

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) proposes amendments to §§334.71, 334.201, and 334.503.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In a prior rulemaking proposal published May 2, 2008, the commission sought input regarding the appropriateness of whether Leaking Petroleum Storage Tank (LPST) sites should be removed from the requirements of Chapter 350 to support statutory changes made to Texas Water Code (TWC), §26.351(a) and (i), by House Bill 3554, 80th Legislature, 2007, authored by Representative Carl Isett. The commission directed staff at the October 8, 2008 Agenda to initiate rulemaking and address the LPST issue in a comprehensive rulemaking for both Chapter 334 and 30 TAC Chapter 350, Texas Risk Reduction Program.

SECTION BY SECTION DISCUSSION

Subchapter D - Release, Reporting, and Corrective Action

The commission proposes to amend §334.71(a) to remove language requiring the use of Chapter 350 for releases discovered and reported to the agency on or after September 1, 2003. Currently, LPST sites discovered and reported on or after September 1, 2003 are required to follow Chapter 334, with the exception that Chapter 350 be used in lieu of §§334.78 - 334.81. This proposed amendment would effectively reinstate the use of §§334.78 - 334.81. Corresponding rule changes would be made to amend §350.2(g), by eliminating language requiring compliance with Chapter 350, for the assessment, response actions, and post-response action care for releases of regulated substances from underground storage tanks (USTs) or aboveground storage tanks (ASTs).

Subchapter G - Target Concentration Criteria

The commission proposes to amend §334.201(a) and (b), to remove the applicability of the Texas Risk Reduction Program to the criteria by which target concentrations are established for cleanup of LPST site releases. The commission also proposes to make a clarifying change to subsection (b) in order to remove an out-dated reference to agency guidance documents.

Subchapter K - Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil

The commission proposes to amend §334.503(b) and (c), to remove the applicability of the Texas Risk Reduction Program to reuse of petroleum-substance waste.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules, although some state agencies and local governments responsible for conducting remedial activities associated with regulated USTs or ASTs could experience cost savings at sites that have low risk potential.

The proposed rulemaking will amend two chapters of 30 TAC which regulate the assessment and remediation requirements applicable to releases of regulated substances from USTs and ASTs. Under current rules, property regulated under Chapter 334 must also comply with Chapter 350 requirements for assessment, response actions, and post-response action care for releases of regulated substances from USTs and ASTs. The proposed rulemaking amends various sections of Chapter 334 to eliminate language requiring compliance with Chapter 350 and reinstates the use of Chapter 334 risk-based corrective action provisions applicable to corrective action for LPST sites. The amendments to both

chapters will simplify and clarify the remedial process, yet continue to provide stringent protection of the environment.

In many cases, the proposed rulemaking could result in cost savings for owners of LPST sites that are of low risk potential. The agency estimates that there may be as many as 30 state agency sites and 36 local government sites that could be affected by the proposed rules. Cost savings from the proposed rulemaking for site assessment, cleanup, notice, and other actions could be as much as \$10,000 to \$140,000 per LPST site of low risk potential.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued protection of public health and safety through environmental cleanup of contaminated UST and AST sites. In many cases, the proposed rulemaking may allow for more rapid closure of contaminated sites due to the simplification of cleanup requirements. It may also allow abandoned contaminated sites to be returned to productive use more quickly.

The proposed rulemaking is not expected to increase costs to businesses or the general public. Rather, the proposed rulemaking is expected to generate cost savings for owners and operators of LPST sites of low risk potential.

The agency estimates that there may be as many as 431 LPST sites owned by individuals and large businesses that may be affected by the proposed rules. Cost savings resulting from the proposed change could be as much \$10,000 to \$140,000 per site for LPST sites of low risk potential.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that own or operate LPSTs of low risk potential as a result of the proposed rules. Staff estimates that there may be as many as 616 of these sites owned or operated by small or micro-businesses that may experience cost savings ranging from \$10,000 to \$140,000 per site as a result of the proposed rules.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years that the proposed rulemaking is in effect. The proposed rules may save owners/operators of LPST sites money if those sites are of low risk potential.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT 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. 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.

Concerning the economy, this rule package represents a return to a more streamlined and flexible process for owners or operators of USTs or ASTs (e.g. retail gasoline stations) to address contamination resulting from releases from tank systems. Because costs of gasoline and diesel are a major concern for the Texas economy and the general public, it is sufficient to note that a streamlined and flexible process may result in a benefit to the economy. Concerning jobs, competition, and productivity, nothing in this package can be estimated to adversely affect these areas; to the extent that a benefit to the economy described above could also benefit jobs, competition, and productivity, then we expect to see a benefit in these areas as well.

Concerning "the environment, or the public health and safety of the state," the commission would first point out that the Chapter 334 assessment and corrective action rules and guidance are currently being used at a majority (approximately 63%) of open LPST sites. (These were LPST releases discovered and reported before September 1, 2003.) This rule affects only LPST releases discovered and reported on or after September 1, 2003, including future LPST sites.

Second, the commission notes that the particular Chapter 334 rules and guidance of concern here were originally proposed and adopted in 1995. House Bill 2587, 74th Legislature, 1995, effective September 1, 1995, significantly revised regulatory authority and responsibilities relative to USTs and ASTs. The rules proposed in July 1995 and adopted October 1995, officially incorporated "risk-based corrective action." This is the same risk-based corrective action program which this rule package proposes to use for all current and future LPST sites. As stated in the 1995 rule proposal, the commission recognizes the

level of remediation warranted at a high risk site will not be equivalent to the level necessary at a low risk site and that appropriate target concentrations and target cleanup levels should be used in determining risk actually posed to the environment and health or human safety. When risk pathways are not present or less risk is posed at a site, corrective action may generally be conducted more expeditiously. Thus, "risk" is the primary consideration in Chapter 334, as required by the TWC. Certain questions are approached using risk analysis, such as how far does a groundwater contamination plume need to be delineated, or to what concentration levels does natural attenuation have to be monitored. Remediation itself may involve a number of different actions, from soil removal to removal of "free product" (also known as non-aqueous phase liquid or NAPL) from wells, to engineered groundwater systems, to monitored natural attenuation (since petroleum products naturally biodegrade to a large degree). In each of these actions, effectiveness and efficiency of removing actual risk pathways to human health and the environment must be considered, as required by the statute, regardless of whether Chapter 334 or Chapter 350 is being applied.

Thus, when actual risk is considered, the Chapter 334 rules, both in 1995 and in the current proposal, are adequately protective of the environment. Although there may be discrete scenarios where Chapter 350 and Chapter 334 assessment and remediation require a different process and may have comparative positive or negative effects, taken as a whole this rule proposal does not represent a major environmental rule which adversely affects the environment or the public health and safety.

Lastly, even if this rule proposal were considered a "major environmental rule," it fails the second test under the Texas Government Code. It does not meet any of the four requirements listed in Texas Government Code, §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." None of these four elements is applicable; the proposed rule package does not exceed any federal or state requirements, nor exceed delegation agreements or contracts. The proposed rule package is adopted under a specific state law, TWC, §26.351, and it is not adopted solely under the general powers of the agency.

Written comments on the draft regulatory impact analysis determination of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the rule is subject to Texas Government Code, Chapter 2007. The rulemaking returns LPST assessment and remediation to the same rules that were in effect before September 1, 2003. This may result in lower costs for assessment of releases from tanks, and may result in closure status being granted more quickly.

Promulgation and enforcement of the proposed amendments would constitute neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in real property because the rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would exist in the absence of the proposed amendments.

Although a contaminated LPST site or contaminated neighboring property may suffer from market devaluation due to contamination, this devaluation is due to the basic fact of the presence of contamination; it cannot be concluded that the choice of application of Chapter 334 risk-based corrective action in lieu of the Texas Risk Reduction Program would "cause" the devaluation. As a whole, this rulemaking is not anticipated to be a 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 takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is 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. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking protects the environment by ensuring that the CMP goals and policies will not be adversely affected by the rule changes described in this preamble for the reason that although Chapter 334 cleanup requirements will now be used without Chapter 350 cleanup requirements, Chapter 334 risk-based corrective action requirements are adequately protective of human health and the environment.

The commission is seeking public comment on the consistency of the proposed rulemaking with the CMP. Written comments may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on December 16, 2008, 10:00 a. m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services, at (512) 239-2548. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Michael Parrish, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project No. 2009-003-350-PR. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. Comments must be received by January 5, 2009. For further information, please contact Anton E. Rozsypal, Jr., P.E., Remediation Division, at (512) 239-5755 or Cullen McMorrow, Litigation Division, at (512) 239-0607.

SUBCHAPTER D: RELEASE REPORTING AND CORRECTIVE ACTION

§334.71

STATUTORY AUTHORITY

The amendment is proposed 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 authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); TWC, §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 TWC, §26.011, which requires the commission to control the quality of water by rule.

The proposed amendment implements TWC, §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 AST.

§334.71. Applicability and Deadlines.

(a) The [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 to which Chapter 350 of this title (relating to Texas Risk Reduction Program) was previously applicable under former rule (i.e. releases reported on or after September 1, 2003), this subchapter shall be used as of the effective date of this subsection. [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, 2011. 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).

SUBCHAPTER G: TARGET CONCENTRATION CRITERIA

§334.201

STATUTORY AUTHORITY

The amendment is proposed 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 authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); TWC, §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 TWC, §26.011, which requires the commission to control the quality of water by rule.

The proposed amendment implements TWC, §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 AST.

§334.201. Purpose, Applicability, and Deadlines.

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

(b) Applicability. The [For releases which are discovered and reported to the agency on or before August 31, 2003, the] provisions of this subchapter are applicable to owners and operators of all underground storage tanks (USTs) and petroleum product aboveground storage tanks (ASTs) unless otherwise specified in Subchapters A and F of this chapter (relating to General Provisions and Aboveground Storage Tanks, respectively). [These rules supersede previous cleanup guidelines as published in the January 1990, Guidance Manual for LPST Cleanups in Texas. All leaking storage tank cases which are not eligible for closure pursuant to the cleanup guidelines as published in the January 1990, Guidance Manual for LPST Cleanups in Texas as of November 8, 1995 shall be reevaluated by the owner and operator under this rule to establish target concentrations unless the agency has provided written approval of a remediation plan to clean a site to a specific numeric target concentration and the remediation plan has been initiated prior to November 8, 1995. For releases reported to the agency on or after September 1, 2003, the provisions of Chapter 350 of this title (relating to Texas Risk Reduction Program) are applicable to owners and operators of all USTs and petroleum product aboveground storage tanks (ASTs) unless otherwise specified in Subchapters A and F of this chapter in place of the provisions of this subchapter.]

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

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

§334.503

STATUTORY AUTHORITY

The amendment is proposed 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 authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); TWC, §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 TWC, §26.011, which requires the commission to control the quality of water by rule.

The proposed amendment implements TWC, §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 AST.

§334.503. Reuse of Petroleum-Substance Waste.

(a) Wastes that are intended for reuse are subject to all the applicable provisions of this subchapter, including, but not limited to, the following requirements. Sections 334.482, 334.496 -

334.500, and 334.502 of this title (relating to General Requirements [Prohibitions]; Shipping Procedures Applicable to Generators of Petroleum-Substance Waste; Recordkeeping and Reporting Procedures Applicable to Generators; Shipping Requirements Applicable to Transporters of Petroleum-Substance Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; Record-keeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; and Design and Operating Requirements of Stockpiles and Land Surface Treatment Units).

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

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

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

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

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

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

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

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

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

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

(1) [(A)] identification, address, and name of the designated representative of the generating facility;

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

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

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

(5) [(E)] documentation of the reuse methods and dates of reuse;

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

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

(c) Reuse requirements are as follows.

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

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

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

(A) Petroleum-substance wastes may be utilized in cold-mix-emulsion bituminous paving at a cold-mix asphalt-producing facility registered under the terms of this subchapter. The petroleum-substance waste shall be mixed with aggregate or other suitable materials at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. The petroleum-substance waste must contain less than 0.5 milligrams/kilograms (mg/kg) for each component of benzene, toluene, ethyl benzene, and total xylenes prior to mixing. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

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

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

other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.]

(B) Petroleum-substance wastes may be utilized in asphalt mix at hot-mix asphalt-producing facilities registered under this subchapter. The petroleum-substance waste must contain less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes prior to mixing. The petroleum-substance waste must be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

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

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

and must not be at such concentrations which compromise the integrity of the hot-mix asphalt product.

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

(C) Petroleum-substance wastes may be utilized in road base or parking lot stabilized base when the base will be covered with concrete or asphalt if the contaminant levels of the soil prior to mixing into the stabilized base are less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes, and less than 500.0 mg/kg total petroleum hydrocarbons or at contaminant levels otherwise specified by the agency. The base must be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized road base must meet the criteria for clean soil as specified by the agency to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

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

lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).]

[(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste shall not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title, and must not be at such concentrations which compromise the integrity of the stabilized base. The base must be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized road base must meet the criteria for clean soil as specified by the agency to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).]

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

(E) [For releases reported to the agency on or before August 31, 2003, petroleum-substance] Petroleum-substance wastes may, if appropriate, be used as fill. To determine if the soil to be reused is appropriate for the application, analysis for contamination must be conducted as specified by this agency. The agency will give written approval for the particular reuse after ensuring that the implementation will, in the opinion of agency staff, adequately protect human health, safety, and the environment. The landowner at the receiving site (if different from the original owner of the petroleum substance contaminated soil) must give written consent for this activity. Fill for tank hold bedding and backfill for tank systems must meet the requirements of §334.46(a)(5) of this title (relating to Installation Standards for New Underground Storage Tank Systems).