I) or (II) of this clause; and
- (iv) The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods utilized in accordance with applicable industry standards.

(F) The tank may be factory-constructed as a steel tank completely contained within a nonmetallic external tank jacket. Any tank constructed under this method is not required to be equipped with a cathodic protection system, provided that the tank meets the following requirements:

(i) The tank shall be equipped with a factory-constructed nonmetallic external jacket which provides both secondary containment and corrosion protection;

(ii) The tank shall be operated and maintained in accordance with the applicable requirements of §334.49 of this title;

(iii) The tank shall be designed and fabricated in accordance with the following:

(I) Part III of UL Standard 1746, “Standard for Safety for External Corrosion Protection Systems for Steel Underground Storage Tanks”; or

(II) any other UL, or STI, or Underwriters’ Laboratories of Canada (ULC) standard which incorporates the requirements contained in the standard listed in subclause (I) of this clause; and

(iv) The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods utilized in accordance with

applicable industry standards.

(G) The tank may be designed, constructed, and protected from corrosion by an alternate method which has been reviewed and determined by the agency to control corrosion and prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and safety and the environment than the methods described in subparagraphs (A) - (D) of this paragraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(2) Spill and overflow prevention equipment. All new tanks shall be equipped with spill and overflow prevention equipment, in accordance with §334.51(b) of this title (relating to Spill and Overflow Prevention and Control).

(3) Release detection for new tanks. All new tanks shall be monitored for releases of regulated substances in accordance with §334.50 of this title (relating to Release Detection).

(4) Other new tank components.

(A) Fittings. All metallic tank fittings (e.g., bung hole plugs) shall be protected from corrosion and shall be either:

(i) isolated from the backfill material and groundwater;

(ii) thoroughly coated with a suitable dielectric material, in accordance with the tank manufacturer's specifications; or

(iii) cathodically protected in accordance with the applicable provisions in §334.49(c) of this title.

(B) Striker plates. Factory-installed striker plates shall be located on the interior bottom surface of each tank under all fill and gauge openings.

(C) Dielectric bushings or fittings. In order to provide electrical isolation of the tank from other connected metal components, all coated steel tanks equipped with either a factory-installed cathodic protection system or a factory-applied fiberglass-reinforced plastic laminate or cladding shall also be fitted with dielectric bushings or fittings at each tank opening where other metal UST system components are connected, except for unused openings closed with metal plugs and for openings where the connected component is non-metallic.

(c) Technical standards for new piping.

(1) Piping design and construction. All new underground piping (including associated valves, fittings, and connectors) in an UST system shall be properly designed, constructed, and

protected from corrosion in accordance with one of the methods listed in subparagraphs (A) - (D) of this paragraph and in accordance with specific codes and standards of practice developed by nationally recognized associations and independent testing laboratories, as referenced in the following subparagraphs.

(A) The piping may be constructed of fiberglass-reinforced plastic. Piping constructed under this method shall meet the following standards:

(i) UL Standard 971, "Standard for Safety for Nonmetallic Underground Piping for Flammable Liquids"; and

(ii) UL Standard 567, "Standard for Safety for Pipe Connectors for Petroleum Products and LP Gas."

(B) The piping may be constructed of coated steel. Piping constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be cathodically protected with a field-installed cathodic protection system meeting the appropriate design and operational requirements in §334.49(c) of this title, and shall meet the applicable provisions of the following standards:

(i) NFPA Standard 30, “Flammable and Combustible Liquids Code”;

(ii) API Publication 1615, “Installation of Underground Petroleum Storage Systems”;

(iii) API Publication 1632, “Cathodic Protection of Underground Storage Tanks and Piping Systems”; and

(iv) NACE International Standard RP0169-96, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems.”

(C) The piping may be constructed of flexible nonmetallic material. Piping constructed under this method shall meet the following standards:

(i) UL Standard 971, “Standard for Safety for Nonmetallic Underground Piping for Flammable Liquids”; and

(ii) UL Standard 567, “Standard for Safety for Pipe Connectors for Petroleum Products and LP Gas.”

(D) The piping may be designed, constructed, and protected from corrosion by an alternate method which has been reviewed and determined by the agency to prevent the release of

any stored regulated substance in a manner that is no less protective of human health and the environment than the methods described in subparagraphs (A) and (B) of this paragraph. Any alternative methods must be submitted and approved in accordance with the procedures in §334.43 of this title.

(2) Release detection for new piping. All new piping shall be monitored for releases of regulated substances in accordance with §334.50(b)(2) of this title.

(3) Other new piping components.

(A) For piping systems in which regulated substances are conveyed under pressure to an aboveground dispensing unit, a UL-listed (or agency accepted equivalent listing by Underwriters' Laboratories of Canada (ULC)) emergency shutoff valve (also called a shear or impact valve) shall be installed in each pressurized delivery or product line and shall be securely anchored at the base of the dispenser. This shut-off valve shall include a fusible link, and shall be designed to provide a positive shut-off of product flow in the event that a fire, collision, or other emergency occurs at the dispenser end of the pressurized line.

(B) UL-listed (or agency accepted equivalent listing by Underwriter's Laboratories of Canada (ULC), or Factory Mutual Research Corporation (FMRC)) flexible connectors shall be installed at both ends of each pressurized product or delivery line to provide flexibility and to allow for vertical and horizontal movement in the piping, unless inherently flexible piping is installed in

accordance with manufacturer's requirements and in accordance with an applicable code or standard of practice developed by a nationally recognized association or independent testing laboratory. The use of metal swing joints in a pressurized UST piping system is specifically prohibited.

(C) If buried and in contact with soil or backfill materials, all metallic pipe, valves, and fittings (including flexible connectors) shall be equipped with corrosion protection meeting the applicable requirements in §334.49 of this title.

(D) Only UL-listed (or agency accepted equivalent listing by Underwriters' Laboratories of Canada (ULC), or Factory Mutual Research Corporation (FMRC)) flexible connectors or nonmetallic piping listed for aboveground use or listed for use in sumps can be used without backfill cover in sumps, manways, or dispenser pans.

(d) Secondary containment for UST systems.

(1) Applicability.

(A) A secondary containment system meeting the requirements of this subsection shall be installed as part of any hazardous substance UST system, in accordance with the applicable schedules in §334.44(a)(2) and (b)(2) of this title (relating to Implementation Schedules).

(B) A double-wall tank and piping system (or approved alternative) meeting the applicable requirements of this subchapter shall be installed for any UST system situated in the Edwards Aquifer recharge or transition zones, in accordance with Chapter 213 of this title (relating to Edwards Aquifer).

(C) An UST system, at a minimum, shall incorporate secondary containment as specified in Texas Water Code, §26.3476, if the UST system is located in an area described in that provision.

(D) The agency may specifically require the installation of a secondary containment system meeting the requirements of this subsection at other times when necessary for the protection of human health or safety or the environment.

(2) General performance standards. All secondary containment systems installed as part of a UST system shall be:

(A) designed, installed, and operated in a manner that will prevent the release of regulated substances from such secondary containment system into the surrounding soil, backfill, groundwater, or surface water during the operational life of the UST system;

(B) capable of collecting and containing releases of regulated substances from any portion of the primary containment vessels (e.g., tanks and piping) until such released substances

are removed;

(C) constructed of or lined with materials which are compatible with the stored regulated substance;

(D) constructed of materials having sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the stored regulated substance (and any other substance to which they may normally be exposed), climatic conditions, the stresses of installation, and the stresses of daily operation (including stresses from nearby vehicular traffic); and

(E) installed on a properly designed and properly placed bedding or backfill material which is capable of providing adequate support for the secondary containment system, capable of providing adequate resistance to any pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Secondary containment for tanks. One or more of the following methods may be used to provide secondary containment for tanks.

(A) Double-wall tanks. Double-wall tanks may be used to comply with the secondary containment requirements of this subchapter, provided that such tanks shall meet the following additional provisions.

(i) The secondary wall of such double-wall tanks shall be structurally designed to contain and support the full-load capacity of the primary tank without failure.

(ii) The double-wall tank (including both the primary and secondary tank walls) shall be protected from corrosion in accordance with one or more of the allowable methods included in §334.49 of this title.

(iii) The double-wall tank shall be designed, installed, operated, and maintained in accordance with one of the applicable codes or standards of practice listed as follows:

(I) for fiberglass-reinforced plastic tanks: UL Standard 1316, “Standard for Safety for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures.”

(II) for steel tanks: STI Standard, “Standard for Dual Wall Underground Steel Storage Tanks,” UL Standard 58, “Standard for Safety for Steel Underground Tanks for Flammable and Combustible Liquids,” and other applicable UL standards for double-wall steel tanks; and

(III) any other code or standard of practice developed by a nationally recognized association or independent testing laboratory that has been reviewed and determined by the agency to be no less protective of human health and safety, and the environment than

the standards described in subclauses (I) and (II) of this clause, in accordance with procedures in §334.43 of this title.

(iv) The double-wall tank system shall be installed in accordance with the requirements in §334.46(f)(2) of this title.

(B) External liners. Tank excavation liners may be used to comply with the secondary containment requirements of this paragraph, provided that such liners shall meet the following additional provisions.

(i) The tank excavation liner shall consist of an artificially constructed material that is of sufficient strength, thickness, puncture-resistance, and impermeability (i.e., allow permeation at a rate of no more than 0.25 ounces per square foot per 24 hours for the stored regulated substance) in order to permit the collection and containment of any releases from the UST system. The criteria for evaluation of the liner for compliance with this clause shall be in accordance with accepted industry practices for materials testing. Types of liners which may be used include certain reinforced and unreinforced flexible-membrane liners, rigid fiberglass-reinforced plastic liners, and reinforced concrete vaults.

(ii) The liner shall be protected from corrosion in accordance with one or more of the allowable methods included in §334.49 of this title.

(iii) The liner shall be sufficiently compatible with the stored regulated substance, so that any regulated substance collected in the liner system shall not cause any substantial deterioration of the liner that would allow the regulated substances to be released into the environment.

(iv) The liner shall be designed to provide a containment volume of no less than 100% of the full capacity of the largest tank within its containment area.

(v) The liner shall be installed in accordance with the requirements in §334.46(f)(4) of this title.

(4) Secondary containment for piping. One or more of the following methods shall be used to provide secondary containment for piping.

(A) Double-wall piping. Double-wall piping systems may be used to comply with the secondary containment requirements of this subchapter, provided that such piping systems meet the following additional provisions.

(i) The double-wall piping system shall be designed to contain a release from any portion of the primary piping within the secondary piping walls.

(ii) The double-wall piping system (including both the primary and secondary piping) shall be protected from corrosion in accordance with one or more of the allowable

methods included in §334.49 of this title.

(iii) The double-wall piping system shall be designed, installed, and operated in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(iv) The double-wall piping system shall be installed in accordance with the requirements in §334.46(f)(3) of this title.

(B) External liners. External piping trench liners may be used to comply with the secondary containment requirements of this paragraph, provided that such liners meet the additional provisions in paragraph (3)(B) of this subsection.

(e) Technical standards for other new UST system equipment.

(1) Vent lines. All underground portions of the vent lines (including all associated underground valves, fittings, and connectors) shall be designed and constructed in accordance with the piping requirements in subsection (c)(1) of this section, shall be properly protected from corrosion in accordance with one of the allowable methods in §334.49 of this title, and shall be installed in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(2) Fill pipes. All fill pipes (including any connected fittings) shall be:

(A) designed and constructed in accordance with the piping requirements in subsection (c)(1) of this section;

(B) properly protected from corrosion in accordance with one of the allowable methods in §334.49 of this title;

(C) properly enclosed in or equipped with spill and overfill prevention equipment as required in §334.51(b) of this title; and

(D) equipped with a removable or permanent factory-constructed drop tube which shall extend to within 12 inches of the tank bottom.

(3) Release detection equipment. All release detection equipment shall be designed and constructed in accordance with the requirements for the particular type of equipment, as described in the applicable provisions in §334.50 of this title.

(4) Monitoring wells and observation wells.

(A) All monitoring wells and observation wells installed on or after the effective date of this subchapter shall be designed, constructed, and installed in accordance with the

requirements in §334.46(g) of this title.

(B) Each separate tank hole in a new UST system installed on or after the effective date of this subchapter shall include a minimum number of four-inch diameter (nominal) observation wells, as specified in the following clauses:

(i) for a tank hole containing only one tank, a minimum of one observation well shall be required; and

(ii) for a tank hole containing two or more tanks, a minimum of two observation wells shall be required.

(f) Records for technical standards for new UST systems. Owners and operators of new UST systems shall maintain adequate records to demonstrate compliance with the applicable provisions in this section, which at a minimum, shall include all records required in §334.46(i) of this title. All records shall be maintained in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

**§334.47. Technical Standards for Existing Underground Storage Tank Systems.**

(a) General requirements.

(1) Alternatives for existing underground storage tank (UST) systems. No later than the implementation dates specified in §334.44(b) of this title (relating to Implementation Schedules), all applicable components of any existing UST system (i.e., UST system for which installation has commenced or has been completed on or prior to December 22, 1988) shall be either installed, upgraded, improved, or replaced with equipment or components which meet or exceed either of the following requirements:

(A) the requirements for technical standards and installation of new UST systems in §334.45 of this title (relating to Technical Standards for New UST Systems) and in §334.46 of this title (relating to Installation Standards for New UST Systems); or

(B) the minimum upgrading requirements for existing UST systems in subsection (b) of this section.

(2) If any applicable component of an existing UST system is not brought into timely compliance with the requirements of paragraph (1) of this subsection, the UST system shall be permanently removed from service no later than 60 days after the prescribed implementation date. The permanent removal from service shall be conducted in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal From Service).

(b) Minimum upgrading requirements for all existing UST systems.

(1) Tank integrity assessment and UST system cathodic protection. No later than December 22, 1998, all tanks in an existing UST system shall be assessed for structural integrity, and all underground metallic components of an existing UST system shall be equipped with a cathodic protection system, as provided in the following subparagraphs.

(A) Tank integrity assessment. The tank shall be assessed for structural integrity and for the presence of corrosion holes by one or more of the following methods.

(i) The tank may be equipped with one or more of the release detection systems meeting the applicable requirements of §334.50(d)(4) - (10) of this title (relating to Release Detection). Such release detection system(s) shall have been in operation for at least 60 days prior to the date of the cathodic protection system installation, and at least one of the systems shall remain in operation for the remaining operational life of the tank.

(ii) The tank may be tested by conducting at least two tank tightness tests meeting the requirements of §334.50(d)(1)(A) of this title. The first tightness test shall be conducted prior to installing the cathodic protection system, and the second test shall be conducted between three and six months after the cathodic protection system is placed into operation. For tanks constructed of non-corrodible material, or metal tanks clad or jacketed with noncorrodible material which are electrically isolated from surrounding soil, backfill or groundwater, the tank may be tested by conducting at least one tightness test meeting the requirements of §334.50(d)(1)(A) of this title, within the 12 month period prior to December 22, 1998.

(iii) When the tank upgrading is to include the installation of an interior lining meeting the applicable provisions in §334.52(b) of this title (relating to UST System Repairs and Relining), a site assessment or release determination may be conducted prior to the installation of the interior lining and the cathodic protection system. Such site assessment or release determination shall be conducted in accordance with the provisions of §334.55(e) of this title.

(iv) Prior to the installation of the cathodic protection system, the tank may be internally inspected and assessed to assure that the tank is structurally sound and free of corrosion holes, provided that such internal inspection shall be:

(I) conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory; and

(II) performed by qualified personnel possessing the requisite training, experience, and competence to assure that any corrosion holes or structurally unsound areas are located.

(v) Prior to the installation of the cathodic protection system, the tank may be assessed for structural integrity and the presence of corrosion holes by an alternate method which has been reviewed and determined by the agency to prevent releases in a manner that is no less protective of human health and the environment than the methods described in clauses (i) - (iv) of this subparagraph, in accordance with the provisions of §334.43 of this title (relating to Variances and

Alternative Procedures).

(B) Repairs or corrective action. If the results of the tank integrity assessment (required by subparagraph (A) of this paragraph) indicate that the existing tank is not structurally sound and/or that a release of regulated substances has occurred, then the owner and operator shall:

(i) comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action); and

(ii) conduct one of the following activities, as applicable:

(I) perform appropriate repairs or relining of the tank, in accordance with the applicable requirements of §334.52 of this title, as necessary to restore the structural integrity of the tank; or

(II) permanently remove the tank from service in accordance with the applicable provisions in §334.55 of this title.

(C) Field-installed cathodic protection system. After confirmation or restoration of the structural integrity of the tank, all underground metal components of the UST system, which are not isolated from the surrounding soil, backfill, and groundwater, and which either do or

could convey, contain, or store regulated substances, shall be equipped with a field-installed cathodic protection system meeting the requirements of §334.49(c)(2) of this title (relating to Corrosion Protection).

(2) Adding spill and overflow prevention equipment. No later than December 22, 1994, all existing USTs shall be equipped with appropriate spill and overflow prevention equipment, in accordance with the provisions in §334.51(b) of this title (relating to Spill and Overflow Prevention and Control).

(3) Adding release detection for UST system piping.

(A) Release detection for pressurized piping. No later than December 22, 1990, all piping in an existing UST system that routinely conveys regulated substances under pressure (i.e., which operates at greater than atmospheric pressure) shall be brought into compliance with the pressurized piping release detection requirements in §334.50(b)(2)(A) of this title.

(B) Release detection for suction piping and gravity-flow piping. All piping in an existing UST system that routinely conveys regulated substances either under suction (i.e., which operates at less than atmospheric pressure) or by gravity-flow shall be brought into compliance with the applicable release detection requirements in §334.50(b)(2)(B) of this title no later than the date on which release detection is required for the tank to which such piping is connected, as prescribed in paragraph (4) of this subsection.

(4) Adding release detection for tanks.

(A) Except as provided in subparagraph (B) of this paragraph, all tanks at an existing UST system shall be brought into compliance with the tank release detection requirements in §334.50(b)(1) of this title no later than the date specified in the following clauses for the time of installation applicable to such tanks:

(i) December 22, 1989, for tanks where the installation dates are undetermined or unknown;

(ii) December 22, 1989, for tanks installed during 1964 or prior years;

(iii) December 22, 1990, for tanks installed during the years 1965 - 1969, inclusive;

(iv) December 22, 1991, for tanks installed during the years 1970 - 1974, inclusive;

(v) December 22, 1992, for tanks installed during the years 1975 - 1979, inclusive;

(vi) December 22, 1993, for tanks installed during the years 1980 - 1987, inclusive; and

(vii) December 22, 1993, for tanks installed between January 1, 1988, and December 22, 1988, inclusive.

(B) For emergency generator tanks only, the compliance dates prescribed in subparagraph (A)(i) - (v) of this paragraph shall be extended by one year; however, no compliance date shall be extended past December 22, 1993.

(C) When two or more existing tanks are located in a common tank hole, and when the selected method of release detection is either vapor monitoring or groundwater monitoring in accordance with §334.50(d)(5) and (6) of this title, then all such tanks shall be brought into compliance with the applicable release detection requirements of this paragraph no later than the date specified for the oldest tank in such common tank hole.

(c) Additional upgrading requirements for existing hazardous substance UST systems. In addition to the upgrading requirements applicable to all existing UST systems in subsections (a) and (b) of this section, all existing hazardous substance UST systems (e.g., UST system for which installation has commenced or has been completed on or prior to December 22, 1988) shall be equipped or retrofitted with a secondary containment system and an associated release detection system in accordance with the following provisions.

(1) No later than December 22, 1998, all existing hazardous substance UST systems shall be equipped with a secondary containment system meeting the design, construction, and installation requirements in §334.45(d) of this title and §334.46(f) of this title.

(2) No later than December 22, 1998, all existing hazardous substance UST systems shall be equipped with a release detection system capable of monitoring either the interstitial spaces between the primary and secondary walls of any double-walled UST component, or the spaces between the primary UST component walls and any external liners, as applicable, in accordance with the provisions in §334.50(c) of this title.

(d) An UST system, at a minimum, shall incorporate secondary containment as specified in Texas Water Code, §26.3476, if the UST system is located in an area described in that provision.

(e) Records for upgrading of existing UST systems.

(1) Owners and operators shall maintain all records related to the upgrading of existing UST systems required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain the following records for the operational life of the UST system:

(A) general information related to the tank integrity assessment and cathodic protection requirements in subsection (b) of this section, including:

(i) dates of the tank integrity assessment and cathodic protection installation activities;

(ii) names, addresses, and telephone numbers of the persons conducting the tank integrity assessment and cathodic protection installation activities; and

(iii) copies of all related notifications or reports filed with the agency or others, including:

(I) registration information, as required by §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems); and

(II) installation certification information, as required by §334.8(a) of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems);

(B) as-built drawings (or plans), which have been drawn to scale and in sufficient detail so as to accurately depict and describe the sizes, dimensions, and locations of any UST system components or equipment added or installed on or after the effective date of this subchapter

which are installed pursuant to one of the construction activities included in §334.6(b)(1)(A) of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems); and

(C) equipment information for any UST system components or equipment added or installed on or after the effective date of this subchapter for the purpose of compliance with the upgrading requirements of this section, including manufacturers specifications, installation instructions, operating instructions, warranty information, recommended test procedures, and inspection and maintenance schedules.

(3) Owners and operators shall maintain the results of all equipment tests and tank integrity tests required in this section including internal inspections, tank and piping tightness tests, and site assessments, for at least five years after the dates such tests are conducted.

**§334.50. Release Detection.**

(a) General requirements.

(1) Owners and operators of new and existing underground storage tank (UST) systems shall provide a method, or combination of methods, of release detection which shall be:

(A) capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment;

(B) installed, calibrated, operated, maintained, utilized and interpreted (as applicable) in accordance with the manufacturer's and/or methodology provider's specifications and instructions consistent with the other requirements of this section, and by personnel possessing the necessary experience, training, and competence to accomplish such requirements; and

(C) capable of meeting the particular performance requirements of such method (or methods) as specifically prescribed in this section, based on the performance claims by the equipment manufacturer or methodology provider/vendor, as verified by third party evaluation conducted by a qualified independent testing organization, using applicable United States Environmental Protection Agency protocol, provided that the following additional requirements shall also be met.

(i) Any performance claims, together with their bases or methods of determination including the summary portion of the independent third party evaluation, shall be obtained by the owner and/or operator from the equipment manufacturer, methodology provider, or installer and shall be in writing.

(ii) When any of the following release detection methods are used on or after December 22, 1990 (except for methods permanently installed and in operation prior to that date), such method shall be capable of detecting the particular release rate or quantity specified for that method such that the probability of detection shall be at least 95% and the probability of false alarm shall be no greater than 5.0%:

(I) tank tightness testing, as prescribed in subsection (d)(1)(A)

of this section;

(II) automatic tank gauging, as prescribed in subsection (d)(4)

of this section;

(III) automatic line leak detectors for piping, as prescribed in

subsection (b)(2)(A)(i) of this section;

(IV) piping tightness testing, as prescribed in subsection

(b)(2)(A)(ii)(I) of this section;

(V) electronic leak monitoring systems for piping, as

prescribed in subsections (b)(2)(A)(ii)(III) and (B)(i)(III) of this section; and

(VI) statistical inventory reconciliation (SIR), as prescribed in

subsection (d)(9) of this section.

(2) When a release detection method operated in accordance with the particular performance standards for that method indicates that a release either has or may have occurred, the owners and operators shall comply with the applicable release reporting, investigation, and corrective action requirements in Subchapter D of this chapter (relating to Release Reporting and Corrective

Action).

(3) Owners and operators of all UST systems shall comply with the release detection requirements of this section in accordance with the applicable schedules in §334.44 of this title (relating to Implementation Schedules).

(4) As prescribed in §334.47(a)(2) of this title (relating to Technical Standards for Existing UST Systems), any existing UST system that cannot be equipped or monitored with a method of release detection that meets the requirements of this section shall be permanently removed from service in accordance with the applicable procedures in §334.55 of this title (relating to Permanent Removal from Service) no later than 60 days after the implementation date for release detection as prescribed by the applicable schedules in §334.44 of this title.

(5) Any owner or operator who plans to install a release detection method for an UST system shall comply with the applicable construction notification requirements in §334.6 of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems), and upon completion of the installation of such method shall also comply with the applicable registration and certification requirements of §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems) and §334.8 of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems).

(6) Any equipment installed or used for conducting release detection for an UST system shall be listed, approved, designed, and operated in accordance with standards developed by a nationally recognized association or independent testing laboratory (e.g., UL) for such installation or use, as specified in §334.42(d) of this title (relating to General Standards).

(7) For an UST system to be placed temporarily out of service, the owner or operator must comply with the requirements of §334.54(c) of this title (relating to Temporary Removal from Service).

(b) Release detection requirements for all UST systems. Owners and operators of all UST systems shall ensure that release detection equipment or procedures are provided in accordance with the following requirements.

(1) Release detection requirements for tanks.

(A) Except as provided in subparagraphs (B) and (C) of this paragraph and in subsection (d)(9) of this section, all tanks shall be monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods described in subsection (d)(4) - (10) of this section).

(B) A combination of tank tightness testing and inventory control in accordance with subsection (d)(1) of this section may be used as an acceptable release detection method for tanks

only until December 22, 1998, and the required frequency of the tank tightness test shall be based on the following criteria.

(i) A tank tightness test shall be conducted at least once each year for any tank in an existing UST system which is not being operated in violation of the upgrading or replacement schedule in §334.44(b) of this title, but has not yet been either:

(I) replaced with an UST system meeting the applicable technical and installation standards in §334.45 of this title (relating to Technical Standards for New UST Systems) and §334.46 of this title (relating to Installation Standards for New UST Systems); or

(II) retrofitted or equipped in accordance with the minimum upgrading requirements applicable to existing UST systems in §334.47 of this title.

(ii) A tank tightness test shall be conducted at least once every five years for any tank in an UST system which has been either:

(I) installed in accordance with the applicable technical standards for new UST systems in §334.45 of this title and §334.46 of this title; or

(II) retrofitted or equipped in accordance with the minimum upgrading requirements applicable to existing UST systems in §334.47 of this title.

(C) The manual tank gauging method of release detection, as prescribed in subsection (d)(2) of this section, may be used as the sole release detection system only for a petroleum substance tank with a nominal capacity of 1,000 gallons or less. The monthly tank gauging method of release detection, as prescribed in subsection (d)(3) of this section, may be used as the sole release detection system only for emergency generator tanks.

(D) In addition to the requirements in subparagraphs (A) - (C) of this paragraph, any tank in a hazardous substance UST system shall also be equipped with a secondary containment system and related release detection equipment, as prescribed in subsection (c) of this section.

(2) Release detection for piping. Piping in an UST system shall be monitored in a manner which will detect a release from any portion of the piping system, in accordance with the following requirements.

(A) Requirements for pressurized piping. UST system piping that conveys regulated substances under pressure shall be in compliance with the following requirements.

(i) Each separate pressurized line shall be equipped with an automatic line leak detector meeting the following requirements.

(I) The line leak detector shall be capable of detecting any release from the piping system of three gallons per hour when the piping pressure is at ten pounds per square inch.

(II) The line leak detector shall be capable of alerting the UST system operator of any release within one hour of occurrence either by shutting off the flow of regulated substances, or by substantially restricting the flow of regulated substances.

(III) The line leak detector shall be tested at least once per year for performance and operational reliability and shall be properly calibrated and maintained, in accordance with the manufacturer's specifications and recommended procedures.

(ii) In addition to the required line leak detector prescribed in clause (i) of this subparagraph, each pressurized line shall also be tested or monitored for releases in accordance with at least one of the following methods.

(I) The piping may be tested at least once per year by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a national recognized association or independent testing laboratory. Any such piping tightness test shall be capable of detecting any release from the piping system of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure.

(II) Except as provided in subsection (d)(9) of this section, the piping may be monitored for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods prescribed in subsection (d)(5) - (10) of this section.

(III) The piping may be monitored for releases at least once every month (not to exceed 35 days between each monitoring) by means of an electronic leak monitoring system capable of detecting any release from the piping system of 0.2 gallons per hour at normal operating pressure.

(B) Requirements for suction piping and gravity flow piping.

(i) Except as provided in clause (ii) of this subparagraph, each separate line in an UST piping system that conveys regulated substances either under suction or by gravity flow shall meet at least one of the following requirements.

(I) Each separate line may be tested at least once every three years by means of a positive or negative pressure tightness test applicable to underground product piping and conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory. Any such piping test shall be capable of detecting any release from the piping system of 0.1 gallons per hour.

(II) Each line may be monitored for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods prescribed in subsection (d)(5) - (10) of this section.

(ii) No release detection methods are required to be installed or applied for any piping system that conveys regulated substances under suction when such suction piping system is designed and constructed in accordance with the following standards:

(I) The below-grade piping operates at less than atmospheric pressure;

(II) The below-grade piping is sloped so that all the contents of the pipe will drain back into the storage tank if the suction is released;

(III) Only one check valve is included in each suction line;

(IV) The check valve is located aboveground, directly below and as close as practical to the suction pump; and

(V) Verification that the requirements under subclauses (I) - (IV) of this clause have been met can be provided in the form of:

(-a-) signed as-built drawings or plans provided by the installer or by a professional engineer who is duly licensed to practice in Texas, or

(-b-) signed written documentation provided by an UST contractor who is properly registered with the agency, or by an UST installer who is properly licensed with the agency, or by a professional engineer who is duly licensed to practice in Texas.

(C) Monitoring secondary containment. In addition to the requirements in subparagraphs (A) and (B) of this paragraph, all piping in a hazardous substance UST system shall also be equipped with a secondary containment system and related release detection equipment, as prescribed in subsection (c) of this section.

(c) Additional release detection requirements for hazardous substance UST systems. In addition to the release detection requirements for all UST systems prescribed in subsections (a) and (b) of this section, owners and operators of all hazardous substance UST systems shall also assure compliance with the following additional requirements.

(1) All new hazardous substance UST systems shall be in compliance with the requirements of paragraph (3) of this subsection for the entire operational life of the system.

(2) All existing hazardous substance UST systems shall be brought into compliance with the requirements of paragraph (3) of this subsection no later than December 22, 1998.

(3) Secondary containment and monitoring.

(A) All hazardous substance UST systems (including tanks and piping) shall be equipped with a secondary containment system which shall be designed, constructed, installed, and maintained in accordance with §334.45(d) of this title and §334.46(f) of this title.

(B) All hazardous substance UST systems (including tanks and piping) shall include one or more of the release detection methods or equipment prescribed in subsection (d)(7) - (10) of this section, which shall be capable of monitoring the space between the primary tank and piping walls and the secondary containment wall or barrier.

(d) Allowable methods of release detection. Tanks in an UST system may be monitored for releases using one or more of the methods included in paragraphs (2) - (10) of this subsection. Piping in an UST system may be monitored for releases using one or more of the methods included in paragraphs (5) - (10) of this subsection. Any method of release detection for tanks and/or piping in this section shall be allowable only when installed (or applied), operated, calibrated, and maintained in accordance with the particular requirements specified for such method in this subsection.

(1) Tank tightness testing and inventory control. A combination of tank tightness testing and inventory control may be used as a tank release detection method only until December 22, 1998, subject to the following conditions and requirements.

(A) Tank tightness test. Any tank tightness test shall be conducted in conformance with the following standards.

(i) The tank tightness test shall be conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(ii) The tank tightness test shall be performed by qualified personnel who possess the requisite experience, training, and competence to conduct the test properly, who are present at the facility and who maintain responsible oversight throughout the entire testing procedure, and who have been certified by the manufacturer or developer of the testing equipment as being qualified to perform the test. The tank tightness test shall be conducted in strict accordance with the testing procedures developed by the system manufacturer or developer.

(iii) The tank tightness test shall be capable of detecting a release of 0.1 gallons per hour from any portion of the tank which contains regulated substances.

(iv) The tank tightness test shall be performed in a manner that will account for the effects of vapor pockets, thermal expansion or contraction of the stored substance, temperature of the stored substance, temperature stratification, evaporation or condensation, groundwater elevation, pressure variations within the system, tank end deflection, tank deformation, and any other factors that could affect the accuracy of the test procedures.

(B) Inventory control. All inventory control procedures shall be in conformance with the following requirements.

(i) All inventory control procedures shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(ii) Reconciliation of detailed inventory control records shall be conducted at least once each month, and shall be sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.

(iii) The operator shall assure that the following additional procedures and requirements are followed.

(I) Inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank shall be recorded each operating day.

(II) The equipment used shall be capable of measuring the level of stored substance over the full range of the tank's height to the nearest one-eighth of an inch.

(III) Substance dispensing shall be metered and recorded within an accuracy of six or less cubic inches for every five gallons of product withdrawn.

(IV) The measurement of any water level in the bottom of the tank shall be made to the nearest one-eighth of an inch at least once a month, and appropriate adjustments to the inventory records shall be made.

(2) Manual tank gauging. Manual tank gauging may be used as a tank release detection method, subject to the following limitations and requirements.

(A) Manual tank gauging in accordance with this subparagraph may be used as the sole method of tank release detection only for petroleum substance tanks having a nominal capacity of 1,000 gallons or less.

(B) The use of manual tank gauging shall not be considered an acceptable method for meeting the release detection requirements of this section for any tanks with a nominal capacity greater than 1,000 gallons.

(C) When used for compliance with the release detection requirements of this section, the procedures and requirements in the following clauses shall be applicable.

(i) For purposes of this subparagraph only, the following definitions are applicable.

(I) Level measurement - The average of two consecutive liquid level readings from a tank gauge, measuring stick, or other measuring equipment.

(II) Gauging period - A weekly period during which no substance is added to or removed from the tank. The duration of the gauging period is dependant upon tank volume and diameter, as specified in clause (v) of this subsection.

(III) Weekly deviation - The variation between the level measurements taken at the beginning and the end of one gauging period, converted to and expressed as gallons.

(IV) Monthly deviation - The arithmetic average of four consecutive weekly deviations, expressed as gallons.

(ii) Any measuring equipment shall be capable of measuring the level of stored substance over the full range of the tank's height to the nearest one-eighth of an inch.

(iii) Separate liquid level measurements in the tank shall be taken weekly at the beginning and the ending of the gauging period, and the weekly deviation shall be

determined from such level measurements.

(iv) Once each month, after four consecutive weekly deviations are determined, a monthly deviation shall be calculated.

(v) For the purposes of the manual tank gauging method of release detection, a release shall be indicated when either the weekly deviation or the monthly deviation exceeds the maximum allowable standards indicated in the following subclauses:

(I) for a tank with a capacity of 550 gallons or less (any tank diameter): minimum duration of gauging period = 36 hours; weekly standard = 10 gallons; monthly standard = five gallons;

(II) for a tank with a capacity of 551 gallons to 1,000 gallons (when tank diameter is 64 inches): minimum duration of gauging period = 44 hours; weekly standard = nine gallons; monthly standard = four gallons;

(III) for a tank with a capacity of 551 gallons to 1,000 gallons (when tank diameter is 48 inches): minimum duration of gauging period = 58 hours; weekly standard = 12 gallons; monthly standard = six gallons.

(vi) When either the weekly standard or the monthly standard is exceeded and a suspected release is thereby indicated, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this chapter.

(3) Monthly tank gauging. Monthly tank gauging may be used as a tank release detection method, subject to the following limitations and requirements.

(A) Monthly tank gauging in accordance with this paragraph may be used as the sole method of tank release detection only for emergency generator tanks.

(B) The use of monthly tank gauging shall not be considered an acceptable method for meeting the release detection requirements of this section for any tanks other than emergency generator tanks.

(C) When used for compliance with the release detection requirements of this section, the procedures and requirements in the following clauses shall be applicable.

(i) For purposes of this paragraph only, the following definitions are applicable.

(I) Level measurement - The average of two consecutive liquid level readings from a tank gauge, measuring stick, or other manual or automatic measuring equipment.

(II) Gauging period - A period of at least 36 hours during which no substance is added to or removed from the tank.

(III) Monthly deviation - The variation between the level measurements taken at the beginning and the end of one gauging period, converted to and expressed as gallons.

(ii) Any measuring equipment (whether operated manually or automatically) shall be capable of measuring the level of a stored substance over the full range of the tank's height to the nearest one-eighth of an inch.

(iii) Separate liquid level measurements in the tank shall be taken at least once monthly at the beginning and the ending of the gauging period, and the monthly deviation shall be determined from such level measurements.

(iv) For the purposes of the monthly tank gauging method of release detection, a release shall be indicated when the monthly deviation exceeds the maximum allowable standards indicated in the following subclauses:

(I) for a tank with a capacity of 550 gallons or less: monthly standard = five gallons;

(II) for a tank with a capacity of 551 gallons to 1,000 gallons: monthly standard = seven gallons;

(III) for a tank with a capacity of 1,001 gallons to 2,000 gallons: monthly standard = 13 gallons;

(IV) for a tank with a capacity greater than 2,000 gallons: monthly standard = 1.0% of the total tank capacity.

(v) When the monthly standard is exceeded and a suspected release is thereby indicated, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this chapter.

(4) Automatic tank gauging and inventory control.

(A) A combination of automatic tank gauging and inventory control may be used as a tank release detection method, subject to the following requirements.

(i) Inventory control procedures shall be in compliance with paragraph (1)(B) of this subsection.

(ii) The automatic tank gauging equipment shall be capable of:

(I) automatically monitoring the in-tank liquid levels, conducting automatic tests for substance loss, and collecting data for inventory control purposes; and

(II) performing an automatic test for substance loss that can detect a release of 0.2 gallon per hour from any portion of the tank which contains regulated substances.

(B) For emergency generator tanks only, automatic tank gauging may be used as a tank release detection method, provided that the automatic tank gauging equipment shall be capable of:

(i) automatically monitoring the in-tank liquid levels;

(ii) conducting continuous automatic tests for substance loss during the periods when the emergency generator engine is not in operation; and

(iii) performing an automatic test for substance loss that can detect a release of 0.2 gallon per hour from any portion of the tank which contains regulated substances.

(5) Vapor monitoring. Equipment and procedures designed to test or monitor for the presence of vapors from the regulated substance (or from a related tracer substance) in the soil gas of the backfilled excavation zone may be used, subject to the following limitations and requirements.

(A) The bedding and backfill materials in the excavation zone shall be sufficiently porous to allow vapors from any released regulated substance (or related tracer substance) to rapidly diffuse through the excavation zone (e.g., gravel, sand, crushed rock).

(B) The stored regulated substance, or any tracer substance placed in the tank system, shall be sufficiently volatile so that, in the event of a substance release from the UST system, vapors will develop to a level that can be readily detected by the monitoring devices located in the excavation zone.

(C) The capability of the monitoring device to detect vapors from the stored regulated substance shall not be adversely affected by the presence of any groundwater, rainfall, and/or soil moisture in a manner that would allow a release to remain undetected for more than one month (not to exceed 35 days).

(D) Any preexisting background contamination in the excavation zone shall not interfere with the capability of the vapor monitoring equipment to detect releases from the UST system.

(E) The vapor monitoring equipment shall be designed to detect vapors from either the stored regulated substance, a component or components of the stored substance, or a tracer substance placed in the UST system, and shall be capable of detecting any significant increase in vapor concentration above preexisting background levels.

(F) Prior to installation of any vapor monitoring equipment, the site of the UST system (within the excavation zone) shall be assessed by qualified personnel to:

(i) ensure that the requirements in subparagraphs (A) - (D) of this paragraph have been met; and

(ii) determine the appropriate number and positioning of any monitor wells and/or observation wells, so that releases into the excavation zone from any part of the UST system can be detected within one month of the release (not to exceed 35 days).

(G) All monitoring wells and observation wells shall be designed and installed in accordance with the requirements of §334.46(g) of this title.

(6) Groundwater monitoring. Equipment or procedures designed to test or monitor for the presence of regulated substances floating on or dissolved in the groundwater in the excavation zone may be used, subject to the following limitations and requirements.

(A) The stored regulated substance shall be immiscible in water and shall have a specific gravity of less than one.

(B) The natural groundwater level shall never be more than 20 feet (vertically) from the ground surface, and the hydraulic conductivity of the soils or backfill between all parts of the UST system and the monitoring points shall not be less than 0.01 centimeters per second (i.e., the soils or backfill shall consist of gravels, coarse to medium sands, or other similarly permeable material).

(C) Any automatic monitoring devices that are employed shall be capable of detecting the presence of at least 1/8 inch of free product on top of the groundwater in the monitoring well or observation well. Any manual monitoring method shall be capable of detecting a visible sheen or other accumulation of regulated substances in or on the groundwater in the monitoring well or observation well.

(D) Any preexisting background contamination in the monitored zone shall not interfere with the capability of the groundwater monitoring equipment or methodology to detect releases from the UST system, and the groundwater monitoring equipment or methodology shall be capable of detecting any significant increase above preexisting background levels in the amount of regulated

substance floating on or dissolved in the groundwater.

(E) Prior to installation of any groundwater monitoring equipment, the site of the UST system (within and immediately below the excavation zone) shall be assessed by qualified personnel to:

(i) ensure compliance with the requirements of subparagraphs (A) and (B) of this paragraph; and

(ii) determine the appropriate number and positioning of any monitoring wells and/or observation wells, so that releases from any part of the UST system can be detected within one month (not to exceed 35 days) of the release.

(F) All monitoring wells and observation wells shall be designed, installed, and maintained in accordance with the requirements in §334.46(g) of this title.

(7) Interstitial monitoring for double-wall UST systems. Equipment designed to test or monitor for the presence of regulated substance vapors or liquids in the interstitial space between the inner (primary) and outer (secondary) walls of a double-wall UST system may be used, subject to the following conditions and requirements.

(A) Any double-wall UST system using this method of release detection shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) of this title and §334.46(f) of this title.

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substances from any portion of the primary tank or piping within one month (not to exceed 35 days) of the release.

(C) The sampling, testing, or monitoring method shall be capable of detecting a breach or failure in the primary wall and the entrance of groundwater into the interstitial space due to a breach in the secondary wall of the double-wall tank or piping system within one month (not to exceed 35 days) of such breach or failure (whether or not a stored regulated substance has been released into the environment).

(8) Monitoring of UST systems with secondary containment barriers. Equipment designed to test or monitor for the presence of regulated substances (liquids or vapors) in the excavation zone between the UST system and an impermeable secondary containment barrier immediately around the UST system may be used, subject to the following conditions and requirements.

(A) Any secondary containment barrier or liner system at an UST system using this method of release detection shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) of this title and §334.46(f) of this title.

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substance from any portion of the UST system into the excavation zone between the UST system and the secondary containment barrier within one month (not to exceed 35 days) of the release.

(C) The sampling, testing, or monitoring method shall be designed and installed in a manner that will ensure that groundwater, soil moisture, and rainfall will not render the method inoperative where a release could remain undetected for more than one month (not to exceed 35 days).

(D) Prior to installation of any secondary containment release monitoring equipment, the site of the UST system shall be assessed by qualified personnel to:

(i) ensure that the secondary containment barrier will be positioned above the groundwater level and outside the designated 25-year flood plain, unless the barrier and the monitoring equipment are designed for use under such conditions; and

(ii) determine the appropriate number and positioning of any observation wells.

(E) All observation wells shall be designed and installed in accordance with the requirements in §334.46(g) of this title.

(9) Statistical inventory reconciliation (SIR) and inventory control.

(A) A combination of SIR and inventory control may be used as a release detection method for UST system tanks and lines, subject to the following requirements.

(i) Inventory control procedures must be in compliance with paragraph (1)(B) of this subsection.

(ii) The SIR methodology as utilized by its provider or vendor, or by its vendor-authorized franchisee or licensee or representative must analyze inventory control records in a manner which can detect a release of 0.2 gallons per hour from any part of the UST system.

(iii) The UST system owner and/or operator must take appropriate steps to assure that they receive a monthly analysis report from the entity which actually performs the SIR analysis (either the SIR provider/vendor or the provider/vendor-authorized franchisee or licensee or representative) in no more than 15 calendar days following the last day of the calendar month for which the analysis is performed. This analysis report must, at minimum:

(I) state the name of the SIR provider/vendor and the name and version of the SIR methodology which was utilized for the analysis as they are listed in the independent third party evaluation of that methodology;

(II) state the name of the company and the individual (or the name of the individual if no company affiliation) who performed the analysis, if it was performed by a provider/vendor-authorized franchisee or licensee or representative;

(III) state the name and address of the facility at which analysis is performed and provide a description of each UST system for which analysis has been performed;

(IV) quantitatively state in gallons per hour for each UST system being monitored: the leak threshold for the month analyzed, and the minimum detectable leak rate for the month analyzed, and the indicated leak rate for the month analyzed;

(V) qualitatively state one of the following for each UST system being monitored: “pass,” or “fail,” or “inconclusive.”

(iv) Any UST system analysis report result other than “pass” must be reported to the agency by the UST system owner or operator as a suspected release in accordance with §334.72 of this title (relating to Reporting of Suspected Releases).

(v) Any UST system analysis report result of “inconclusive” which has not been investigated and quantified as a “pass” (in the form of a replacement UST system analysis report meeting the requirements of clause (iii) of this subparagraph) must be reported to the agency as a suspected release within 72 hours of the time of receipt of the inconclusive analysis report result by the

UST system owner or operator.

(vi) At least once per calendar quarter, the SIR provider/vendor must select at random, at least one of the individual UST system analyses performed by each of its authorized franchisees or licensees or representatives during that period and audit that analysis to assure that provider/vendor standards are being maintained with regard to the acceptability of inventory control record data, the acceptability of analysis procedures, and the accuracy of analysis results. The written result of that audit must be provided to the authorized franchisee or licensee or representative and to the owner and/or operator of the audited UST system(s) by the SIR provider/vendor during that calendar quarter. In addition, within 30 days following each calendar quarter, the SIR provider/vendor must provide to the agency a list containing the name and address of each of its authorized franchisees or licensees or representatives which specifies for each one, the name and address of each facility at which one or more UST system audits were performed during the previous calendar quarter.

(10) Alternative release detection method. Any other release detection method, or combination of methods, may be used if such method has been reviewed and determined by the agency to be capable of detecting a release from any portion of the UST system in a manner that is no less protective of human health and safety and the environment than the methods described in paragraphs (1) - (8) of this subsection, in accordance with the provisions of §334.43 of this title.

(e) Release detection records.

(1) Owners and operators shall maintain the release detection records required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain records adequate to demonstrate compliance with the release detection requirements in this section, and in accordance with the following minimum requirements.

(A) All appropriate installation records related to the release detection system, as listed in §334.46(i) of this title, shall be maintained for as long as the release detection system is used.

(B) All written performance claims pertaining to any release detection system used, and documentation of the manner in which such claims have been justified, verified, or tested by the equipment manufacturer, methodology provider/vendor or independent third party evaluator shall be maintained for as long as the release detection system is used.

(C) Records of the results of all manual and/or automatic methods of sampling, testing, or monitoring for releases (including tank tightness tests) shall be maintained for at least five years after the sampling, testing, or monitoring is conducted.

(D) Records and calculations related to inventory control reconciliation shall be maintained for at least five years from the date of reconciliation.

(E) Written documentation of all service, calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least five years after the work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for as long as the release detection system is used.

**§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;

(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); and

(C) Before any UST system is returned to service under this subsection, the owner or operator must first submit a construction notification form as specified in §334.6(b) of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems).

(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 D: RELEASE REPORTING AND CORRECTIVE ACTION**

### **§334.71, §334.82**

#### **STATUTORY AUTHORITY**

The amendments are adopted under 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 amendments are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding USTs; and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or an aboveground storage tank.

#### **§334.71. Applicability and Deadlines.**

(a) For releases discovered and reported to the executive director on or before August 31, 2003, the provisions of this subchapter are applicable to owners and operators of all underground storage tanks (USTs) and all petroleum product aboveground storage tanks (ASTs) unless otherwise specified in Subchapters A or F of this chapter (relating to General Provisions and Aboveground Storage Tanks, respectively). For releases reported to the agency on or after September 1, 2003, the provisions of this subchapter are applicable to owners and operators of all USTs and all petroleum

product ASTs, except that Chapter 350 of this title (relating to Texas Risk Reduction Program) shall be used in lieu of §§334.78 - 334.81 of this title (relating to Site Assessment, Removal of Non-Aqueous Phase Liquids, Investigation for Soil and Groundwater Cleanup, and Corrective Action Plans, respectively).

(b) If the release was reported to the agency on or before December 22, 1998, the person performing the corrective action shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a corrective action plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under paragraph (2) of this subsection to require a corrective action plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a corrective action plan or groundwater monitoring, all deadlines set by the executive director concerning the corrective action plan or approved groundwater monitoring plan shall be met; and

(6) site closure requests for all sites where the executive director agreed in writing that no corrective action plan was required must be received by the agency no later than September 1, 2005. The request must be complete, as judged by the executive director.

(c) Failure to meet the deadlines detailed in subsection (b) of this section will result in a loss of reimbursement eligibility as described in Subchapter H of this chapter (relating to Reimbursement Program).

**§334.82. Public Participation.**

(a) For each confirmed release that requires corrective action, the owner or operator must provide notice to the public by means designated to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, publication in a state register, certified letters to

individual households or businesses, or personal contacts.

(b) The owner or operator must submit proof of the notification required under subsection (a) of this section to the agency within 30 days of either agency, or owner or operator, determination that off-site assessment is required, whichever date is earlier.

(c) The agency shall give public notice to affected parties if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the executive director. When corrective action is performed by the agency, the agency will provide the notification referenced in subsection (a) of this section.

## **SUBCHAPTER G: TARGET CONCENTRATION CRITERIA**

### **§334.201**

#### **STATUTORY AUTHORITY**

The amendment is adopted under 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 USTs; and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or an aboveground storage tank.

#### **§334.201. Purpose, Applicability, and Deadlines.**

(a) Purpose. The purpose of this subchapter is to establish the criteria by which target concentrations are established for the cleanup of leaking storage tank site releases discovered and reported to the agency on or before August 31, 2003.

(b) Applicability. For releases which are discovered and reported to the agency on or before August 31, 2003, the provisions of this subchapter are applicable to owners and operators of all

underground storage tanks (USTs) and petroleum product aboveground storage tanks (ASTs) unless otherwise specified in Subchapters A and F of this chapter (relating to General Provisions and Aboveground Storage Tanks, respectively). These rules supersede previous cleanup guidelines as published in the January 1990, Guidance Manual for LPST Cleanups in Texas. All leaking storage tank cases which are not eligible for closure pursuant to the cleanup guidelines as published in the January 1990, Guidance Manual for LPST Cleanups in Texas as of November 8, 1995 shall be reevaluated by the owner and operator under this rule to establish target concentrations unless the agency has provided written approval of a remediation plan to clean a site to a specific numeric target concentration and the remediation plan has been initiated prior to November 8, 1995. For releases reported to the agency on or after September 1, 2003, the provisions of Chapter 350 of this title (relating to Texas Risk Reduction Program) are applicable to owners and operators of all USTs and petroleum product aboveground storage tanks (ASTs) unless otherwise specified in Subchapters A and F of this chapter in place of the provisions of this subchapter.

(c) Deadlines. For sites where the release was reported to the agency on or before December 22, 1998, the deadlines detailed in §334.71(b) of this title (relating to Applicability and Deadlines) apply.

## **SUBCHAPTER H: REIMBURSEMENT PROGRAM**

### **§§334.301 - 334.303, 334.310, 334.313, 334.322**

#### **STATUTORY AUTHORITY**

The amendments are adopted under 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 amendments are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding USTs; and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or an aboveground storage tank.

#### **§334.301. Applicability of this Subchapter.**

(a) Authorization for reimbursement. This subchapter authorizes the reimbursement of the expenses of corrective action taken in response to a release of:

- (1) petroleum products from a petroleum storage tank;

(2) hydraulic fluid and other substances from a hydraulic lift system located at a vehicle service and fueling facility; and

(3) spent oil and other substances from spent oil tanks located at a vehicle service and fueling facility, provided that the tank listed under this subsection is also subject to regulation under Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(b) Deadline for commencing corrective action. This subchapter applies only under the following conditions:

(1) the confirmed release or releases which necessitated the corrective action were reported to the agency on or before December 22, 1998; and

(2) the release is confirmed by the agency.

(c) Expenses considered for payment - time frame in which corrective action performed. Subject to the other requirements of this subchapter, the expenses which may be considered for payment from the petroleum storage tank remediation fund (PSTR) are limited to expenses of corrective action which was performed for the owner or operator on or after September 1, 1987, and conducted in response to a confirmed release that was initially discovered and reported to the agency on or before December 22, 1998. Expenses for corrective action performed prior to September 1, 1987, are not subject to reimbursement or payment. No expenses for corrective action performed after September 1,

2005 will be reimbursed. No reimbursements will be made for corrective action expenses sought in claims submitted to the agency after March 1, 2006. Under no circumstances will any reimbursements be made on or after September 1, 2006.

(d) Limitations. This subchapter shall not be construed to authorize reimbursement or payment from the PSTR fund in situations other than those described in subsection (a) of this section and any person seeking reimbursement under this subchapter must meet the requirements of this subchapter.

(e) Operative date for this subchapter. This subchapter applies as follows.

(1) This subchapter authorizes applications for payment from the PSTR fund to be filed and processed pursuant to its terms on and after July 17, 1990, and ratifies any actions relating to filing and processing applications taken in accordance with this subchapter.

(2) This subchapter authorizes the agency to make payments pursuant to its terms from the PSTR fund on and after July 17, 1990, and ratifies any payments made in accordance with this subchapter.

(3) All costs incurred in the course of performing corrective action which are incurred on or after September 1, 1987, will be subject to the terms of this subchapter for the purposes of determining whether those costs are allowable. Nothing in this paragraph shall be construed to invalidate payments made by the agency under prior rules of the commission.

(f) If any section, subsection, paragraph, subparagraph, clause, or subclause of this subchapter is held invalid, such invalidity shall not affect any other section, subsection, paragraph, subparagraph, clause, or subclause which can be given effect without the invalid provision, and to this end the provisions of this subchapter are declared to be severable.

(g) Suspending payments from the PSTR fund. The executive director may suspend payments from the fund, in whole or in part, as necessary to preserve the viability of the fund.

(h) Effective September 1, 1995, the executive director shall consider and process a claim by an eligible owner or operator for reimbursement from the PSTR fund in the order in which it is received, with the following provisions:

(1) The executive director shall consider and process all claims by eligible owners and operators for reimbursement from the fund that were received before September 1, 1995, before the executive director considers a claim received after that date.

(2) The executive director may not consider, process, or pay a claim for reimbursement from the PSTR fund for corrective action work begun after September 1, 1993, and without prior approval until all claims for reimbursement for preapproved corrective action work have been considered, processed, and paid.

**§334.302. General Conditions and Limitations Regarding Reimbursement.**

(a) To be considered for reimbursement under this subchapter, corrective action must be performed either as provided in subsection (b) of this section or in response to a release which:

(1) results in contamination which penetrates beyond the excavation zone of the tank system and which is above action levels determined by the agency;

(2) is ultimately confirmed by the agency, either before or after corrective action commences, provided that it shall be the burden of the person claiming monies under this subchapter to show both that a release which is eligible for reimbursement occurred and the expenses claimed are allowable and reimbursable; and

(3) the confirmed release was initially discovered and reported to the agency on or before December 22, 1998.

(b) Subsection (a) of this section does not apply if the corrective action is specifically required by an order of the commission, or a written request or confirmation by the agency, and the release was initially discovered and reported to the agency on or before December 22, 1998.

(c) No payments shall be made by the agency under this subchapter for:

(1) the owner/operator contribution described in §334.312 of this title (relating to Owner/Operator Contribution), which the agency may apportion in the case of multiple claimants as

provided in §334.314(f) of this title (relating to Fund Payment Report);

(2) any expenses for corrective action which exceed one million per occurrence;

(3) any expenses relating to compensation for bodily injury or property damage;

(4) any expenses for corrective action incurred for confirmed releases initially discovered and reported to the agency after December 22, 1998;

(5) any expenses related to corrective action performed after September 1, 2005;

(6) any expenses related to corrective action contained in a reimbursement claim filed with the agency after March 1, 2006; or

(7) on or after September 1, 2006.

(d) No expenses for which reimbursement is claimed under this subchapter and no expenses which are to be applied to the owner/operator contribution shall be subject to reimbursement or applied to the owner/operator contribution unless the following conditions have been met.

(1) An application for reimbursement must be filed by the owner or operator of a petroleum storage tank or his duly authorized representative, as required by §334.304 of this title

(relating to Who May File Application).

(2) Unless otherwise approved by the agency, a certification affidavit as provided in the application for reimbursement must be signed by all of the following: owner or operator of a petroleum storage tank, the application preparer, and the prime contractor and/or the prime corrective action specialist, as defined in §334.322 of this title (relating to Subchapter H Definitions).

(3) The application has been filed within the time prescribed in §334.303 of this title (relating to When to File Application).

(4) The person seeking reimbursement must be an eligible owner or operator, as defined in §334.322 and §334.310 of this title (relating to Subchapter H Definitions and Requirements for Eligibility, respectively) or they must be authorized by an eligible owner or eligible operator to receive such payment pursuant to subsections (i) - (k) of this section.

(5) The expenses for which reimbursement is sought, and those which are to be applied to the owner/operator contribution must be allowable costs, as defined in §334.308 of this title (relating to Allowable Costs and Restrictions on Allowable Costs).

(6) The allowable costs for which reimbursement is sought and those which are to be

applied to the owner/operator contribution must be reimbursable, as defined in §334.309 of this title (relating to Reimbursable Costs).

(7) An application for reimbursement has been filed in accordance with this subchapter which contains the information required by this subchapter.

(e) For purposes of this subchapter only, the persons listed in §334.310 of this title may be eligible owners or operators, provided that they meet the other criteria prescribed by this subchapter.

(f) All claims for assistance and reimbursement filed under this subchapter are subject to the availability of funds in the petroleum storage tank remediation fund.

(g) Nothing in this subchapter shall affect the liability or responsibility of an owner or operator of an underground or aboveground storage tank to take corrective action in response to a release pursuant to applicable law.

(h) Nothing in this subchapter shall be construed to create an entitlement to monies in the petroleum storage tank remediation fund or any other fund, and the commission reserves the right to amend or repeal without limitation any of the provisions of this subchapter, including provisions regarding eligibility and allowable costs.

(i) Payment made to persons other than the eligible owner or operator may only be made

subject to subsections (j) and (k) of this section and may only be made to agents or assignees duly authorized to receive payment on behalf of an eligible owner or operator.

(j) Authorization for an agent or assignee to receive payment on behalf of an eligible owner or operator must be in writing and signed by the eligible owner or operator who is requesting payment. The authorization must clearly describe what funds the agent or assignee is authorized to receive. If the agency determines that the authorization is not clear as to the disposition of funds to which the eligible owner or operator is entitled, the agency may withhold payment and request written clarification from the eligible owner or operator. The agency may limit the number of agents or assignees who may receive payments for any one occurrence. Notwithstanding any review made or limitations imposed by the agency pursuant to this section, neither the State of Texas, nor the agency shall be responsible for insuring that payment is made to the parties as contemplated by the authorization. It is the responsibility of the eligible owner or operator and the agent requesting payment to insure that the agency is supplied with information sufficient to make the proper payments. The right to receive payment under this subchapter is not transferable for any purpose and only the people authorized to receive payment under this section are entitled to do so.

(k) No payment of funds will be made to any person other than the owner or operator under this subchapter except as follows:

(1) the person authorized to accept payment on behalf of an owner or operator is:

(A) a purchaser of the property where the release occurred and on which the claim for payment is based;

(B) a person who holds a security interest in personal property or in fixture that is not attached to the real estate or lienhold interest on the real estate or fixture that is attached to the real estate where the release occurred and on which the claim for payment is based;

(C) a person who has insured the owner or operator of petroleum storage tanks for pollution liability on or after July 17, 1990, and who has paid claims on that policy for remediation costs for which the tank owner may be reimbursed under this subchapter; or

(D) any other person who holds legal or equitable title to the property where the release occurred and on which the claim for payment is based; and

(2) the type of ownership interest required under paragraph (1)(A), (B), and (D) of this subsection is an interest in the surface estate of the property.

(l) The agency may require the execution of a contract of subrogation prior to the disbursement of payment.

**§334.303. When to File Application.**

(a) An application for reimbursement under this subchapter must be filed on or after January 17, 1990, but not after March 1, 2006.

(b) No expenses are allowable for reimbursement under this subchapter unless a complete application for reimbursement is filed.

(c) For claimed expenses of corrective action activities, the application for reimbursement will not be considered complete until the supporting information, reports, and/or documentation required by the agency under Subchapter D of this chapter (relating to Release Reporting and Corrective Action) have been filed with the agency.

**§334.310. Requirements for Eligibility.**

(a) For a person to be an eligible owner or operator under this subchapter, each of the following requirements must be met.

(1) The person must meet the other requirements of this chapter (including, but not limited to, the restrictions under §334.302 of this title (relating to General Conditions and Limitations Regarding Reimbursement)) and must be:

(A) an owner or an operator of a petroleum storage tank, hydraulic lift system, or a spent oil tank which is subject to the requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(B) any past owner or operator of a tank described in subparagraph (A) of this paragraph who performed corrective action on or after September 1, 1987 in response to a release of petroleum products from such tank;

(C) an owner of land who can clearly prove that the land has been contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph which is or was located on said land and who performed corrective action in response to a release of petroleum products from such tank;

(D) a lender who has a bona fide security or lienhold interest in or mortgage lien on any property where a tank described in subparagraph (A) of this paragraph is or was located and who performed corrective action in response to a release of petroleum products from such tank;

(E) a lender who forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of property contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph, and who performed corrective action in response to a release of petroleum products from such tank; or

(F) an adjacent landowner who can clearly prove that the land has been contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph which is not located on said land, and who performed corrective action in response to a release of petroleum products from such tank, and either:

(i) performed emergency abatement actions by completing all the following:

(I) notifying the agency within 24 hours of discovery that the emergency condition exists;

(II) notifying the local fire marshall (or state fire marshall if no local authority is available) within 24 hours;

(III) taking actions necessary to protect against imminent danger to human health and safety by mitigating fire, explosion, and vapor hazards, by removing phase-separated product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the executive director. Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and remediation are not considered part of emergency abatement activities. Any expenses incurred after 72 hours from commencement of the action must be approved by the agency in writing; and

(IV) having the release and threat ultimately confirmed by the agency; or

(ii) committed to undertake the entire cleanup of the leak and contamination from the tank on his property and on all other property by:

(I) obtaining prior approval in writing from the agency;

(II) performing a site assessment to define the extent of the vertical and horizontal contamination at the time of the agreement;

(III) entering into a legal agreement with the owner of the tank whereby the adjacent landowner agrees to indemnify and hold harmless the owner, operator, and other affected landowners for any corrective action or third party liability effective from the date of the agreement; and

(IV) performing all corrective action in conformance with this chapter, and all other applicable rules and regulations. The applicable deductible for reimbursement under §334.312 of this title (relating to Owner/Operator Contribution) for cleanups undertaken by adjacent landowners under this subsection shall be the same as that applicable to the registered owner of the tank.

(2) An underground and aboveground storage tank installed prior to December 1, 1995, which is required to be registered pursuant §334.7 of this title (relating to Registration for Underground Storage Tanks (“USTs”) and UST Systems) or §334.127 of this title (relating to Registration for ASTs) must be registered with the agency on or before December 31, 1995, or the owner or operator is not eligible to receive reimbursement for that tank, except for:

(A) an owner or operator of a registered facility who discovers an unregistered tank while removing, upgrading, or replacing a tank or while performing a site assessment;

(B) a state or local governmental agency that discovers an unregistered storage tank in a right-of-way during construction; or

(C) a property owner who reasonably could not have known that a tank was located on the property because a title search or the previous use of the property does not indicate a tank on the property.

(3) The owner or operator of an underground and aboveground storage tank installed on or after December 1, 1995, must be registered with the agency pursuant §334.7 of this title or §334.127 of this title no later than the 30th day after the date the installation is completed to be eligible for reimbursement for such tank.

(4) All annual facility fees due since September 1, 1987, pursuant to §334.21 of this title (relating to Fee Assessment), and since September 1, 1989, pursuant to §334.128 of this title (relating to Annual Facility Fees) for all underground and aboveground storage tanks which they own or operate must be paid to the agency, except for those tanks which the owner or operator, upon reasonable inquiry, could not have known existed. All fees which come due up until the time that reimbursement funds are released to the claimant must be paid.

(5) Any release on which a claim under this subchapter is based must be discovered and reported to the agency on or before December 22, 1998, and must subsequently be confirmed by the agency.

(b) If an otherwise eligible owner or operator misses a deadline under §334.71(b) of this title (relating to Applicability), and that missed deadline is the fault of that person, his agent or contractor, then that person shall no longer be eligible for reimbursement for those or future corrective action expenses at that site.

(c) The agency may determine other persons to be eligible owners or operators in accordance with the standards of the Texas Water Code, §26.3571.

(d) Compliance with the Texas Water Code, Chapter 26, Subchapter I, for the purposes of determining eligibility under this subchapter and the Texas Water Code, §26.3571, does not mean that an eligible owner or operator has not violated a statute or a rule or order of the commission. Eligibility

of an owner or operator under this subchapter does not preclude the issuance of an enforcement order or the assessment of administrative penalties against an eligible owner or operator.

(e) In no case will reimbursement be made under subsection (a)(1)(F) of this section for duplication of assessment and remediation activities involving the same contamination plume. There will be no reimbursement for adjacent landowner cleanup allowed under subsection (a)(1)(F) of this section for activities at a site which occur after the site has been designated for state lead cleanup under §334.84 of this title (relating to Corrective Action by the Agency).

(f) Unless otherwise approved by the executive director, all corrective action activities, including activities proposed in corrective action plans, must be approved in writing by the executive director prior to implementation. For reimbursement of emergency, initial abatement measures and phase-separated product recovery as required by §334.77 of this title (relating to Initial Abatement Measures and Site Check), approval by the executive director is not required prior to implementation, unless the emergency action extends beyond 72 hours, then written approval will be required for all activities.

**§334.313. Review of Application.**

(a) An application for reimbursement or supplemented application filed under this subchapter shall be subject to review by the agency:

(1) to determine if the information which is required to be submitted under this subchapter has been filed with the agency, utilizing the following procedure:

(A) an application submitted will be reviewed by the staff for completeness.

To be considered complete, an application must contain the following information:

(i) a completed application form, which has been provided or approved by the agency, containing the information required under §334.306(a) and (b)(1) - (4) of this title (relating to Form and Contents of Application);

(ii) be accompanied by legible copies of invoices (contractor and subcontractor) and proof of payment as required under §334.306(b)(6) and (7) of this title;

(iii) be accompanied by copies of preapproval documentation and technical information requested in the application form, provided or approved by the agency, under §334.306(b)(5) of this title and §334.307(a) of this title (relating to Technical Information Required);  
and

(iv) the completion of an Application Checklist, provided with the application form, verifying that the applicant and application preparer have reviewed the application for completeness;

(B) if an application is received which is not complete, the agency shall notify the applicant of the deficiencies by mail. If the required information is not received within 30 days of the date of the deficiency notice, the applicant must reapply;

(C) if 30 days is insufficient time to prepare an adequate response, the applicant may request one extension of 30 days to supply the required information. If the extension is granted and the required information is not received from the applicant within that 30 days, the applicant must reapply;

(D) after an application is determined by the agency to be complete, the agency will then commence a substantive (technical and financial) review of the application;

(E) if it is determined that an otherwise complete application contains any costs which required prior agency approval prior to implementation as required by §334.310(f) of this title (relating to Requirements for Eligibility), and such prior approval was not obtained, the applicant will be notified and the application will not be forwarded for further review until such time as the agency reviews applications with non-preapproved costs as allowed under subsection (f) of this section;

(F) if it has been determined that an otherwise complete application contains costs for a corrective action activity which has been performed improperly, or the information or report that documents the activity has been determined to be deficient or defective by the agency under Subchapter D of this chapter (relating to Release Reporting and Corrective Action), the applicant will

be notified and the application will not be forwarded for further review. The applicant may resubmit the application after the defects or deficiencies have been resolved and the agency concurs that the corrective action activity or documentation is acceptable under Subchapter D of this chapter (though no reimbursement applications may be filed after March 1, 2006);

(G) the received date of the application is considered to be the date which the complete application was received by the agency, or the date which the required additional information (under subparagraph (B) of this paragraph) was received by the agency; and

(2) to examine the substance of the application, including without limitation:

(A) the cost effectiveness and fiscal merits of the corrective action taken at the facility; and

(B) the technical merits of the corrective action taken at the facility.

(b) An application which does not contain all the information required by this subchapter will not be considered a complete claim and will not be processed. This does not prevent the applicant from filing another application for the same occurrence at any time prior to March 1, 2006.

(c) The agency is not required to commence the substantive review of an application until he has received all of the information this subchapter requires the applicant to submit in order for the

executive director to review a claim for payment.

(d) If, during the course of the substantive (technical and financial) review, the agency finds that additional information of the type required by this subchapter is needed to evaluate the application, it may either, at the executive director's discretion:

(1) require the applicant to provide such additional information. Further review of the application will be postponed until such information is received by the agency. The received date for the complete claim will be considered the date on which the agency received such additional required information; or

(2) issue the fund payment report, but withhold payment for the insufficiently documented costs or insufficiently documented corrective action activity.

(e) An application for reimbursement or supplemental application filed under this subchapter shall be subject to audit by the agency.

(f) The executive director may not consider, process, or pay a claim for reimbursement for corrective action work begun after September 1, 1993, and without prior agency approval until all claims for reimbursement for corrective action work preapproved by the agency have been considered, processed, and paid.

**§334.322. Subchapter H Definitions.**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Action level** - The concentration of constituents in the native soil or water at which corrective action will be required. Exceeding an action level warrants further assessment of the site, but does not mandate that site cleanup be required. Based upon the results of the site assessment, the need for site cleanup will then be determined and cleanup levels will be set. Action levels should not be used as cleanup levels; they are simply levels which signal the need for additional assessment.

(2) **Adjacent landowner** - A person who owns legal title to land which is within reasonably close proximity to property where a regulated underground storage tank (UST) or aboveground storage tank is located whether or not the land is contiguous to the property containing the tank.

(3) **Application preparer** - Any person responsible for preparing the application for reimbursement.

(4) **Commingled** - See definition in §334.2 of this title (relating to Definitions).

(5) **Confirmed** - In the context of a release being confirmed by the agency under this subchapter, means that the executive director has determined that sufficient evidence exists to prove that a release of petroleum products has occurred from a petroleum storage tank subject to regulation under this chapter.

(6) **Contract of subrogation** - A document of agreement between the executive director and the eligible tank owner and operator which authorizes the executive director to recover costs reimbursed from persons who performed corrective action activities at leaking petroleum storage tank sites.

(7) **Eligible aboveground storage tank** - A non-vehicular device with a capacity of more than 1,100 gallons, and all connecting piping both above and below ground, that is made of non-earthen materials; located on or above the surface of the ground or on or above the surface of the floor of a structure below ground, such as a mineworking basement, or vault; and designed to contain an accumulation of petroleum.

(8) **Eligible operator** - Any person in control of or having the responsibility for the daily operation of a petroleum storage tank who meets the eligibility requirements prescribed in §334.310 of this title (relating to Requirements for Eligibility).

(9) **Eligible owner** - Any person who meets the eligibility requirements prescribed in §334.310 of this title and who held or currently holds legal possession or ownership of an interest in a

petroleum storage tank. For the purposes of this subchapter, if the actual ownership of the petroleum storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the petroleum storage tank is located is considered the petroleum storage tank owner unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the petroleum storage tank is owned by another person. A person that has registered as an owner of a petroleum storage tank with the commission under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems) (or a preceding rule section concerning tank registration) after September 1, 1987, shall be considered the petroleum storage tank owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the petroleum storage tank was transferred to a different person subsequent to the date of the tank registration. This definition is subject to the limitations found in Texas Water Code, §26.3514, Limits on Liability of Lender; §26.3515, Limits on Liability of Corporate Fiduciary; and §25.3516, Limits on Liability of Taxing Unit.

(10) **Emergency** - Any existing or potential fire, explosion, or vapor hazards which pose an imminent threat to human health and safety, or any imminent threat at the point of actual use to drinking water supplies actually being used.

(11) **Emergency abatement** - Taking mitigating actions necessary in an emergency to protect against imminent danger to human health and safety by removing phase-separated product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the agency. Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and

remediation are not considered part of emergency abatement activities.

(12) **Initial abatement measures** - The mitigation of all existing or potential fire, explosion, or vapor hazards, including the removal of phase-separated product, to provide adequate protection of human health, safety, and the environment in emergency situations or other situations where emergency actions must be implemented to prevent further impacts to the environment.

Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and remediation are not considered part of initial abatement measures.

(13) **Petroleum product** - See definition in §334.2 of this title.

(14) **Petroleum storage tank** - See definition in §334.2 of this title.

(15) **Phase-separated product** - See Free-product as defined in §334.2 of this title.

(16) **Prime contractor** - Any natural person, firm, or any entity responsible for the contracting of any corrective action services.

(17) **Prime corrective action specialist** - A natural person, consulting firm, or any entity engaging in corrective action services, or acting as coordinator of others engaged in corrective action services.

(18) **Spent oil** - A regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

(19) **Tank removal** - The physical removal of an UST from the subsurface. Tank removals include removal and replacement of surface material, excavation and disposal of backfill material, tank removal and disposal, backfilling and compaction of excavation, and any other activities typically associated with the tank removal process.

(20) **Vehicle service and fueling facility** - A facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.