

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) adopts amendments to §§334.2, 334.5, 334.8, 334.71, 334.84, 334.301 - 334.303, 334.306, 334.310, and 334.313 *without changes* to the proposed text as published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4562) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted amendments in this rulemaking is to incorporate into agency rules, changes to statute which were effective September 1, 2005, based on language in Senate Bill 485, House Bill 1987, and Senate Bill 1863 (Article 5) from the 79th Legislature, 2005, and to incorporate a change suggested by stakeholders during and following a meeting of the Petroleum Storage Tank (PST) Rules Advisory Group held November 29, 2005.

SECTION BY SECTION DISCUSSION

Throughout this rulemaking, administrative changes have been made as necessary in accordance with Texas Register requirements.

Subchapter A - General Provisions

The following amendments are adopted to comply with statutory changes. Adopted §334.2 amends paragraph (41), the definition of "Free-product" by specifying that the term has the same meaning with or without a hyphen, and amends paragraph (92), the definition of "Release" by adding language defining the term "subsurface soils" as used in that definition to reflect the inclusion of the term "subsurface soil" in statutory definitions. Adopted §334.5(b)(1)(A), (B), and (C), (2)(A), and (3) are amended by adding and/or deleting language as necessary to reflect the statutory removal of common

carrier liability with respect to deliveries into underground storage tanks and to specify clearly that liability regarding such deliveries rests entirely with underground storage tanks (USTs) system owners and operators. Adopted §334.8(c)(2) is amended to add the insertion of a descriptive opening sentence to provide textual consistency. Adopted §334.8(c)(5)(A)(i) is amended to add language applicable to delivery prohibitions to reflect statutory language which allows a UST owner/operator to provide verification to a common carrier of compliance with UST certification requirements by obtaining or by directing the common carrier to view a copy of the delivery certificate for a site from the agency's Web site.

Subchapter D - Release Reporting and Corrective Action

The following amendments are adopted to comply with statutory changes. Adopted §334.71(a) is amended by adding the phrase "unless otherwise provided in §350.2(g) of this title (relating to Applicability)" at the end of the subsection to provide reference to that section for possible exceptions to §334.71(a). Adopted §334.71(b)(6) is amended to change the language and extend the deadline applicable to the submission of site closure requests for eligible sites that require either a corrective action plan or groundwater monitoring to reflect statutory amendments. Adopted §334.84(a)(4) is added to provide language in accordance with statute allowing owners or operators who are eligible for an extension for corrective action reimbursement to apply to the agency to have their sites placed in the Petroleum Storage Tank State Lead Program administered by the commission and the word "or" is moved from the end of paragraph (3) to the end of the new paragraph (4). The subsequent paragraph is renumbered accordingly.

The following amendment is adopted to comply with stakeholder requests. An adopted new §334.84(c) is added to place a practicable time limit on the agency with regard to response to a proper written application to have an eligible corrective action site placed in the Petroleum Storage Tank State Lead Program.

Subchapter H - Reimbursement Program

The following amendments are adopted to comply with statutory changes, or to correct minor errors and provide clarity. Adopted §334.301(c) is amended by adding language in accordance with statute which extends the deadline for the performance of corrective action from September 1, 2005, to “before August 31, 2007,” for eligible owners/operators who have been granted an extension for corrective action reimbursement by the agency; by amending in accordance with statute the deadline for filing a claim for reimbursement from March 1, 2006, to March 1, 2008; and by amending in accordance with statute the final deadline for payment of reimbursements from September 1, 2006, to September 1, 2008. Adopted §334.301(f) and (h) are each amended to add the insertion of a descriptive opening sentence to provide textual consistency. Adopted §334.301(h)(2) is amended by adding language which allows the executive director to postpone considering, processing, or paying claims for reimbursement for corrective action work which was begun without prior commission approval and deletes language which prevents such claims from being considered, processed, or paid until all agency pre-approved claims for reimbursement have been completed. Adopted §334.302(c)(5) is amended by adding language in accordance with statute which provides an extension of the final deadline for the performance of corrective action from September 1, 2005, to “before August 31, 2007,” with regard to the reimbursement of related corrective action expenses to an eligible owner or operator from the Petroleum Storage Tank Remediation Account. Adopted §334.302(c)(6) is amended

by changing in accordance with statute the deadline for filing a claim for corrective action reimbursement with the agency from March 1, 2006, to March 1, 2008. Adopted §334.302(c)(7) is amended by changing the final deadline for payment of any expenses related to corrective action reimbursements from September 1, 2006, to September 1, 2008. Adopted §334.303(a) is amended by changing the deadline for filing an application (claim) for reimbursement from March 1, 2006, to March 1, 2008. Adopted §334.306(b)(7) is amended to change the word "though" to the word "through" to correct an error. Adopted §334.306(f)(5) is amended by changing the phrase "within 120 days of the effective date of this subchapter" to the actual beginning and ending dates of that period to prevent confusion when current adopted amendments become effective. Adopted §334.310(f) is amended by adding a reference to language in §334.301(h)(2) and §334.313(d) as an additional exception. Adopted §334.313(d) is amended by adding language which allows the executive director to postpone considering, processing, or paying claims for reimbursement for corrective action work which was begun without prior commission approval and deletes language which prevents such claims from being considered, processed, or paid until all agency pre-approved claims for reimbursement have been completed.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and 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. The rule changes adopted in this package are either minor definitional or procedural changes, or they are changes which benefit the regulated community in the form of such things as extended reimbursement deadlines, expanded opportunity for the transfer of sites to the state lead program, and removal of

liability for common carriers regarding delivery certificates. The changes do not increase burdens on regulated entities in particular or the economy in general.

A 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. Even if the intent of these adopted rules is to protect the environment or reduce risks to human health from environmental exposure, the adopted rules will not adversely affect in a material way the previously-mentioned areas (the economy, productivity, competition, jobs, the environment, or public health and safety). Further, it does not meet any of the four requirements listed in §2001.0225(a). That section states: "*(a) This section applies only to a major environmental rule adopted by a state agency, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.*" The rulemaking does not meet any of the requirements as previously described, and thus it is not subject to the regulatory analysis provision of §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The rulemaking incorporates statutory changes

which will not create a burden on private real property. The statutory changes being incorporated basically extend the deadlines related to reimbursements from the Petroleum Storage Tank Remediation (PSTR) Account. This should result in the cleanup of more contaminated property in Texas. As a whole, this rulemaking will not be the cause of a reduction in market value of private real property, does not create a burden on private real property, and will not constitute a taking under Texas Government Code, Chapter 2007.

Promulgation and enforcement of the adopted rules is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's rights to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the adopted rules. The adopted rules implement statutes concerning the remediation of leaking petroleum storage tank sites. There are no burdens imposed on private real property from these adopted rules and the benefits to society are the adopted rules' specific procedures and requirements that should result in additional cleanup of contaminated property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found it to be a rulemaking identified in the Coastal Coordination Act Implementation Rules (31 TAC §505.11(b)(2)) subject to the Texas Coastal Management Program (CMP) and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

CMP Goals: 31 TAC §501.12 states in part that "*the goals of the Texas Coastal Management Program (CMP) are: (1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); (2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; (3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs*"; and "*(5) to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.*"

The previously stated goals will not be adversely affected by the rule changes described in this preamble for the reason that although changes in rule language are adopted to incorporate statutory changes and a change requested by stakeholders, none of these changes will ease or lessen regulatory requirements for regulated underground or aboveground storage tanks. In fact, statutory changes which provide for extension of the sunset date of the PSTR Account and provide enhanced opportunity for owners/operators of eligible leaking petroleum storage tank (LPST) sites to transfer them into the agency's state lead program will result in the proper cleanup of a greater number of contaminated LPST sites.

CMP Policies: 31 TAC §501.13, "Administrative Policies," states in relevant part: "*(a) Agency and subdivision rules and ordinances subject to §501.10 of this title (relating to Compliance with Goals and Policies) shall: (1) require applicants to provide information necessary for an agency or subdivision to make an informed decision on a proposed action listed in §505.11 of this title (relating to Actions and*

Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program); (2) identify the monitoring established to ensure that activities authorized by actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) comply with all applicable requirements; (3) identify circumstances in which agencies and subdivisions have the authority to issue variances from standards or requirements for the protection of CNRAs, including the grounds for granting variances."

The previously stated policies will not be adversely affected by the rule changes described in this preamble for the reason that there are no substantive changes relating to provision of information, monitoring of compliance, or variances.

The commission sought written public comment on the consistency of the adopted rulemaking with the proposed CMP. No written comments were received.

PUBLIC COMMENT

The public comment period for this rulemaking closed at 5:00 p.m., July 3, 2006. No comments were received by the commission.

SUBCHAPTER A: GENERAL PROVISIONS

§§334.2, 334.5, 334.8

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST); and §26.3573, which allows the commission to use funds from the Petroleum Storage Tank Remediation (PSTR) Account to reimburse an eligible owner or operator or insurer for the expenses of corrective action or to pay the claim of a contractor hired by an eligible owner or operator to perform corrective action. The amended sections are also adopted under the general authority of Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; and §26.011, which allows the commission to control the quality of water by rule.

The adopted rule package implements changes in laws of this state made during the 79th Legislature, 2005, with the passage of Senate Bill 485, House Bill 1987, and Senate Bill 1863 (Article 5).

§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 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 underground storage tank (UST) system and releases associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of a 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) **Action level**--The concentration of constituents of any substance or product listed in §334.1(a)(1) of this title (relating to Purpose and Applicability) in the soil or water at which corrective action will be required.

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

(8) **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 underground storage tank (UST), including, but not limited to, piping, fittings, flanges, valves, and pumps.

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

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

(11) **Appropriate regional office**--The agency's regional field office which has jurisdiction for conducting authorized agency regulatory activities in the area where a particular underground storage tank system or aboveground storage tank system is located.

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

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

(14) **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 underground storage tank (UST) system and releases associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of a UST system.

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

(16) **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.

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

(18) **Change-in-service**--A method of permanent removal from service involving the permanent conversion of a regulated underground storage tank 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.

(19) **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.

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

(21) **Common carrier**--With respect to delivery prohibitions, a person (as defined in this section) who physically delivers a regulated substance into an underground storage tank 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).

(22) **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.

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

(24) **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.

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

(26) **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."

(27) **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.

(28) **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 related 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 is either:

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

(B) 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) certified as a cathodic protection tester, in a manner satisfactory to the agency, by either NACE International or the Steel Tank Institute (STI).

(29) **Date installation is complete**--The date any regulated substance is initially placed in an underground storage tank or the date any petroleum product is initially placed in an aboveground storage tank.

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

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

(32) **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.

(33) **Excavation zone**--The space containing the underground storage tank (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.

(34) **Existing underground storage tank (UST) system**--A 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.

(35) **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 underground storage tank system.

(36) **Facility**--The site, tract, or other defined area where one or more underground storage tank systems or one or more aboveground storage tank systems are located.

(37) **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).

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

(39) **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.

(40) **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.

(41) **Free product (or 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 (i.e., that portion of the product not dissolved in water or adhering to soil).

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

(43) **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.*).

(44) **Hazardous substance underground storage tank (UST) system**--A 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.

(45) **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 fuel oils or residual fuel oil derivatives listed in this paragraph.

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

(47) **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.

(48) **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.

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

(50) **In service**--The status of an underground storage tank (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.

(51) **Installer**--A person who participates in or supervises the installation, repair, or removal of underground storage tanks.

(52) **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.

(53) **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.

(54) **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 under 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.

(55) **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.

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

(57) **Maintenance**--The normal and routine operational upkeep of underground storage tank systems necessary for the prevention of releases of stored regulated substances.

(58) **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.

(59) **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.

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

(61) **New underground storage tank (UST) system**--A 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.

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

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

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

(65) **Noncorrodible material**--A material used in the construction, maintenance, or upgrading of any component of an underground storage tank (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.

(66) **Observation well**--A monitoring well or other vertical tubular structure which is constructed, installed, or placed within any portion of an underground storage tank 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.

(67) **Occurrence**--An incident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank or aboveground storage tank or tank system.

(68) **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.

(69) **Operational life**--The actual or anticipated service life of an underground storage tank 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.

(70) **Operator**--Any person in day-to-day control of, and having responsibility for, the daily operation of the underground storage tank system or the aboveground storage tank system, as applicable.

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

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

(73) **Owner**--Any person who holds legal possession or ownership of an interest in an underground storage tank (UST) system or an aboveground storage tank (AST). For the purposes of this chapter, if the actual ownership of a 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 who has registered as an owner of a 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.

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

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

(76) **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.

(77) **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.

(78) **Petroleum marketing firms**--All firms owning petroleum marketing facilities. Firms owning other types of facilities with underground storage tanks as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(79) **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.

(80) Petroleum storage tank--

(A) Any one or combination of aboveground storage tanks that contain petroleum products and that are regulated by the commission; or

(B) Any one or combination of underground storage tanks and all connecting underground pipes that contain petroleum products and that are regulated by the commission.

(81) 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--(e.g., Grade 80, Grade 100, and Grade 100-LL);

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

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

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

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

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

(I) solvents--(e.g., 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--(e.g., liquid asphalt and dust-laying oils);

(L) insulating and waterproofing materials--(e.g., transformer oils and cable oils); or

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

(82) Petroleum underground storage tank (UST) system--A 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 a 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.

(83) 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.

(84) **Piping**--All underground pipes in an underground storage tank 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.

(85) **Piping trench**--The portion of the excavation zone at an underground storage tank facility which contains the piping system and associated backfill materials.

(86) **Pressurized piping**--Product or delivery piping in an underground storage tank system which typically operates at greater than atmospheric pressure.

(87) **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.

(88) **Professional geoscientist**--A person who is currently duly licensed by the Texas Board of Professional Geoscientists to engage in the public practice of geoscience in the State of Texas.

(89) **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.

(90) **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.*

(91) **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.

(92) **Release**--Any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or aboveground storage tank into groundwater, surface water, or subsurface soils. In this definition, the term "subsurface soils" does not include backfill or native material in the tank hole that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless petroleum free product is present in the backfill or native material.

(93) **Release detection**--The process of determining whether a release of a regulated substance is occurring, or has occurred, from an underground storage tank system.

(94) **Repair**--The restoration, renovation, or mending of a damaged or malfunctioning tank or underground storage tank system component.

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

(96) **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.

(97) **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 underground storage tank or aboveground storage tank.

(98) **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, impervious liners, jackets, containment boots, sumps, or vaults surrounding a primary (single-wall) tank and/or piping system.

(99) **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.

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

(101) **Standard conditions of temperature and pressure**--A temperature of 60 degrees Fahrenheit and an atmospheric pressure of 14.7 pounds per square inch absolute.

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

(103) **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.

(104) **Suction piping**--Product or delivery piping in an underground storage tank system which typically operates below atmospheric pressure.

(105) **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.

(106) **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.

(107) **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.

(108) **Tank hole**--The portion of the excavation zone at an underground storage tank facility which contains the tanks and associated backfill materials.

(109) **Tank system**--An underground storage tank system.

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

(111) **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.

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

(113) **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.

(114) **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.

(115) **Underground storage tank system**--An underground storage tank, 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.

(116) **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).

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

(118) **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.

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

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

(121) **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 underground storage tank to the atmosphere.

(122) **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.

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

§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), the following applies.

(A) Except as provided under subparagraphs (B) and (C) of this paragraph, no owner or operator of a UST system regulated under this chapter shall allow the deposit of any regulated substance into that UST system unless that 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), 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 will be considered adequate to meet the requirements of subparagraph (A) of this paragraph.

(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), the following applies.

(A) Except as provided under subparagraph (B) of this paragraph, no owner or operator of a UST system regulated under this chapter shall allow the deposit of any regulated substance into that UST system unless that 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 is considered 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.

§334.8. 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 a UST owner or operator to install or replace a UST system must also certify by signature that the installation methods are in compliance with §334.46 of this title (relating to Installation Standards for New Underground Storage Tank 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) Non-provision of delivery certificate. The agency will not provide a 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 a 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 a 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 (relating to Financial Assurance for Petroleum Underground Storage Tank Systems); 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 Commission on Environmental Quality (TCEQ) delivery certificate (or TCEQ 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 owner or operator may comply with this requirement by obtaining or by directing the common carrier to view a current copy of the delivery certificate from the agency's Internet Web site.) 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 TCEQ delivery certificate (or TCEQ 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 TCEQ delivery certificate (or TCEQ 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 TCEQ 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 TCEQ 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 following dates:

(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, or within 30 days of a subsequent tank installation, 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, 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 TCEQ construction notification form indicating the pending installation of a new or replacement UST system(s), or indicating that a 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.

SUBCHAPTER D: RELEASE REPORTING AND CORRECTIVE ACTION

§334.71, §334.84

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST); and §26.3573, which allows the commission to use funds from the Petroleum Storage Tank Remediation (PSTR) Account to reimburse an eligible owner or operator or insurer for the expenses of corrective action or to pay the claim of a contractor hired by an eligible owner or operator to perform corrective action. The amended sections are also adopted under the general authority of Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; and §26.011, which allows the commission to control the quality of water by rule.

The adopted rule package implements changes in laws of this state made during the 79th Legislature, 2005, with the passage of Senate Bill 485, House Bill 1987, and Senate Bill 1863 (Article 5).

§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 (NAPLs), Investigation for Soil and Groundwater Cleanup, and Corrective Action Plan, respectively) unless otherwise provided in §350.2(g) of this title (relating to Applicability).

(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) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to the executive director no later than September 1, 2007. 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).

§334.84. Corrective Action by the Agency.

(a) The agency may undertake corrective action in response to a release or a threatened release if:

(1) the owner or operator of the aboveground storage tank (AST) or underground storage tank (UST) is unwilling to take appropriate corrective action;

(2) the owner or operator of the AST or UST cannot be found;

(3) the owner or operator of the AST or UST, in the opinion of the agency, is unable to take the corrective action necessary to protect the public health and safety and/or the environment;

(4) the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571; has been granted such extension by the executive director; has applied to the agency in writing on an agency application form not later than July 1, 2007, to have an eligible corrective action site placed in the Petroleum Storage Tank State Lead Program administered by the commission; and has agreed on the application form to allow access to that site to state personnel and state contractors. Once the executive director places such a site in the state lead

program, the eligible owner or operator of that site is not liable to the commission for any corrective action costs incurred by the state lead program with regard to the site, unless the statutorily allowable maximum cost per site is exceeded; or

(5) notwithstanding any other provision of this subchapter, the executive director determines that more expeditious corrective action than is provided by this subchapter is necessary to protect the public health and safety or the environment.

(b) The agency may retain agents to perform corrective action it considers necessary to carry out the provisions of this chapter. The agents shall operate under the direction of the executive director.

(c) The agency shall generate a written response either accepting or denying the application of an eligible owner or operator, who has applied to the agency in accordance with the requirements of subsection (a)(4) of this section to have an eligible corrective action site placed in the Petroleum Storage Tank State Lead Program, within 30 calendar days, as practicable, of the date that application is received by the agency's state lead program.

SUBCHAPTER H: REIMBURSEMENT PROGRAM

§§334.301 - 334.303, 334.306, 334.310, 334.313

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST); and §26.3573, which allows the commission to use funds from the Petroleum Storage Tank Remediation (PSTR) Account to reimburse an eligible owner or operator or insurer for the expenses of corrective action or to pay the claim of a contractor hired by an eligible owner or operator to perform corrective action. The amended sections are also adopted under the general authority of Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; and §26.011, which allows the commission to control the quality of water by rule.

The adopted rule package implements changes in laws of this state made during the 79th Legislature, 2005, with the passage of Senate Bill 485, House Bill 1987, and Senate Bill 1863 (Article 5).

§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 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 unless the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571 and has been granted such an extension by the executive director. The Petroleum Storage Tank Remediation (PSTR) Account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. No reimbursements will be made for corrective action expenses sought in claims submitted to the agency after March 1, 2008. Under no circumstances will any reimbursements be made on or after September 1, 2008.

(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) Possibility of invalidity. 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) Order of consideration, processing, and payment of claims. 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 postpone considering, processing, or paying a claim for reimbursement for corrective action work begun without prior commission approval after September 1, 1993, that is filed with the commission before January 1, 2005.

§334.302. General Conditions and Limitations Regarding Reimbursement; Assignments.

(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 \$1 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, unless the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571 and has been granted such an extension by the executive director. The Petroleum Storage Tank Remediation (PSTR) Account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007;

(6) any expenses related to corrective action contained in a reimbursement claim filed with the agency after March 1, 2008;

(7) any expenses on or after September 1, 2008; or

(8) payments to an owner and/or operator, who acts as his own prime contractor or consultant, in the form of markup of amounts paid to subcontractors (see Appendix A Note 1 in "Part 9: Markup" or in excess of the limitation listed in Note 5 in "Part 1: Professional Personnel/Labor Rates" and/or in excess of the limitation listed in Note 2 in "Part 8: Report Generation Costs" of §334.560 of this title (relating to Reimbursable Cost Specifications)).

(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/her duly authorized agent, 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 through an assignment by an eligible owner or eligible operator to receive such payment under 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 in accordance with applicable law.

(h) Nothing in this subchapter shall be construed to create an entitlement to monies in the petroleum storage tank remediation account 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 assignees duly authorized to receive payment on behalf of an eligible owner or operator except as provided by §334.306(f) of this title (relating to Form and Contents of Application).

(j) Authorization for an 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 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 assignees who may receive payments for any one occurrence. Notwithstanding any review made or limitations imposed by the agency under this section, neither the State of Texas, nor the agency shall be responsible for ensuring that payment is made to the parties as contemplated by the authorization. It is the responsibility of the eligible owner or operator and the assignee requesting payment to ensure 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 eligible owner or operator under this subchapter, except as follows:

(1) the person assigned the right to accept payment on behalf of an eligible owner or operator. Such assignees are limited to the following:

(A) a Prime Corrective Action Specialist, properly registered under Subchapter J of this chapter (relating to Leaking Petroleum Storage Tank Corrective Action Specialist Registration and Project Manager Licensing), hired by the owner or operator to perform corrective action activities at the leaking petroleum storage tank site in question who also holds a 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; or

(B) 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

(C) 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) and (C) of this subsection is an interest in the surface estate of the property.

§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, 2008.

(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.

§334.306. Form and Contents of Application.

(a) An application for reimbursement filed in accordance with this subchapter shall be on a form approved or provided by the agency.

(b) The application must contain the following:

(1) the name, address, telephone number, and signature of all of the following: the applicant, the application preparer, and the prime contractor and/or prime corrective action specialist required by §334.302 of this title (relating to General Conditions and Limitations Regarding Reimbursement; Assignments), unless otherwise approved by the agency;

(2) the name, address, and telephone number of:

(A) each owner and operator of the tanks;

(B) the facility owner; and

(C) the owner of the land on which the tank system is located;

(3) the address and zip code of the facility where the release occurred;

(4) the location of the facility at which the corrective action was performed or is to be performed, identified with sufficient clarity and detail to enable a person unfamiliar with the site to locate it and reach it by automobile;

(5) any information required by the agency under §334.307 of this title (relating to Technical Information Required), if not already submitted to the agency;

(6) legible copies of contractor and subcontractor invoices and any other documents required by the executive director to provide a description of:

(A) any work performed;

(B) who performed the work;

(C) where the work was performed;

(D) the dates the work was performed;

(E) the unit cost, using the same breakdown of individual activities as are listed in this subchapter and Subchapter M of this chapter (relating to Reimbursable Cost Specifications for the Petroleum Storage Tank Reimbursement Program); and

(F) the total amount paid, or ensured to be paid through the posting of a payment bond;

(7) certification on the designated agency form, either that the amounts described in §334.309(c) of this title (relating to Reimbursable Costs) have been paid in full by the claimant, or have been ensured to be paid in full through the posting of a payment bond in the amount not yet paid in full by the claimant. The certification must include:

(A) for reimbursement(s) to a claimant who is an eligible owner or operator, or an insurer under §334.302(k)(1)(B) of this title, a certification as to payment of the claimant's prime contractor; or

(B) for reimbursement(s) to a claimant who is an assignee contractor described in §334.302(k)(1)(A) of this title, a certification as to payment of the claimant's subcontractors;

(8) if the agency is being requested to honor a reimbursement assignment under §334.302(i) - (k) of this title, the application must include a complete assignment document as described in §334.302(i) - (k) of this title;

(9) if any combination of the owner or operator or the persons performing corrective action activities at, or for, the leaking petroleum storage tank site in question are related parties as the term is defined in §334.322 of this title (relating to Subchapter H Definitions), the application must contain a full description of all such relationships including applicable documentation; and

(10) any other information which the agency may reasonably require.

(c) An application may be filed at the following times:

(1) after the completion of a phase or pre-approved activity; or

(2) at points during the corrective action process agreed to by the agency and the applicant.

(d) The agency may require the applicant to supplement information already submitted or return the application if the information is not sufficient to review the application.

(e) The applicant must update his application with any information not yet submitted to the agency before processing or payment of claims at any stage begins.

(f) A subcontractor may submit information to the agency to assert a claim that the subcontractor has performed pre-approved work and has not been fully paid for the work. To be considered for direct reimbursement by the commission under this subchapter, each of the following requirements must be met:

(1) the subcontractor requesting to be directly reimbursed by the agency shall have performed work for a person eligible for reimbursement in accordance with §334.310 of this title (relating to Requirements for Eligibility) and performed such work as a subcontractor to a prime corrective action specialist retained by the eligible owner or operator;

(2) a Fund Payment Report that contains the charges for which the subcontractor has not been paid has been issued in accordance with §334.314 of this title (relating to Fund Payment Report);

(3) the prime corrective action specialist has failed to pay the subcontractor, due to insolvency subject to the limitations of 11 United States Code, §365(e)(1), the amount reflected on the Fund Payment Report;

(4) the commission has not paid for the work performed in the Fund Payment Report or the commission has successfully recovered the money paid for the work performed in the Fund Payment Report in accordance with §334.318 of this title (relating to Recovery of Costs) and Texas Water Code, §26.355; and

(5) between November 18, 2004, and March 18, 2005, inclusive, the subcontractor has filed the following:

(A) written notice to the agency of the amounts owed on each specific Fund Payment Report that the prime corrective action specialist has failed to pay; and

(B) an affidavit by the subcontractor stating that the prime corrective action specialist has failed to pay the amount being requested by the subcontractor.

(g) For purposes of this subchapter, the following are the phases of corrective action:

(1) initial abatement measures and emergency actions phase;

(2) preliminary site assessment phase;

(3) comprehensive site assessment phase;

(4) risk assessment and remediation planning phase;

(5) remediation phase;

(6) post-remediation monitoring phase; and

(7) site closure.

§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; Assignments)) 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 under §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 Aboveground Storage Tanks (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 under §334.7 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, under §334.21 of this title (relating to Fee Assessment), and since September 1, 1989, under §334.128 of this title (relating to Annual Facility Fees for Aboveground Storage Tanks (ASTs)) 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 Deadlines), and that missed deadline is the fault of that person or 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) Agency eligibility determinations must be done in accordance with the standards of Texas Water Code, §26.3571.

(d) Compliance with Texas Water Code, Chapter 26, Subchapter I, for the purposes of determining eligibility under this subchapter and 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 and except as provided in §334.301(h)(2) and §334.313(d) of this title (relating to Applicability of this Subchapter and Review of Application), all corrective action activities, including activities proposed in corrective action plans, must be approved in writing by the executive director prior to implementation. Pre-approval of proposed corrective action activities and costs does not create an entitlement to reimbursement for any corrective action task, at the amount pre-approved or a different amount. 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) legible copies as required under §334.306(b)(6) of this title and by certification of payment as required under §334.306(b)(7) of this title;

(iii) copies of pre-approval 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) an Application Checklist, provided with the application form, verifying that the applicant and application preparer have reviewed the application for completeness;

(B) 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 in a fund payment report that those costs will not be forwarded for further review until such time as the agency completes reviews of applications with pre-approved costs as allowed under subsection (d) of this section;

(C) if it has been determined that an otherwise complete application contains costs for a corrective action activity which the agency determines to have been performed improperly, the applicant will be notified in a fund payment report that those costs are denied as not allowable under §334.308(g)(22) of this title (relating to Allowable Costs and Restrictions on Allowable Costs); and

(D) 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 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) If, during review, the agency determines that additional information is required to assess the validity of the claim under Subchapters H and M of this chapter (relating to Reimbursement Program; and Reimbursable Cost Specifications for the Petroleum Storage Tank Reimbursement Program), it may either:

(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 of those portions of the claim for which additional information has been requested.

(c) An application for reimbursement or supplemental application filed under this subchapter shall be subject to audit by the agency.

(d) The executive director may postpone considering, processing, or paying a claim for reimbursement for corrective action work begun without prior commission approval after September 1, 1993, that is filed with the commission before January 1, 2005.