

The Texas Natural Resource Conservation Commission (commission) proposes new §§334.401, 334.451, 334.454, and 334.455. The commission also proposes amendments to §334.407 and §334.424. The commission also proposes the repeal of §§334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, 334.425 - 334.428, 334.451 - 334.463, and 334.465 - 334.467.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes changes to Chapter 334 to implement new provisions in Chapter 37, Texas Water Code (TWC), which were created by House Bill (HB) 3111 of the 77th Legislature, 2001.

Texas Water Code, Chapter 37, requires the commission to consolidate administrative requirements and establish uniform procedures for the occupational licensing and registration programs administered by the commission. House Bill 3111 requires the commission to establish rules for the occupational licensing programs by December 1, 2001. The commission proposes to create new 30 TAC Chapter 30, Occupational Licenses and Registrations, to consolidate the administrative requirements for the ten licensing and registration programs administered in the Compliance Support Division (CSD). Chapter 30 will establish uniform procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval for all of the licensing programs managed by the CSD.

The proposed rules will remove the requirements and procedures for issuing and renewing licenses and registrations, setting terms and fees, enforcement activities, and training approval for licenses and registrations from Chapter 334 because these requirements and procedures will be specified in the new Chapter 30. Additional sections in Chapter 334 are amended to accommodate transferring the licensing

requirements to Chapter 30, to amend references to the licensing requirements, and to specify additional requirements for the license and registration holders.

SECTION BY SECTION DISCUSSION

Subchapter I - Underground Storage Tank Contractor Registration and Installer Licensing

The commission proposes amendments to change the title of Subchapter I from “Underground Storage Tank Contractor Registration and Installer Licensing” to “Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration,” to eliminate the reference to installer which is the same as an on-site supervisor, and to make the title consistent with the text. These changes are required to implement HB 3111 and provisions of TWC, Chapter 37.

Sections 334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, and 334.425 - 334.428 are proposed to be repealed because the licensing and registration requirements for contractor registration and installer licensing are being transferred to new Chapter 30.

Proposed new §334.401, License and Registration Required, would clarify who would be required to hold a license or registration issued by the commission and to identify the requirement to comply with Chapter 30. Proposed new §334.401(a) is added to clarify who is required to hold a license for supervising the installation, repair, or removal of an underground storage tank (UST) in accordance with Chapter 30. This added language will also clarify that an on-site supervisor must be on the job site during all times of the critical juncture. Proposed new §334.401(b) is added to clarify who is required to hold a registration as a UST contractor.

Section 334.407, Other Requirements for Certificate of Registration, is proposed to amend the title of this section to “Other Requirements for an Underground Storage Tank Contractor” to clarify the requirements for compliance by UST contractors. Subsection (a) is proposed to be deleted because the requirement is now identified in Chapter 30. Subsection (b) is proposed to renumber subsection (b) to subsection (a) and to add “insurance and net worth” and delete “financial” to explain what financial requirements are needed throughout the period the contractor holds a registration. This subsection is also proposed to add §30.315 as a cross-reference and to change “agency” to “executive director” to be consistent with commission definitions. Also, this section is proposed to be amended to delete “certificate of” because the term has been deleted from Subchapter A. Subsection (c) is proposed to renumber subsection (c) to subsection (b) and to change a reference from Chapter 313 to Chapter 213 relating to the Edwards Aquifer, because of a typographical error in the previous rule. Subsection (d) is proposed to renumber subsection (d) to subsection (c). New subsection (d), which was previously §334.414(d), was transferred with new language to improve readability and to clarify the requirement. New subsection (e), which was previously §334.401(c), was transferred with new language to improve readability and to clarify the requirements of this section.

Section 334.424, Other Requirements for a License A and License B, is proposed to amend the title of this section to “Other Requirements for an On-Site Supervisor” to clarify the requirements for compliance by on-site supervisors. Subsection (a) is proposed to be deleted because the requirement is now identified in Chapter 30. Subsections (b) - (d) are proposed to be renumbered and to delete “installer or” because an installer or an on-site supervisor is the same person and the term is not needed.

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

Proposed new §334.451, Applicability of Subchapter J, was transferred from §334.454 which is proposed to be repealed. Portions of the new language were transferred with changes. The proposed new language refers applicants to Chapter 30 to incorporate the new provisions from TWC, Chapter 37.

Sections 334.425 - 334.428, 334.451 - 334.463, and 334.465 - 334.467 are proposed to be repealed because the licensing and registration requirements for corrective action specialists and project managers are being transferred to new Chapter 30.

Section 334.454, Exception for Emergency Abatement Actions, is proposed to be repealed. Portions of the new language are proposed in new §334.454 with the following changes. “Licensed” was added when referring to corrective action project manager to incorporate the new requirements from TWC, Chapter 37. The phrase “this subchapter” was deleted to correct a cross-reference.

Proposed new §334.455, Notice to Owner or Operator, was transferred from §334.455 which is proposed to be repealed. Portions of the new language were transferred with changes. The phrase “this subchapter” was deleted in three places to correct a cross-reference. Section 334.455(c)(5) is proposed to add “licensing requirements for” to incorporate the new requirements from TWC, Chapter 37.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for other units of state government and local government.

The proposed rules implement certain provisions in HB 3111, 77th Legislature, 2001, and provisions in HB 2912 77th Legislature, 2001.

House Bill 3111 creates a new chapter of TWC, which consolidates the administrative requirements for all commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rules would repeal provisions in Chapter 334 relating to the requirements and procedures for issuing and renewing licenses and registrations; setting terms and fees; enforcement activities; and training approval for licenses and registrations for petroleum storage tank (PST) corrective action specialists, project managers, UST tank contractors and UST installers. The proposed rules also accommodate the proposed transfer in concurrent rulemaking of license requirements by amending references to licensing requirements, and specifying additional requirements for license and registration holders.

Based upon the current year number of licenses, registrations, and revenue, adoption of the proposed rules would affect approximately 1,837 current UST and PST licenses and registrations and result in the loss of fee revenue to the commission of an estimated \$262,755 each year in license and renewal fees. Currently, there are four classes of certification; UST contractor registration is valid for one year for an initial cost of \$150 with a renewal cost of \$75; an UST license A and license B for installers and on-site supervisors is valid for one year for an initial fee of \$200 and renewal fee of \$175; a registration for a corrective action specialist is valid for two years for a initial cost of \$400 and a renewal fee of \$350; and a corrective action project manager is valid for two years for an initial fee of \$250 with a renewal fee of \$150.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses or registrations to PST corrective action specialists, project managers, UST contractors and UST installers are established in a new chapter. Those provisions establish new fee rates and renewal cycles for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed fee rates are lower or the same as current fee rates. There will be no change in the fee rates for UST companies, and leaking petroleum storage tank (LPST) companies will pay \$250 less in fees for an initial two-year registration and \$200 less in fees for the renewal fee of a two-year registration. Leaking petroleum storage tank licenses will decrease by \$180 for an initial two-year license and decrease \$80 for the renewal of a two-year license. Underground storage tank licenses will decrease by \$330 for an initial two-year license and decrease by \$280 for the renewal of a two-year license. Most businesses and individuals seeking to obtain these licenses will see cost savings, though these savings are not considered significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be the implementation of certain provisions in HB 3111 and increased compliance through the consolidation and standardization of commission occupational licensing programs.

The proposed rules implement certain provisions in HB 3111, and provisions in HB 2912.

House Bill 3111 creates a new chapter of TWC, which consolidates the administrative requirements for all commission-regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rules would repeal provisions in Chapter 334 relating to the requirements and procedures for issuing and renewing licenses and registrations; setting terms and fees; enforcement activities; and training approval for licenses and registrations for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed rules also accommodate the proposed transfer in concurrent rulemaking of license requirements by amending references to licensing requirements, and specifying additional requirements for license and registration holders.

Based upon the current year number of licenses, registrations and revenue, adoption of the proposed rules would affect approximately 1,837 current UST and PST licenses and registrations and result in the

loss of fee revenue to the commission of an estimated \$262,755 each year in license and renewal fees. Currently, there are four classes of certification; UST contractor registration is valid for one year for an initial cost of \$150 with a renewal cost of \$75; an UST license A and license B for installers and on-site supervisors is valid for one year for an initial fee of \$200 and renewal fee of \$175; a registration for a corrective action specialist is valid for two years for a initial cost of \$400 and a renewal fee of \$350; and a corrective action project manager is valid for two years for an initial fee of \$250 with a renewal fee of \$150.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses or registrations to PST corrective action specialists, project managers, UST contractors and UST installers are established in a new Chapter 30, Subchapters E and I. Those provisions establish new fee rates and renewal cycles for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed fee rates are lower or the same as current fee rates. There will be no change in the fee rates for UST companies, and LPST companies will pay \$250 less in fees for an initial two-year registration and \$200 less in fees for the renewal fee of a two-year registration. Leaking petroleum storage tank licenses will decrease by \$180 for an initial two-year license and decrease \$80 for the renewal of a two-year license.

Underground storage tank licenses will decrease by \$330 for an initial two-year license and decrease by \$280 for the renewal of a two-year license. Most businesses and individuals seeking to obtain these licenses will see cost savings, though these savings are not considered significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for those small or micro-businesses who may employ individuals or otherwise possess PST licenses, as a result of implementation of the proposed rules. For those small or micro-businesses not affected by this rulemaking, there will be no fiscal implications.

The proposed rules would repeal certification and fee requirements procedures for issuing and renewing licenses and registrations, setting terms and fees, enforcement activities, and training approval for licenses and registrations for PST corrective action specialists, project managers, UST contractors and UST installers. Small or micro-businesses that employ these individuals or have these licenses would realize cost savings if they currently pay these license fees.

The proposed rules implement certain provisions in HB 3111, and provisions in HB 2912.

House Bill 3111 creates a new chapter of TWC, which consolidates the administrative requirements for all commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rules would repeal provisions in Chapter 334 relating to the requirements and procedures for issuing and renewing licenses and registrations; setting terms and fees; enforcement activities; and training approval for licenses and registrations for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed rules also accommodate the proposed transfer in

concurrent rulemaking of license requirements by amending references to licensing requirements, and specifying additional requirements for license and registration holders.

Based upon the current year number of licenses, registrations, and revenue, adoption of the proposed rules would affect approximately 1,837 current UST and PST licenses and registrations and result in the loss of fee revenue to the commission of an estimated \$262,755 each year in license and renewal fees. Currently, there are four classes of certification; UST contractor registration is valid for one year for an initial cost of \$150 with a renewal cost of \$75; an UST license A and license B for installers and on-site supervisors is valid for one year for an initial fee of \$200 and renewal fee of \$175; a registration for a corrective action specialist is valid for two years for a initial cost of \$400 and a renewal fee of \$350; and a corrective action project manager is valid for two years for an initial fee of \$250 with a renewal fee of \$150. It is not known how many small or micro-businesses possess one of these licenses but if they do, they would realize cost savings as a result of the adoption of these rules.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses or registrations to PST corrective action specialists, project managers, UST contractors and UST installers are established in a new chapter. Those provisions establish new fee rates and renewal cycles for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed fee rates are lower or the same as current fee rates. There will be no change in the fee rates for UST companies, and LPST companies will pay \$250 less in fees for an initial two-year registration and \$200 less in fees for the renewal fee of a two-year registration. Leaking petroleum storage tank licenses will decrease by \$180 for an initial

two year license and decrease \$80 for the renewal of a two- year license. Underground storage tank licenses will decrease by \$330 for an initial two-year license and decrease by \$280 for the renewal of a two-year license. Most businesses and individuals seeking to obtain these licenses will see cost savings, though these savings are not considered significant.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has review this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the rules is to consolidate the requirements for the various occupations licensed or registered by the commission into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the proposed rules. Furthermore, the proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would primarily consolidate existing rule language into one chapter. Thus, the proposed rules do not meet the definition of a “major environmental rule” as

defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission into one chapter. The proposed rules would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational license or registration including procedures for the initial application, examinations, and renewal applications. The proposed rules do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor would it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The repeals will be implemented under the authority of TWC, §37.002, which

requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

Furthermore, TWC, Chapter 37 provides the commission the authority to establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code.

The repeals are implemented under TWC Chapter 37, which gives the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

**SUBCHAPTER I: UNDERGROUND STORAGE TANK CONTRACTOR
REGISTRATION AND INSTALLER LICENSING**

§§334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, 334.425 - 334.428

§334.401. Certificate of Registration for UST Contractor.

§334.402. Application for Certificate of Registration.

§334.403. Issuance of Certificate of Registration.

§334.404. Renewal of Certificate of Registration.

§334.405. Grounds for Denial of Certificate of Registration.

§334.406. Fee Assessments for Certificate of Registration.

§334.408. Exception to Registration Requirements.

§334.409. Revocation, Suspension, or Reinstatement of Certificate of Registration and License.

§334.410. Notice of Hearings.

§334.411. Procedures for Revocation, Suspension, or Reinstatement of a Certificate of Registration and License.

§334.412. Definitions.

§334.414. License for Installers and On-site Supervisors.

§334.415. License A and License B.

§334.416. Requirements for Issuance of License A and License B.

§334.417. Application for License A and License B.

§334.418. Notification of Examination.

§334.419. License A and License B Examination.

§334.420. Issuance of License A or License B.

§334.421. Renewal of License.

§334.422. Grounds for Denial of License A or License B.

§334.423. Fee Assessments for License A and License B.

§334.425. Exceptions to License A and License B Requirements.

§334.426. Revocation, Suspension, or Reinstatement of a License A and License B.

§334.427. Notice of Hearings.

§334.428. Procedures for Revocation, Suspension, or Reinstatement of a License A and License B.

**SUBCHAPTER I: UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR
LICENSING [CONTRACTOR REGISTRATION AND INSTALLER] AND
CONTRACTOR REGISTRATION [LICENSING]**

§334.401, 334.407, 334.424

STATUTORY AUTHORITY

The amendments and new section are proposed under the authority granted to the commission by the Texas Legislature in Texas Water Code (TWC), Chapter 37. The amendments and new section will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

The amendments and new section are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code.

The amendments and new section are implemented under TWC Chapter 37, which gives the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish

fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§334.401. License and Registration Required.

(a) An individual supervising the installation, repair, or removal of an underground storage tank (UST), as defined in §334.2 of this title (relating to Definitions), must hold an on-site supervisor license issued by the commission in accordance with Chapter 30 of this title (relating to Occupational Licenses and Registrations). An on-site supervisor must be present at the site at all times during the critical junctures of the installation, repair, or removal, as defined in §30.307 of this title (relating to Definitions).

(b) Any person or business entity that offers to undertake, represents itself as being able to undertake, or does undertake the installation, repair, or removal of a UST, as defined in §334.2 of this title, must hold a UST contractor registration issued by the commission in accordance with Chapter 30 of this title.

§334.407. Other Requirements for an Underground Storage Tank Contractor [Certificate of Registration].

(a) [All registered contractors shall notify the agency in writing within 30 days of any change which occurs during the validated registration year. Such changes shall include, but are not limited to:]

[(1) change of business name, address, or telephone number;]

[(2) change of physical address;]

[(3) change in status of insurance;]

[(4) change of authorized representative as prescribed by §334.402(2)(B) of this subchapter (relating to Application for Certificate of Registration);]

[(5) permanent cessation of underground storage tank (UST) business or UST activities;]

[(6) a filing for reorganization or protection under federal bankruptcy laws;]

[(7) change of branch office, address, or telephone number.]

[(b)] A registered underground storage tank (UST) [UST] contractor is required to maintain insurance and net worth [financial] requirements, as required by §30.315 [§334.402] of this title (relating to Qualifications for an Initial Registration), throughout the period that the contractor holds a valid [certificate of] registration from the executive director [agency].

(b) [(c)] A [An] UST contractor subject to the provisions of this subchapter employed or otherwise engaged by a [an] UST owner or operator (or by any other person representing to be the UST owner or operator) to conduct the installation, repair, or removal of a [an] UST shall comply with all applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 213 [313] of this title (relating to Edwards Aquifer).

(c) [(d)] Compliance with the provisions of this subchapter by a registered contractor shall not relieve such contractor from the responsibility of compliance with all applicable regulations legally promulgated by the EPA [United States Environmental Protection Agency], United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Department of Health, Texas Department [State Board] of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural Resource Conservation Commission, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(d) A UST contractor must have an on-site supervisor who is licensed by the agency under this subchapter at the site at all times during the critical junctures of the installation, repair, or removal, as defined in §30.307 of this title (relating to Definitions).

(e) A UST contractor must prominently display the UST contractor registration number on all bids, proposals, offers, and installation drawings.

§334.424. Other Requirements for an On-Site Supervisor [a License A and License B].

(a) [All License A and License B installers and on-site supervisors shall notify the agency in writing within 30 days of any change to the application including, but not limited to:]

[(1) change of employer;]

[(2) change of employer's mailing and physical address or telephone number; and]

[(3) change of personal mailing and physical address or telephone number.]

[(b)] A licensed [installer or] on-site supervisor subject to the provisions of this subchapter that is engaged in the installation, repair, or removal of underground storage tanks (USTs) shall be required to comply with all applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 213 of this title (relating to Edwards Aquifer).

(b) [(c)] Compliance with the provisions of this subchapter by a licensed [installer or] on-site supervisor shall not relieve such licensee from the responsibility of compliance with all applicable regulations legally promulgated by the EPA [United States Environmental Protection Agency], United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Department of Health, Texas Department [State Board] of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural Resource Conservation Commission, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(c) [(d)] A licensed [installer or] on-site supervisor who offers to undertake, represents to undertake, or does undertake the installation, repair, or removal of a [an] UST shall either be registered as a [an] UST contractor in accordance with [pursuant to] this subchapter, or be employed by a registered UST contractor.

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

§§334.451 - 334.463, 334.465 - 334.467

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in Texas Water Code (TWC), Chapter 37. The repeals will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

The repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code.

The repeals are implemented under TWC Chapter 37, which gives the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§334.451. Applicability of Subchapter J.

§334.452. Exemptions from Subchapter J.

§334.453. General Requirements and Prohibitions.

§334.454. Exception for Emergency Abatement Actions.

§334.455. Notice to Owner or Operator.

§334.456. Application for Certificate of Registration for Corrective Action Specialist.

§334.457. Application for Certificate of Registration for Corrective Action Project Manager.

§334.458. Review and Issuance of Certificates of Registration.

§334.459. Continuing Education Requirements for Corrective Action Project Managers.

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

§334.461. Denial of Certificate of Registration.

§334.462. Other Requirements.

§334.463. Grounds for Revocation or Suspension of Certificate of Registration.

§334.465. Procedures for Revocation or Suspension of a Certificate of Registration.

§334.466. Reinstatement of a Certificate of Registration.

§334.467. Fee Assessments for Certificates of Registration.

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

§§334.451 - 334.455

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in Texas Water Code (TWC), Chapter 37. The new sections will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code.

The new sections are implemented under TWC, Chapter 37, which gives the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§334.451. Applicability of Subchapter J.

(a) All corrective action services covered by this chapter must be performed by or be coordinated by a person or entity registered as a corrective action specialist; and

(b) All corrective action services covered by this chapter must be supervised by a licensed corrective action project manager according to Subchapter E of Chapter 30 of this title (relating to Registration of Corrective Action Specialist and Project Managers for Product Storage Tank Remediation Projects).

§334.454. Exception for Emergency Abatement Actions.

(a) An owner or operator or other person may undertake such corrective action as may be necessary to abate any immediate threat to human health and safety or the environment caused by a release or threatened release without a registered corrective action specialist or a licensed corrective action project manager; and a person who is not registered under §30.190 of this title (relating to Qualifications for Initial Registration), or §30.180 of this title (relating to Qualifications for Initial License) may provide or perform such services provided that the action is in compliance with this section.

(b) For this section to apply, the owner or operator or other person must:

(1) demonstrate that the actions taken were necessary to protect against imminent danger to human health and safety by mitigating fire, explosion, and vapor hazards, by removing free product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the executive director;

(2) notify the executive director of the emergency occurrence within 24 hours of commencing emergency abatement action;

(3) notify the local fire marshal (or state fire marshal if no local authority is available) within 24 hours of commencing emergency abatement action; and

(4) obtain the services of a registered corrective action specialist within ten days of commencing emergency action.

§334.455. Notice to Owner or Operator.

(a) A notice of corrective action must be provided by the corrective action specialist, in accordance with this section for any corrective action services which are commenced on or after October 1, 1994.

(b) The notice requirements of this section apply regardless of whether or not the person offering the services is working directly for an owner or operator. The notice of corrective action must

be given to the owner or operator prior to the time when the offer to perform corrective action services is accepted.

(c) The notice must contain the following:

(1) whether the person or entity is registered in accordance with Chapter 30 of this title (relating to Occupational Licenses and Registrations);

(2) the person or entity's registration number;

(3) proof of commercial liability insurance required in §30.190 of this title (relating to Qualifications for Initial Registration); and

(4) the disclaimer required in subsection (f) of this section; and

(5) a statement signed by the owner or operator and by a representative of the corrective action specialist which indicates both parties are aware of the registration requirements for corrective action specialists and licensing requirements for corrective action project managers set forth in Chapter 30 of this title, and that reimbursement will be in accordance with the provisions of Subchapter H of this chapter (relating to Reimbursement Program) and in accordance with the published agency reimbursable cost guidelines.

(d) The notice of corrective action must be on a form provided by the executive director. The person contracting with the owner or operator shall provide the owner or operator with a copy of the signed notice of corrective action.

(e) Within 15 days of the date on which the offer to perform corrective action services is accepted, the corrective action specialist shall submit to the executive director a copy of such written notice signed by the authorized representative of the corrective action specialist and by the owner or operator or their duly authorized agent.

(f) Any bid, proposal, or offer that indicates a company or person is a corrective action specialist must reproduce in its entirety the following disclaimer. The disclaimer must be a part of any notice required by this section.

(1) The registration of a corrective action specialist with the agency does not constitute endorsement, licensing, or promotion of any corrective action specialist. Registration does not imply that the agency guarantees the quality of the work performed or that the cost of the work may be reimbursed.

(2) Reimbursement for approved work is subject to the eligibility requirements set forth in Subchapter H of this chapter and the agency's reimbursable cost guidelines. Charges exceeding the amount determined as reimbursable for that particular work item shall not be reimbursed by the agency.

