The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new Chapter 334, Subchapter A, General Provisions, §334.18, Limits on Liability of Taxing Unit and Chapter C, Technical Standards, §334.56, Exempt or Excluded Status. The commission also adopts amendments to Chapter 334, Subchapter A, General Provisions, §§334.1 - 334.10, 334.12, 334.15, and 334.17; Subchapter B, Underground Storage Tank Fees, §§334.21 - 334.23; Subchapter C, Technical Standards, §§334.41 - 334.52. 334.54, and 334.55; Subchapter D, Release Reporting and Corrective Action, §§334.71 - 334.85; Subchapter F, Aboveground Storage Tanks, §§334.121 - 334.130 and 334.132; Subchapter G, Target Concentration Criteria, §§334.201 - 334.206, and 334.208; Subchapter H, Interim Reimbursement Program, §§334.301 - 334.310, 334.312 - 334.315, 334.318, and 334.320 - 334.322; Subchapter I, Underground Storage Tank Contractor Registration and Installer Licensing, §§334.402 - 334.407, 334.409, 334.411 - 334.412, 334.414, 334.416 - 334.424, 334.426, and 334.428; Subchapter J, Registration of Corrective Action Specialists and Project Managers for Product Storage Tank Remediation Projects, §§334.452, 334.453, 334.455 - 334.463, and 334.465 - 334.467; Subchapter K, Storage, Treatment, and Reuse Procedures For Petroleum-Substance Contaminated Soil, §§334.481, 334.482, 334.484 - 334.488, 334.490, 334.492 - 334.494, 334.496, 334.497, 334.499 - 334.504, and 334.506 - 334.508; Subchapter L, Overpayment Prevention, §§334.531 - 334.535, and 334.537. The commission also adopts the repeal of Subchapter A, General Provisions, §334.11; Subchapter E, Financial Responsibility, §§334.91 - 334.110; Subchapter F, Aboveground Storage Tanks, §334.131; and Subchapter I, Underground Storage Tank Contractor Registration and Installer Licensing, §334.413 and §334.429.

Sections 334.2, 334.5, 334.7, 334.8, 334.18, 334.45, 334.46, 334.48 - 334.52, 334.71, 334.72, 334.125, 334.127, 334.202, 334.313, 334.402, 334.422, 334.426, 334.459, 334.461, 334.465 are adopted *with changes* to the proposed text as published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5152). The remaining sections are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules implement House Bills (HBs) 2109, 2815, and 2816, 76th legislature, 1999. House Bill 2109 limits environmental liability for qualifying local taxing authorities that foreclose on properties with storage tanks. House Bill 2815 creates an annual compliance self-certification process, whereby certain tank owners/operators must certify that their tanks meet certain technical and administrative requirements prior to accepting regulated substance(s) deliveries, and "common carriers" must verify (through the observation of a delivery certificate) that self-certification has been accomplished prior to delivering regulated substances. House Bill 2815 also extends two corrective action deadlines for being eligible for reimbursement from the state Petroleum Storage Tank Reimbursement (PSTR) Fund without an increase in the deductible paid by the owner or operator. The December 23, 1997 corrective action plan deadline was extended by six months and the December 23, 1998 corrective action implementation goals deadline was extended by 12 months. Also, HB 2815 added a requirement for the agency to respond to an administratively complete reimbursement application with a fund payment report by the 90th day from receipt of the application. In HB 2816, the expiration date of the PSTR Fund was extended an additional two years to September 1, 2003. The agency also conducted regulatory reform, and opened Chapter 334 to rule review public comment.

One element of this rulemaking package is to make certain tank operators jointly and severally liable with certain tank owners under §334.7, Registration. To implement HB 2815, the new compliance certification program has been merged with the existing tank registration program. Since the bill calls for operators to be jointly and severally liable with tank owners for compliance certification purposes, the TNRCC is adopting the same type of liability for tank registration purposes. Aside from facilitating the implementation of the bill, making this change will bring §334.7 in line with the liability scheme of the remainder of Chapter 334 (excluding tank fees, which is statutorily an obligation placed on tank owners). Other benefits of this change include increased compliance with tank registration requirements (which are an element of federal program delegation)--and agency tank registration rules establish the database that facilitates annual tank fee billings, aids in establishing "responsible parties" for leaking petroleum storage tank sites, etc.

The commission has conducted a review of the rules under Chapter 334 and has determined that the justification for their adoption continues to exist. The rules are necessary to prevent the contamination of water and other media by leaks from storage tanks and to provide requirements for remediation of petroleum contaminated sites and soils; to implement Texas Water Code (TWC), Chapter 26, Subchapter I, Underground Storage Tanks and Subchapter K, Underground Storage Tank Installers; and to implement requirements necessary to maintain federal petroleum storage tank (PST) program delegation. This review of Chapter 334 included Subchapter E, concerning PST financial assurance requirements. Upon determining that the justification for their adoption continues to exist, the subchapter was repealed and the substance of the rules was moved to the new Subchapter I in Chapter 37.

SECTION BY SECTION DISCUSSION

Unless otherwise noted, all the federal citations are adopted as they currently exist, as well as prospectively amended by the United States Environmental Protection Agency (EPA).

Since proposal, grammatical and administrative changes were made throughout various subchapters.

The adopted amendments incorporate changes to the PST program as a result of the passage of HBs 2109 and 2815. HB 2109 limits environmental liability for qualifying local taxing authorities that foreclose on properties with storage tanks. HB 2815 creates an annual tank requirement self-certification process, whereby tank owners/operators must certify that their tanks meet certain technical and administrative requirements to prior to accepting deliveries of regulated substances, and "common carriers" must verify (through the observation of a delivery certificate) that self-certification has been accomplished prior to delivering regulated substance(s).

Throughout the adopted rules, "executive director" and "commissioner" were often changed to "agency" to be consistent with the agency general definitions in 3, Definitions. The reason for these changes, just given, will not be discussed further in this preamble, but each instance will be noted.

Also, throughout this adopted rule, many administrative changes have been made to correct formatting, such as defining acronyms and subsequently using them in place of the defined term (underground storage tank (UST), aboveground storage tank (AST), Texas Water Code (TWC), leaking petroleum storage tank (LPST), petroleum storage tank remediation (PSTR), etc.), deleting the title cross-

references where the title of the referenced section has already been given once within the rule section, change “a” to “an,” capitalization changes, and making grammatical corrections.

Subchapter A, General Provisions

Adopted §334.1, Purpose and Applicability. The adopted amendments to §334.1(a)(1) clarifies the rule and more accurately reflect the regulatory scheme: by changing the phrase “underground storage tank systems storing hazardous substances and petroleum substances” to “hazardous substance and petroleum substance underground storage tank (UST) systems”; by changing the phrase “and for aboveground storage tanks storing certain petroleum products” to “and a limited regulatory program for petroleum product aboveground storage tanks (ASTs)”; and by adding the phrase “and Subchapter K” to the included reference. The adopted amendment to §334.1(b)(1) replaces “shall be” with “is” to improve readability. The adopted amendment to §334.1(b)(1)(C) and (D) deletes an unnecessary comma, and deletes “Statutory” and “Commission” and adds “for Underground Storage Tanks (USTs) and UST Systems” to reflect the new names of the referenced sections. The adopted amendment to §334.1(b)(2) deletes “applicable” and replaces “shall apply” with “are applicable” to improve readability, adds “self-certification” to reflect the new rules implementing HB 2815, adds “(including risk-based corrective action)” as a clarification to reflect the addition of previously-adopted risk based concepts elsewhere in this chapter, and adds a cross-reference to the underground storage tank (UST) financial assurance requirements in Chapter 37, new Subchapter I, Financial Assurance for Petroleum Underground Storage Tank Systems. The adopted amendment to §334.1(b)(3) deletes “applicable” to provide clarification and deletes “shall” to improve readability. The adopted amendment to §334.1(b)(4) replaces “shall be” with “are” to improve readability. The adopted amendment to

§334.1(c)(1) replaces “shall be” with “is” to improve readability. The adopted amendment to §334.1(c)(1)(A) and (B) reflects the movement of the definitions from Subchapter F, Aboveground Storage Tanks, to §334.2, Definitions. The term “for ASTs” was deleted in §334.1(c)(1)(A) to reflect the movement of the definition from Subchapter F to §334.2. The adopted amendment to §334.1(c)(1)(C) replaces “in” with “under” to improve readability, and deletes “Statutory” and add “Aboveground Storage Tanks (ASTs)” to reflect the new name of the referenced section. The adopted amendment to §334.1(c)(1)(D) replaces “in” with “under” to improve readability and deletes “Commission” and adds “Aboveground Storage Tanks” to reflect the new name of the referenced section. The adopted amendment to §334.1(c)(2) deletes the word “applicable” to provide clarification; deletes the word “shall” to improve readability and the the term “(including risk-based corrective action)” has been inserted to provide clarification and to reflect the addition of previously adopted risk based concepts elsewhere in this chapter. The adopted amendment to §334.1(c)(4) replaces “shall be” with “are” to improve readability. The adopted amendments to §334.1(c)(6) deletes the word “statutory” to be consistent with the new name of the referenced section, deletes the §334.123 title because it has already been given once in this section, and replaces “shall be” with “is” to improve readability. The adopted amendment to §334.1(d)(1) and (2) reorganizes them as to applicability of the sections in this subchapter and to improve readability.

Adopted §334.2, Definitions. The definitions in this section are renumbered to reflect the addition and deletion of various definitions in this section. In the first sentence of the section, the word “shall” has been deleted to improve readability. The definition “Abandonment-in-place” has been amended to define the acronym for underground storage tank the first time it is used and to add a cross-reference

for clarification. The definition "Abatement" was moved to this subchapter from Subchapter H, Petroleum Storage Tank Reimbursement Program, since it is used in more than one subchapter, and the term is clarified. The definition "Aboveground storage tank (AST)" has been moved to this subchapter from Subchapter F since it is used in more than one subchapter. The old definition "Accidental release" has been deleted from this subchapter and moved to the definitions section of Chapter 37, new Subchapter I, since the definition is used in that chapter. The definition "ACT" has been amended by adding language for clarification and to improve readability. The definition "Allowable cost" has been amended by removing the term "Interim" in the cross-reference to Subchapter H, §334.308 to reflect the new title of that section. The definition "ANSI" has been amended by adding descriptive language to provide clarification and improve readability. The definition "API" has been amended by adding descriptive language to provide clarification and improve readability. The term "Appropriate district office" and its definition have been amended by changing "district" to "regional" in two places to reflect current agency terminology; by changing "commission's" to "agency's" and "commission" to "agency;" and by adding "or AST system" to provide clarification. The definition "ASTM" has been amended by adding descriptive language to provide clarification and improve readability. The definition "Backfill" has been moved to this subchapter from Subchapter H because it is used in more than one subchapter. The old definition "Bodily Injury" has been deleted from this subchapter and moved to the definitions section of Chapter 37, new Subchapter I, since the definition is used in that chapter. The old definition "Bulk storage tank" has been deleted as an unnecessary term and to avoid confusion with the "bulk facility" term in Subchapter F. The definition "Closure letter" has been amended to change "commission" to "agency" in three places and to add clarification by deleting specific reference to owners or operators to acknowledge that landowner responsible parties can also

obtain a closure letter upon completion of cleanup. The definition "Commingled" has been moved to this subchapter from Subchapter H and has been clarified. The old definition "Commission" has been deleted because it is defined in Chapter 3. The definition "Common carrier" has been added to this section to define the term used in rules necessary to implement the requirements of HB 2815, and the term is used in rule clarification language applicable to continuing UST and AST delivery prohibitions. Since proposal, the phrase "and UST compliance self-certification only" was deleted to insure applicability to Subchapter F. The definition "Composite tank" has been amended by replacing "an external" with "a" and adding "to the external surface of the outer tank wall" to provide clarification and to improve readability. The old definition "Controlling interest" has been deleted from this subchapter and moved to Chapter 37, new Subchapter I. The definition "Corrective action" has been moved to this subchapter from Subchapter H because it is used in more than one subchapter, and it has been clarified by adding the word "monitoring" in the list of activities. The definition "Corrective action plan (or remedial action plan)" has been moved to this subchapter from Subchapter H because it is used in more than one subchapter, and has been clarified by adding the word "required" before the word "protection." Under the definition, "Corrosion specialist," subparagraphs (A) and (B) have been amended to reflect the current names of the National Association of Corrosion Engineers and the Texas State Board of Registration for Professional Engineers. Under the definition for "Corrosion technician," subparagraphs (A) and (C) have been amended to reflect the current name of the National Association of Corrosion Engineers. Subparagraph (B) has been amended by inserting the word "or" at its end for readability, and subparagraph (D) has been deleted to ensure appropriate certification by NACE International or direct supervision by a corrosion specialist. Also, a typographical error was made in the proposal of this definition--the word "testor" was misspelled as "test or." That error has

been corrected at adoption. The old definition "Cost effective work" has been deleted as an outdated auditing term. The definition "Emergency generator" has been amended by removing "shall" for readability. The definition "EPA" has been deleted because it is defined in Chapter 3, which contains agency general definitions. The definition "Executive director" has been deleted. The definition "Existing UST system" has been amended by changing "has" to "had" in four places, "can" to "could," "require" to "required," and "is" to "was" to improve readability. The definition "Facility" has been amended by adding the term "or one or more AST systems" (since the definition has been deleted from Subchapter F), and unnecessary and confusing language which could have been read to include all contiguous land (even that owned by others) has been deleted. The definition "Facility owner" has been deleted as an unnecessary term. The definition "Field constructed tank" has been amended by adding the phrase "not factory assembled, and which is," by adding the word "same," and by replacing "to be" with "subsequently" to provide clarification and improve readability. The definition "Financial reporting year" has been deleted from this subchapter and moved to Chapter 37, new Subchapter I where the term is now used. The definition "Flow-through process tank" has been amended by deleting the phrase "not including" and replacing it with "excluding" to improve readability. The definition "Free product" has been amended by adding "(or non-aqueous phase liquid)" for clarification and cross-reference purposes. The definition "Hydraulic fluid" has been moved to this subchapter from Subchapter H since the term is used in more that one subchapter. The definition "Hydraulic lift tank" has been amended by changing "and" to "or" to provide clarification. The definition "Jacketed tank" has been added to this section to better address existing and new UST technology. The definition "Legal defense cost" has been deleted from this subchapter and moved to Chapter 37, new Subchapter I where the term is now used. The definition "Lender" has been amended

by adding the term "state or federal" to better define "savings bank," and by adding the term "a credit union" to the list of lenders to provide clarification. The definition "Leaking petroleum storage tank (LPST) site" has been moved to this subchapter from Subchapter K, Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil, since the term is used in more than one subchapter, and amended by changing the term "executive director" to "agency." The definition "Monitoring well" has been amended by changing "shall" to "does" to improve clarity and readability. The definition "Motor fuel" has been amended by providing clarification and improved readability by changing "transportation" to "motor," by adding "aircraft" to the list of vehicles and vessels since aviation gasoline is one of the originally listed fuels in the definition, by changing "leaded or unleaded" to "motor," and by changing "and any grades of" to "or." The definition "NACE" has been amended by providing changes which reflect the current as well as the former name of the organization, and by providing descriptive language about what the association is, for clarification. The definition "Necessary cost" has been deleted as an outdated auditing term (in the preamble text when this definition was proposed for deletion, the word "necessary" was inadvertently deleted from the term "necessary cost"). The definition "Necessary work/technically necessary work" has been deleted as an outdated auditing term. The definition "New UST system" has been amended by deleting the word "has" to improve readability. The definition "NFPA" has been amended by adding descriptive language about what the association is, for clarification. The definition "Non-aqueous phase liquid (NAPL)" has been added to this section, and a cross-reference to the definition "Free product (or non-aqueous phase liquid)" in this section has been added, to provide clarification and to recognize the interchangeability of the terms. The definition "Occurrence" has been amended by replacing "accident" with "incident" for clarification, by adding "or AST" and "or tank system" to clarify the

meaning and effect of the term, and by removing unnecessary language applicable to financial responsibility. The definition “Operator” has been amended by adding language to specify persons who are in “day-to-day” control of “and” have responsibility for daily operation to reflect the requirements of HB 2815 and by adding language to include applicability to AST systems to compensate for the deletion of this definition from Subchapter F. The definition “Owner” has been amended by adding language to include applicability to ASTs to compensate for the deletion of this definition from Subchapter F, and by adding the phrase “Except as otherwise provided by the Texas Water Code, §§26.3514 - 26.3516, owner…" to incorporate HB 2109 and the other listed statutory exceptions. The definition “PEI” has been amended by adding descriptive language about what the association is, to provide clarification. The definition “Petroleum product” has been moved from Subchapter F to this section because it is used in more than one subchapter, and is modified by deleting the word “necessarily” from the phrase “not necessarily limited” to improve readability. The definition “Petroleum substance” has been amended by movement of a cross-reference phrase from the end of the definition to the middle to improve clarity, by changing “shall be” to “is” to improve readability, and by deleting subparagraph (N) from the list of substances/mixtures to make the rest of the list all-inclusive. The definition “Petroleum UST system” has been amended by changing the word “shall” to “must” to improve readability. The definition “Piping” has been amended by adding “in an UST system” to improve clarity. The definition “Professional engineer” has been amended by updating the name of the Texas Board of Professional Engineers and to comply with the language of the most recent version of the Engineering Practice Act. The definition “Property Damage” has been deleted from this subchapter and moved to Chapter 37, new Subchapter I, because it concerns UST financial assurance. The definition “Provider of financial assurance” has been deleted from this subchapter and moved to

Chapter 37, new Subchapter I, because it concerns financial assurance. The definition "Reasonable cost" has been deleted from this subchapter as an outdated auditing term. The definition "Regulated substance" has been amended by changing the term "shall be" to "is" to improve readability. The definition "Reimbursable cost" has been deleted because the concept is addressed by rule in Subchapters H and M of this chapter. The definition "Release" has been amended by adding language to include applicability to ASTs to compensate for the deletion of this definition from Subchapter F. The definition "Release detection" has been amended by adding "is occurring or" to provide clarity. The definition "Retail service station" has been moved to this subchapter from Subchapter F, because it is used in more than one subchapter. The old definition "SARA" has been deleted from this subchapter because it is defined in Chapter 3. The definition "Secondary containment" has been amended by adding the terms "jacket," "jackets," "containment boots," and "sumps," by moving "and double-wall tank and/or piping systems" from the end to the beginning of the list of systems to improve clarity and readability, and by changing a comma to a colon for better punctuation. The definition "STI" has been amended by adding descriptive language about what the organization is, to provide clarification and improve readability. The old definition "Substantial business relationship" has been deleted and moved to Chapter 37, new Subchapter I, because the definition concerns financial assurance. The definition "Sump" has been amended by changing "temporarily" to "and temporarily store" to provide clarification and improve readability. The old definition "Tangible net worth" has been deleted and moved to Chapter 37, new Subchapter I, because the definition concerns financial assurance. When this rule package was proposed, an inadvertent conflict was written into the proposed rules whereby the definition for the term "taxing unit" that the agency created and proposed in §334.2(108) of this section conflicted with a statement in proposed §334.18(a) of this chapter, which stated that the term would be

as defined in the Property Tax Code. To resolve this conflict, the agency has deleted the definition in this section so that the definition cross-referenced in §334.18 controls. The definition in the Property Tax Code offers the liability protection to more parties than the definition which was deleted from this section. The definition "Temporary removal from service" has been amended by changing "kept" to "taken" and deleting the phrase "required to be" to provide clarification and improve readability. The definition "Tightness test (or tightness testing)" has been amended by deleting "the ability of," "contain the stored substance, to prevent any," and ", and to prevent the intrusion of groundwater into a tank or piping system;" and by adding "determine whether the system(s) is capable of preventing the" to simplify and clarify the definition and improve readability. The old definition "TNRCC" has been deleted as unnecessary. The definition "TWC" has been deleted as an outdated term because the Texas Water Commission was merged into the Texas Natural Resource Conservation Commission in 1993. The definition "UL" has been amended by adding descriptive language about what the organization is, to provide clarification and improve readability. The definition "Underground storage tank system" has been amended by specifying "underground" with reference to piping and ancillary equipment to improve clarity.

Adopted §334.3, Statutory Exemptions. The title of the section has been amended to delete the term "Statutory" as unnecessary and to add "for Underground Storage Tanks (USTs) and UST Systems" after the word "Exemptions" to provide specificity and clarification. Section 334.3(a) has been amended to remove an unnecessary statutory reference. Section 334.3(a)(8) has been amended to add the descriptive term "Title" to the reference to federal regulations. Section 334.3(b) has been amended

to delete the word “shall” to improve readability. Section 334.3(c) has been added to make explicit that the agency may ask a tank owner and tank operator to verify claimed exempt status.

Adopted §334.4, Commission Exclusions. The title of the section has been amended to delete the term “Commission” as unnecessary and to add the phrase “for Underground Storage Tanks (USTs) and UST Systems” after the word “Exclusions” to provide specificity and clarification. Section 334.4(a) has been amended to delete “Statutory” and add “for Underground Storage Tanks (USTs) and UST Systems” to reflect the new title of the referenced section, and to remove “by commission directive” as unnecessary language. Section 334.4(a)(4) has been amended to delete “however” and replace “shall” with “must” to improve readability. Section 334.4(a)(5) has been amended to replace “contain” with “during their entire operational life have exclusively contained only” to more specifically address historical as well as present use of the UST system and to address the possibility of previous release of regulated substance. Section 334.4(b) has been amended to reflect the new location of, and to provide a reference to, PST financial assurance rules; to properly replace “chapter” with “title” in that reference; and to add “for Underground Storage Tanks (USTs) and UST Systems” to reflect the new title of §334.8. Section 334.4(c) has been amended to remove the word “shall” to improve readability. Section 334.4(d) has been added to make explicit that the agency may ask a tank owner and tank operator to verify claimed excluded status.

Adopted §334.5, General Prohibitions. The title of the section has been amended to add “for Underground Storage Tanks (USTs) and UST Systems” to provide clarification. Section 334.5(a) has been amended by adding the term “prohibitions” and replacing “shall” with “may” to provide

clarification and improve readability. Section 334.5(a)(1) has been amended to replace “shall” with “must” to improve readability. Section 334.5(a)(2) has been amended to replace “shall” with “must” in two places and to replace “shall prevent” with “prevents” to improve readability. Also in this subsection, the phrase “or threatened release” has been deleted. Section 334.5(a)(3) has been amended to replace “shall” with “must” to improve readability. Section 334.5(b) has been amended by adding the term “prohibitions” to provide clarification. Since proposal, §334.5(b)(1) - (5) have been deleted and replaced with new similar language to reflect requirements imposed by HB 2815. Previous PST rules for many years contained a delivery prohibition tied to tank registration. HB 2815 charges the agency to adopt rules creating a delivery prohibition tied to a new compliance self-certification requirement for tank owners and operators. This subsection was reorganized and amended at adoption to logistically incorporate the new statutorily required delivery prohibition with the ongoing one, taking into account agency computer limitations that came to light subsequent to rule proposal. The agency has created a new form that will serve for both tank registration and compliance self-certification purposes. Proper completion of the form will lead to TNRCC issuance of a delivery certificate. That certificate will act as documentation that the owner or operator has properly registered his USTs, and has made the proper compliance self-certification for those USTs. Prior to delivery, a common carrier is charged with seeing a valid, current delivery certificate (or temporary delivery authorization, for new or replacement UST systems). The adopted rules give a phase-in schedule for the compliance certification delivery prohibition with regard to USTs that store regulated substances that are not motor fuels, and describe how the tank registration delivery prohibition will work during that phase-in period. Section 334.5(c) and (d) have been deleted as redundant to §334.6 and §334.7, respectively, of this subchapter.

Adopted §334.6, Construction Notification. The title of the section has been amended to add "for Underground Storage Tanks (USTs) and UST Systems" to provide clarification. Section 334.6(a)(1) has been amended to change "shall" to "must" to improve readability. Section 334.6(a)(2) has been amended to change the phrase "the effective date of this subchapter" to "September 29, 1989" to maintain the meaning of the rule, and to change "shall" to "must" to improve readability. Section 334.6(a)(3) has been amended to change "shall" to "must" to improve readability, to change "executive director" to "agency," and to correct the chapter number of the referenced Edwards Aquifer rule from "313" to "213." Section 334.6(a)(4) and (5) have been amended to change "shall" to "must" to improve readability. Section 334.6(a)(6) has been amended to change "commission's" to "agency's" in two places and to change "a commission" to "an agency," to change "district" to "regional" to reflect current agency terminology, and to change "shall" to "must" to improve readability. Section 334.6(a)(7) has been amended to change "shall" to "must" and "shall be" to "are" to improve readability, and to modify a phrase regarding contractors and consultants to include them as possible examples of an authorized agent of an owner or operator. Section 334.6(b)(1)(A) has been amended to change "shall include" to "includes" to provide clarification and to improve readability. Section 334.6(b)(1)(B) has been amended to change "shall" to "are," and delete "be," to improve readability. Section 334.6(b)(2) has been amended by deleting "person" and replacing it with "owner or operator" to provide clarification that the liability under this section is joint and several between owners and operators, to change "shall" to "must" to improve readability, and to change "executive director" to "agency." Section 334.6(b)(2)(A) has been amended to change "commission's" to "agency's." Section 334.6(b)(2)(B) has been amended by changing "executive director" to "agency," and by changing "must" to "shall" and "shall" to "is" to improve readability. Section 334.6(b)(2)(C) has been

amended to change “shall” to “or operator must” to provide clarification pursuant to the change in language addressed in §334.6(b)(2), to change “commission’s” to “agency’s,” to change “district” to “regional” to reflect current agency terminology, and to change “shall” to “must” to improve readability. Section 334.6(b)(3) has been amended by adding “or operator” in two places to reflect joint and several liability of owners and operators under this section, to change “shall” to “must” to improve readability, and to change “district” to “regional” to reflect current agency terminology. Section 334.6(b)(3)(A) has been amended by adding “or operator” to reflect the joint and several liability of owners and operators under this section, and to change “shall” to “must” to improve readability. Section 334.6(b)(3)(B) has been amended by adding “or operator” to reflect the joint and several liability of owners and operators under this section, to change “commission’s” to “agency’s,” and to change “district” to “regional” to reflect current agency terminology. Section 334.6(b)(4) has been amended to change “shall be” to “is,” “shall” to “must,” “shall have” to “has” and “shall” to “will” to improve readability; to add “or operator” in two places to reflect the joint and several liability of owners and operators under this section; to change “commission’s ” to “agency’s;” and to change “district” to “regional,” “district manager” to “regional director,” and “manager’s” to “director’s” to reflect current agency terminology. Section 334.6(b)(4)(A) has been amended by adding “or operator” to reflect the joint and several liability of owners and operators under this section. Section 334.6(b)(4)(B) has been amended to change “commission” to “agency.” Section 334.6(b)(5) has been amended by changing “shall be” to “is,” “shall” to “will,” and “shall” to “must” to improve readability; and by adding “or operator” to reflect the joint and several liability of owners and operators under this section. Section 334.6(b)(6)(A) has been amended by changing “shall” to “must” to improve readability and by changing “commission’s” to “agency’s.” Section 334.6(b)(6)(B) has been amended

by changing “shall” to “must” in three places, by deleting the word “as” to improve readability, by deleting “as possible” to eliminate inappropriate ambiguity, and by adding “, the operator” and replacing “owner’s designated representative” with “authorized representative of the owner or operator” to reflect the joint and several liability of owners and operators under this section and to provide more clarification with respect to authorized agents of owners and operators. Section 334.6(c)(1) has been amended by adding “or operator” to reflect the joint and several liability of owners and operators under this section. Section 334.6(c)(1)(A) has been amended by adding the term “or operator” as a clarification and to be consist with its addition to §334.6(c)(1); by changing “shall” to “must” in two places to improve readability; by changing “commission” to “agency” and “commission’s” to “agency’s;” and by changing “district” to “regional” to reflect current agency terminology. Section 334.6(c)(1)(B) has been amended by adding the term “or operator” in four places as a clarification to be consistent with its addition to section §334.6(c)(1); by changing “district manager” to “regional director” and “manager’s” to “regional director’s” to reflect current agency terminology; by changing “shall” to “must” to improve readability; and by changing “commission” to “agency” in two places. Section 334.6(c)(2)(A) has been amended by adding “or operator” to reflect the joint and several liability of owners and operators under this section. Section 334.6(c)(2)(D) has been amended by adding a cross-reference to §334.2 for the definition of the term “Emergency generator.” Section 334.6(c)(2)(E) has been amended by changing “executive director” to “agency.”

Adopted §334.7, Registration. The title of the section has been amended to add the term “for Underground Storage Tanks (USTs) and UST Systems” to provide clarification. Section 334.7(a)(1) has been amended by changing “shall” to “must” to improve readability; by changing “commission” to

"agency" in two places; and by adding a phrase which includes the cross-reference "in accordance with subsection (e) of this section" to provide clarification. Section 334.7(a)(1)(A) has been amended to delete "Statutory" and add "for Underground Storage Tanks (USTs) and UST Systems" to reflect the new title of the section referenced in this subparagraph. Section 334.7(a)(1)(B) has been amended to delete "Commission" and add "for Underground Storage Tanks (USTs) and UST Systems" to reflect the new title of the section referenced in this subparagraph. Section 334.7(a)(1)(C) has been amended by changing "commission" to "agency;" and by changing "has submitted" to "or operator must submit" to reflect that owners and operators are now jointly and severally liable for all requirements in the section. This will mirror the liability scheme of the remainder of Chapter 334 (except for tank fees). Subsequent to proposal in subsection (a)(1)(D), the phrase "permanently removed from service" has been replaced with the phrase "permanently removed from usage" to avoid possible confusion with the former phrase as it is used in §334.55 of this title. Also in this subsection, the phrase "and which" has been replaced with the word "by" to clarify the requirement. Section 334.7(a)(1)(E)(i) has been amended to add "and operator" to reflect the change to joint and several liability for this section. Section 334.7(a)(2) has been amended by adding "and operator" to reflect the change to joint and several liability for this section; by replacing "shall be" with "are" to improve readability; by adding "or operator" to reflect the change to joint and several liability for this section; and by changing "shall be held" to "and operator remain" to reflect the change to joint and several liability for this section and to improve readability. Section 334.7(a)(3) has been amended by changing "shall" to "are" and deleting "be" to improve readability; by adding "or operator" to reflect the change to joint and several liability for this section; by adding "or timely" to provide clarification; and by replacing "shall" with "does" to improve readability. Although the commission has issued registration certificates for many

years when proper tank registration information is received on the designated agency form, in the past this rule section did not memorialize that fact. Due to changes made at adoption in §334.5(b) (see full discussion in this preamble in §334.5(b)), and to address comments made by TPCA in §334.5(b) (see "Specific Comments" in this preamble for rationale), it has become important to clearly distinguish between the registration certificate, which is issued pursuant to agency receipt of proper tank registration information, and the new delivery certificate, which will be issued pursuant to agency receipt of proper compliance self-certification information. The new rule provision in §334.7(a)(4) accomplishes this. Section 334.7(b) has been amended to change "shall" to "must" to improve readability; and to change "commission" to "agency" in two places. Subsection (b) has been amended by adding the sentence "Upon the effective date of this subsection, the obligation becomes joint and several with the tank operator as well" to reflect the change to joint and several liability for this section. Section 334.7(c) has been amended to change "executive director" to "agency" and "commission" to "agency." Subsection (c) has also been amended by adding the sentence "Upon the effective date of this subsection, the obligation becomes joint and several with the tank operator as well" to reflect the change to joint and several liability for this section. Section 334.7(d)(1) has been amended by adding the term "or operator" to reflect the change to joint and several liability for this section; by changing "shall" to "must" in two places and "shall" to "are" in one place to improve readability; by changing "executive director" to "agency;" and by deleting "necessarily be" to provide clarity. Section 334.7(d)(1)(A) has been amended by changing "ownership" to "owner or operator" for clarification and to reflect the change to joint and several liability for this section; by adding "authorized representative" for clarification; and by adding ", provided that:" at the end of the subparagraph to indicate applicable allowances and restrictions follow. Section 334.7(d)(1)(B) has been amended to replace "each" with

"any" to improve readability; to delete "or" to improve readability; and to add two items to the list of examples of operational status, those being "change-in-service to provide for the storage of a substance other than a regulated substance, or change to exempt or excluded status" to better clarify options available under applicable rule. Section 334.7(d)(1)(C) has been amended to delete the reference to "change-in-service to provide for the storage of a substance other than a regulated substance" which has been moved to the list of examples in the §334.7(d)(1)(B) to provide clarification. Section 334.7(d)(1)(D) has been amended by adding "/or" to the word "and" to provide clarification and specify an either/or situation. Section 334.7(d)(1)(J) has been amended by replacing "responsibility" with "assurance" to provide clarification; and by adding a reference to reflect the new location of PST financial assurance rules, specifically, Chapter 37, new Subchapter I. Section 334.7(d)(2) has been amended by changing "shall" to "must" in two places to improve readability; by changing "commission registration" to "agency" to be consistent with other rule changes (see preamble comments for changes to §334.5 of this subchapter), which make "commission registration form" outdated terminology; by changing the term "commission's" to "agency's;" and by deleting "registration" as unnecessary in the second sentence. Section 334.7(d)(3) has been amended by changing "shall" to "must" to improve readability and by changing "executive director" to "agency." Section 334.7(d)(4) has been added as a provision to facilitate the issuance of delivery certificates, as required by HB 2815 and as detailed in §334.8(c) of this subchapter. House Bill 2815 mandates that the agency create a compliance self-certification program that operates on a per-tank basis (as opposed to per-facility). A common carrier must be able to look at the delivery certificate and determine which tanks are covered at a given facility. For the agency to be able to issue delivery certificates which contain that level of detail, owners or operators must, at least once, fill out a new UST registration and self-certification form with

sufficient information to identify (under a standardized numbering system) each tank at that facility. The agency will utilize the information from this one-time submittal to generate delivery certificates which are tank specific (as required under HB 2815). Also, in subsection (d)(4) in the first parenthetical, the phrase "(as described…" has been changed to "(which is described…" to clarify the requirement. In that same subsection, a typographical error has been corrected--a second close-parenthetical mark has been added at the end of the first parenthetical phrase. Subsection (e) has been amended to change its catch line to reflect rule changes which make the term "registration form" an outdated term, as the agency has created a new form that will serve for both tank registration and compliance self-certification purposes. Section 334.7(e)(1) has been amended to change "tank" in two places and "tank owned" in one place to "UST" to provide clarification; to add "or operator" after "owner" to reflect the change to joint and several liability for this section; to change "shall" to "must" to improve readability; to change "commission's" to "agency's;" to delete "registration" as an outdated term; and to add a sentence specifying that UST registration information must be provided on the appropriate agency form and providing a reference to the adopted new §334.7(e)(6). Section 334.7(e)(2) has been amended by changing "tank" to "UST" to provide clarification; by adding "portion of the" to provide clarification which reflects that the agency has created a new form that will serve for both tank registration and compliance self-certification purposes; by changing "shall" to "must" in three places to improve readability; by deleting "as" and "as possible" to eliminate inappropriate ambiguity; by adding "or the operator" to reflect the joint and several liability of owners and operators under this section; by changing "owner's designated" to "authorized," by adding "of the owner or operator" to provide more clarification with respect to authorized agents of owners and operators; and by changing "executive director" to "agency." Section 334.7(e)(3) has been amended

by changing “tank” to “UST” in two places and “tanks” to “USTs” in one place to provide clarification; by adding “or operators” to reflect the joint and several liability of owners and operators under this section; by changing “shall” to “must” to improve readability; and by deleting “registration” as an outdated term. Section 334.7(e)(4) has been amended by changing “tank” to “UST” and “tanks” to “or operate USTs” to provide clarification; by adding “or operators” and “or operate USTs” to reflect the joint and several liability of owners and operators under this section; by changing “shall” to “must” to improve readability; by deleting the term “registration” as an outdated term; and by adding “where regulated USTs are located” to provide clarification. Section 334.7(e)(5) has been amended by changing “shall” to must to improve readability; by changing “should” to “must” to eliminate inappropriate ambiguity; and by deleting “registration” as an outdated term. Section 334.7(e)(6) has been added to reflect that tank registration requirements in this section, as well as the compliance self-certification requirements proposed in §334.8(c) of this subchapter, will be provided on a new combined form to minimize the paperwork burdens on owners and operators, and on the agency, so that delivery certificates are issued as quickly as possible. Section 334.7(e)(7) has been added to remind owners and operators of the need to refer to petroleum UST system financial assurance requirements, which are contained in Chapter 37, new Subchapter I. Section 334.7(f) has been amended by changing “tank” to “UST” to provide clarification; by changing “commission” to “agency” and “executive director” to “agency;” by adding the terms “and/or operator” and “or operator” to reflect the joint and several liability of owners and operators under this section; and by changing “shall” to “must” to improve readability. Section 334.7(g) has been deleted as redundant as this requirement is addressed in Subchapter H of this chapter.

Adopted §334.8, Certification. The title of the section has been amended to add "for Underground Storage Tanks (USTs) and UST Systems" to provide clarification. Section 334.8(a) has been amended to delete "installation" and replace it with "UST construction activity" to provide clarification. Section 334.8(a)(1) (including subparagraphs (A) - (C)) has been deleted as language which is no longer necessary given new rules proposed in §334.8(c). Section 334.8(a)(2) has been amended by renumbering as paragraph (1); by adding "or on-site supervisor" as a clarifying change consistent with the terminology used in Subchapter I; by deletion of the phrase "After the effective date of this subchapter" and replacement with the actual calendar date "after September 29, 1989" to which the original language referred, for clarification and to preserve the original meaning of the paragraph; by changing "shall" to "must" to improve readability; and by deleting the sentence "The tank owner or operator shall be responsible for assuring that the installer has provided the certification required in this paragraph." to reflect that this rule requirement is only speaking to the installer. Section 334.8(a)(3) has been amended by deleting the word "replacement" and replacing it with the word "construction" to provide clarification; by changing the reference to "paragraphs (1) and (2)" to "paragraph (1)" to reflect the deletion of the original paragraph (1) and the renumbering of the original paragraph (2) to paragraph (1); by changing "shall" to "must" in two places to improve readability; by changing "commission's" to "agency's" and "commission" to "agency;" by changing "tank" to "UST" to provide clarification; by adding a phrase to clarify which agency form should be used and to provide a cross-reference to §334.7(e), and by deleting "(relating to Registration)" in the reference to §334.7 because this title has already been given once in this section. Section 334.8(b) has been amended by deleting the word "responsibility" and replacing it with "assurance," and by adding "for USTs storing petroleum substance," to provide clarification and to conform with terminology used in Chapter 37,

new Subchapter I, and by adding "Owners and operators of UST systems regulated under this section must comply with the requirements of subsection (c) of this section." to provide clarification and to provide a cross-reference to subsection §334.8(c) of this section, which is the location for compliance certification rules (which have a financial assurance certification component). Section 334.8(b)(1) has been amended by deleting the original language to reflect the repeal of Subchapter E, Financial Responsibility, and the creation of Chapter 37, new Subchapter I. Section 334.8(b)(2) language, including §334.8(A) and (B), has been amended by deleting the original language in its entirety to reflect the deletion of Subchapter E and the creation of Chapter 37, new Subchapter I. New §334.8(c) has been titled "UST compliance self-certification requirements" and has been added to reflect requirements imposed by HB 2815, which mandated that the commission promulgate rules which establish a compliance self-certification scheme for the PST program. The new statutory language requires that owners and operators of USTs annually self-certify that each UST is in compliance with the commission "administrative requirements and technical standards." Upon making that certification for tanks at a facility, TNRCC will issue a delivery certificate covering those tanks at that location. The new legislation requires that common carriers not deliver regulated substances into USTs unless they first observe a valid, current certificate (see adopted language in §334.5). All of §334.8(c) is new language to fulfill these legislative mandates. The subparagraphs deal with the applicability of the compliance self-certification program, outline the phase-in schedule for these requirements as to non-motor fuel USTs, detail how to make the self-certification (what forms to use, due dates, etc.) and who must make it, outline how and when delivery certificates will be issued to UST owners and operators, state which agency regulations are "administrative requirements and technical standards" in the new program, give requirements for owners/operators to make delivery certificates available to common

carriers, describe how delivery certificate renewal works, detail how tanks should be numbered so that the commission can meet the requirements of HB 2815 that the new program be tank-specific, outline how the agency will accommodate new and replacement tank installations, and give the procedures for delivery certificate revocation. The commission believes that these rules will create reasonable procedures that, when properly followed, will not interfere with the ability of owners and operators of compliant USTs to receive deliveries of regulated substances. It is not the goal of the commission to use the compliance self-certification program to initiate more formal enforcement actions on minor violations of the rules concerning "administrative requirements and technical standards." Agency enforcement guidelines, which are available to the public, will be followed in these matters and under these guidelines the agency uses its enforcement discretion to work with the violator to address the minor violation (as opposed to automatic referral for formal enforcement). The agency believes that a positive benefit of HB 2815 will be that it acts as an incentive for owners and operators to bring their facilities into compliance prior to any agency inspection, such that an enforcement action will be unnecessary. New §334.8(c)(1) refers to "Applicability." Nothing in HB 2815 acts to invalidate standing the commission exemptions and exclusions, so they are cross-referenced here. Section 334.8(c)(1)(A)(iii) reflects the statutory provision which limits applicability of the self-certification requirement to situations where the regulated substance is delivered by a "common carrier." New §334.8(c)(2) specifies a phase-in schedule for all regulated substance UST systems except those storing motor fuel. HB 2815, by its own terms, is applicable to regulated USTs containing "regulated substances" (a term that is defined in TWC Chapter 26, Subchapter I). However, the bill's sponsor has stated in writing that the legislative intent was to have the agency focus on USTs storing "motor fuels" (a term that is defined in this subchapter), which is a large subset of "regulated substances." With that

in mind, the commission has decided to phase-in the self-certification requirements for USTs that do not contain motor fuels. This will allow the agency to focus its limited resources as intended by the legislature, while still complying with the new statutory language. These rules outline how that phase-in will work. Section 334.8(c)(2)(B) highlights that owners and operators of tanks in the phase-in group must still do a very limited tank registration update, one time, as described in new §334.7(d)(4), which will implement a uniform tank labeling system across the State of Texas for use in the commission PST database. Once this tank labeling information has been collected, the commission will be able to issue delivery certificates for tanks in the phase-in group, when the time comes, without any delays that might interrupt product deliveries to those tanks. There is also a great general benefit to the agency when all tanks are labeled consistently and registered under a standard labeling scheme (which is then reflected in the agency database, which is used for a variety of purposes by central office and regional staff). Agency efficiency is improved, which allows more work to be done at current staffing levels. Section 334.8(c)(3) specifies conditions and limitations. These adopted rules contain general statements concerning the new compliance self-certification program. Section 334.8(c)(3)(A) simply underscores that the new rules do not relieve persons from other regulatory requirements elsewhere in agency rules. Section 334.8(c)(3)(B) states that a proper and timely submittal which shows a self-certification of compliance for a tank will result in agency issuance of a delivery certificate for that tank. Section 334.8(c)(3)(C) makes the important legal point that agency acceptance of a compliance self-certification from a UST owner or operator does not constitute any agreement by the agency that those rules in the certification have in fact been complied with--the agency maintains its traditional duty to investigate possible violations and to proceed with enforcement under the TWC and agency enforcement regulations, as allowed by law. Section 334.8(c)(3)(D) specifically states which agency rules are

considered to be included in the statutory phrase "administrative requirements and technical standards." Since proposal, language was added here to specify what certification must be made as to recordkeeping and reporting requirements included in those "technical standards". Section 334.8(c)(4) outlines the mechanics of making the compliance self-certification. To reduce paperwork burdens on owners/operators and agency staff, a new form has been developed that combines the old tank registration form (used for many years under regulations in §334.7) and new language concerning compliance self-certification. This new form is called the "UST registration and self-certification form." The adopted rules require that the form be completely and accurately filled out, and submitted in a timely manner. Owners/operators may use one form to cover each of their facilities. The form must be received by the agency within 60 days of the effective date of these rules, except that provisions are made for tanks installed after that date. The rule also states that the compliance self-certification requirements create a joint and several liability on both the tank owner and the operator to reflect the legal effect of HB 2815. To insure that tanks do not exceed a year without being certified, and to facilitate efficient use of limited staff resources, a new certification must be submitted within 30 days of a change in tank ownership at a facility. Section 334.8(c)(5) addresses requirements related to the UST delivery certificate. These rules describe the delivery certificate that the agency will issue upon receipt of a properly completed, and timely submitted, UST registration and self-certification form. Section 334.8(c)(5)(A)(i) and (ii) state the HB 2815 requirement that owners/operators must make their delivery certificates available to common carriers prior to accepting deliveries into the tanks, and that delivery certificates must be made available to agency inspectors upon request. Section 334.8(c)(5)(A)(iii) has been adopted so that inspectors from the commission and the Texas Department of Agriculture (TDA) can share information regarding compliance with state regulations, including the

presence of a delivery certificate at an investigated facility. The posting requirement avoids the situation of TDA inspectors asking an owner/operator to see a TNRCC certificate, which some might argue that they have no legal authority to do--there is no potential legal problem in a TDA inspector noting whether a posted certificate is present. Section 334.8(c)(5)(B) details how delivery certificate renewal will be handled by the agency. Each certificate will be tank specific, and will include on its face an expiration date. For the initial issuance of certificates under this new program, a schedule has been devised based on the TNRCC owner identification number (which each owner of a regulated UST in Texas already has, if he has registered his tanks as required by law). Since proposal, the mechanics of the initial renewal date have been made less stringent. Section 334.8(c)(5)(C) details a tank labeling system that will standardize how regulated USTs are identified in Texas. Aside from other benefits, this system is necessary for the commission to be able to make delivery certificates tank specific (HB 2815 creates a "per tank," not "per facility" scheme). A common carrier must be able to tell, by matching the delivery certificate to the tank labels at the facility itself, which tanks are covered by that certificate. Under the new legislation, that common carrier may only deliver to those tanks covered by the certificate (also, see preamble comments for §334.7(d)(4) and §334.8(c)(2)). Section 334.8(c)(5)(D) details how the agency will provide temporary delivery authorization for new or replacement UST installations. When the required construction notification form is sent to the agency stating the intent to make such an installation, a response letter will go out that will contain language that will function as "temporary delivery authorization" for the tank(s) in question. The owner/operator will then show this letter to the common carrier, who will treat it like a regular delivery certificate except that it has a limited lifetime of 90 days from the date the first delivery of regulated substance is made into the tank. The rules require the owner/operator to show the common carrier documentation

of when that first delivery took place, so that he may calculate the validity period for the temporary delivery authorization. Section 334.8(c)(6) addresses delivery certificate revocation and specifies in detail how the agency may revoke a delivery certificate. The procedures are taken, to the extent practicable, from long-standing procedures in Subchapter I. Since proposal, the legal standard for the third possible regulatory ground for revocation has shifted from the executive director level to the commission level.

Adopted §334.9, Sellers Disclosure, has been amended by changing “shall” to “must” to improve readability; by changing “commission’s” to “agency’s;” by adding “, compliance self-certification,” as an additional tank owner obligation as proposed in §334.8(c) to encompass the requirements of HB 2815; by adding “for Underground Storage Tanks (USTs) and UST Systems” to reflect the proposed new titles of §334.7 and §334.6 currently referenced in this section; and by adding a new reference to §334.8 for completeness. Section 334.9(1) has been amended by changing “shall” to “must” to improve readability and by changing “commission’s” to “agency’s.” Section 334.9(2) has been amended to improve readability by changing “shall apply” to “applies” and by deleting “shall” and inserting “applies” in place of “apply.” Section 334.9(3) has been amended by changing “shall” to “must” to improve readability. Section 334.9(4) has been amended by inserting a reference to §334.9(1) of this section to provide clarification; by changing Texas “Water” Commission to Texas “Natural Resource Conservation” Commission to reflect the current name of the agency; by adding “, compliance self-certification,” as an additional tank owner obligation to encompass the requirements of HB 2815; and by changing “31" to “Title 30" to reflect recodification of the TAC.

Adopted §334.10, Reporting and Recordkeeping. Section 334.10(a) has been amended by changing "shall" to "must" to improve readability. Section 334.10(a)(1) has been amended by adding "for Underground Storage Tanks (USTs) and UST Systems" to reflect the new title of the section currently referenced in this paragraph. Section 334.10(a)(2) has been amended by changing "313" to "213" to reflect the recodification of the Edwards Aquifer chapter in the TAC and be deleting the title of §334.6 because it has already been given once in this section. Section 334.10(a)(3) has been amended by adding "for Underground Storage Tanks (USTs) and UST Systems" to reflect the new title of the section currently referenced in this paragraph. Section 334.10(a)(4) has been amended by replacing "installations and" with "construction activities," to provide clarification; by deleting the word "responsibility" and replacing it with "assurance" to provide clarification and to conform to terminology used in Chapter 37, new Subchapter I, by adding "and compliance self-certification" to encompass the requirements of HB 2815, and by adding "for Underground Storage Tanks (USTs) and UST Systems" to reflect the new title of the section referenced in this paragraph. Section 334.10(a)(6) has been amended by deleting "§334.54(d)(2)" and replacing it with "with §334.54" to encompass all alternatives available under rule. Section 334.10(a)(9)(D) has been amended by changing "characterization" to "assessment" to provide clarification and agreement with the terminology used in Subchapter D, Release Reporting and Corrective Action, and by deleting "Initial" and changing "Characterization" to "Assessment" to correct the title of the reference included in this subparagraph. Section 334.10(a)(9)(E) has been amended to add "non-aqueous phase liquid" in place on "free product" to use the preferred terminology and to delete "Free Product" and add "of Non-Aqueous Phase Liquids" to reflect the new title of the referenced section, as in Subchapter D. Section 334.10(a)(9)(H) and (I) have been amended to delete the title of §334.81 because it has already been

given once in this section. Section 334.10(a)(10) has been amended by deleting the word "responsibility" and replacing it with "assurance" to provide clarification and to conform to terminology used in Chapter 37, new Subchapter I; by adding a reference to Chapter 37, new Subchapter I to indicate the location of the notification and reports requirements, and to provide clarification; and by deleting "including:" and replacing it with "; and" to provide clarification and improve readability. Section 334.10(a)(10)(A) - (E) have been deleted because these types of requirements are included in Chapter 37, new Subchapter I, and a cross-reference to these rules is provided earlier in this paragraph. Section 334.10(a)(11) has been amended by deleting "executive director or commission" and replacing it with "agency." Section 334.10(b)(1)(A) has been amended by changing "shall be" to "are" to improve readability. Section 334.10(b)(1)(B) has been amended by changing "shall" to "must" in three places to improve readability; and by deleting "commission" and replacing it with "agency." Section 334.10(b)(1)(C) has been amended by adding a reference up front to new §334.10(b)(1)(C)(v) to provide clarification and encompass the new language. Section 334.10(b)(1)(C)(i) has been amended by changing "shall" to "must" to improve readability. Section 334.10(b)(1)(C)(ii) has been amended by changing "shall" to "must" to improve readability, and by deleting "commission" and replacing it with "agency." Section 334.10(b)(1)(C)(iii) has been amended by changing "shall" to "must" to improve readability; by deleting "executive director" and "commission's" and replacing them with "agency's central office" and "agency's," respectively; and by changing "district" to "regional" to reflect current agency terminology. Section 334.10(b)(1)(C)(iv) has been amended by changing "shall" to "must" to improve readability; by deletion of the phrase "30 days after the effective date of this chapter" and replacement with the actual calendar date "October 29, 1989" to which the original language referred, for clarification and to preserve the original meaning of

the paragraph; and by adding a phrase at the end of the clause to provide clarification and a cross-reference to §334.7(d). Section 334.10(b)(1)(C)(v) has been added to be consistent with the requirements of proposed §334.8(c). Section 334.10(b)(1)(D) has been amended by deleting the term "executive director" and replacing it with "agency." Section 334.10(b)(1)(D)(ii) has been amended by changing "shall" to "must" to improve readability. Section 334.10(b)(1)(D)(iii) has been amended by changing "shall" to "must" in two places to improve readability. Section 334.10(b)(2) has been amended by changing "shall" to "must" to improve readability. Section 334.10(b)(2)(A) has been amended by changing "shall" to "must" to improve readability. Section 334.10(b)(2)(A)(i) has been amended by changing "§337.7" to "§334.7" to correct a typographical error in the text. Section 334.10(b)(2)(A)(ii) has been amended by deleting the word "responsibility" and replacing it with "assurance" to provide clarification and to conform to terminology used in Chapter 37, new Subchapter I. Section 334.10(b)(2)(B) has been amended by changing "shall" to "must" to improve readability. Section 334.10(b)(2)(B)(i) has been amended by deleting "executive director's" and replacing it with "the agency's," and by deleting the title of §334.43 because it has already been cited once in this section. Section 334.10(b)(2)(B)(x) and (xi) have been amended to delete referenced titles because they have already been given once in this section. Section 334.10(b)(2)(C) has been amended by changing "shall" to "must" to improve readability; by deleting "§334.105" and update it with "Chapter 37, Subchapter I" and by deleting the title of deleted §334.105 to refer readers to Chapter 37 for financial requirements rather than Chapter 334. Section 334.10(b)(2)(D) has been added to be consistent with the requirements of and provide a cross-reference to §334.8(c).

Adopted §334.11, Enforcement has been repealed in its entirety because the agency has consolidated all enforcement rules into Chapter 70, which followed statutory enforcement consolidation into a unified TWC, Chapter 7.

Adopted §334.12, Other General Provisions. Section 334.12(a)(1) has been amended by changing "shall" to "does" to improve readability. Section 334.12(b)(1) has been amended by deleting the first sentence, which begins with "Except as otherwise provided," as an unnecessary and redundant provision; and by deleting "aboveground storage tank to be principally in charge of any activities or procedures required under this chapter" to remove legally inappropriate language, given the liability scheme of Chapter 334 as whole. New §334.12(b)(2) has been added and old §334.12(b)(2) language deleted, to more exactly reflect the legal effect of TWC, §26.3513(m). Section 334.12(b)(2) has been amended by renumbering as (3); by adding new language pursuant to HB 2109, specifically "The liability of certain taxing units as owners or operators of USTs and ASTs is conditionally and specifically limited, in accordance with the provisions and conditions of TWC, §26.3516 (relating to Limits on Liability of Taxing Units).." Section 334.12(b)(3) has been amended by renumbering to (4) and to be clarified by adding a direct reference to statute and deleting the old reference to §334.15. Section 334.12(b)(4) has been amended by renumbering to (5) and to be clarified by adding a direct reference to statute and deleting the old reference to §334.16. Section 334.12(c)(1) has been amended by deleting "commission or the executive director" and replacing it with "agency" and by changing "shall" to "must" to improve readability. Section 334.12(c)(1)(B) has been amended by changing "commission" to "agency." Section 334.12(c)(2) has been amended by changing "commission, its" to "agency's." Section 334.12(c)(3) has been amended by changing "commission" to "agency." Section

334.12(c)(4) has been deleted in its entirety as unnecessary and redundant because it is duplicative of language in TWC, Chapter 26, Subchapter I.

Adopted §334.15, Limits on Liability of Lender. Section 334.15(c)(1) has been amended by adding the word "permanently" in two locations to provide clarification.

Adopted §334.17, Privatization of Storage Tank Program, has been amended by changing "shall" to "will" to improve readability.

Adopted new §334.18, Limits on Liability of Taxing Unit, has been added to implement the requirements of HB 2109. When this section was proposed, the rule language largely tracked the language of the enabling statute (passed by the Texas Legislature in 1999 as HB 2109) except for certain places where language was added in an attempt to clarify the statutory language. However, legal concerns have been raised that it could be argued that the proposed rule language exceeded the authority granted under HB 2109. To address these concerns, the final adopted version of this section was modified to make it clear that the rule does not exceed the scope allowed under its enabling statute.

Subchapter B, Underground Storage Tank Fees

Adopted §334.21, Fee Assessment. Section 334.21(b) and (c) have been amended to change "executive director" to "agency." Section 334.21(d) has been amended to change "commission" to "agency."

Adopted §334.22, Failure to Make Payment, has been amended to change “executive director” to “agency.”

Adopted §334.23, Disposition of Fees, Interest, and Penalties, has been amended to change “executive director” to “agency.”

Subchapter C, Technical Standards

Adopted §334.41, Applicability. Section 334.41(b)(2) has been amended to delete “Commission” and add “for Underground Storage Tanks (USTs) and UST Systems” in the title of the cross-reference to §334.4(b) to reflect the new title. Section 334.41(c) has been amended to add “for Underground Storage Tanks (USTs) and UST Systems” in the title of the cross-reference to §334.5(a) to reflect the new title. Section 334.41(d) has been amended to replace “the effective date of this subchapter” with the actual effective date “September 29, 1989" to maintain the intended date.

Adopted §334.42, General Standards. Section 334.42(a) has been amended to delete “for as long as the underground storage tank system is used to store regulated substances” to provide clarification that the requirements apply to regulated UST systems regardless of whether regulated substances are currently being stored. Section 334.42(b) has been amended to replace the phrase “are used to contain or store” with “contain, have contained, or will contain” to add clarification and to improve readability. Section 334.42(c) has been amended to delete the reference to §334.11 and to add a reference to Chapter 70 because the agency has consolidated all enforcement rules into Chapter 70. Section 334.42(f) has been

amended to add “otherwise stated in” and to delete “or alternative procedure is” to provide clarification; and to change “executive director” to “agency.”

Adopted §334.43, Variances and Alternative Procedures. Section 334.43(a) has been amended by replacing “initiating” with “proceeding in,” by replacing “activity or procedure” with “manner,” by replacing “which is at variance with or which is not specifically authorized under” with “that differs from,” and by inserting “the requirements of” to clarify the rule requirement. Section 334.43(a) has also been amended by changing “commission” to “written agency” to further clarify the rule requirement. Section 334.43(a) has been amended by replacing the word “of” with the word “in,” by adding “form of a,” and deleting the phrase “or alternative procedure” to clarify that a “variance” is the written approval of a request to be allowed to implement an “alternative procedure” and/or piece of equipment rather than follow the specific requirement found in this subchapter. Section 334.43(b) has been amended to change “executive director” in two places to “agency,” to delete “and alternative procedures as relate to” to clarify that a “variance” is the written approval itself, and to replace “the provisions of” with “from the requirements in,” and to change the word “shall” to “will” to improve readability. Section 334.43(b) has been amended by deleting “reasonably” to remove an unacceptably vague qualifier, and to insert “to appropriate agency staff” to emphasize the point that technical PST program staff must be satisfied that the standard will be met before a variance can be granted. Section 334.43(b) has been amended by deleting “variance or,” and by inserting“and/or equipment” to clarify that a “variance” is the agency approval of an alternative procedure and/or equipment. Section 334.43(b) has been amended by replacing “a system meeting” with “the requirement(s) for which,” and by replacing “requirements of this subchapter” with “variance is sought” to clarify the rule

requirements and improve readability. Section 334.43(c) has been amended to delete "approval of" and "or alternate procedure" to help clarify that a variance is the written approval of a request for an alternate procedure and/or equipment. Section 334.43(c)(1) has been amended by adding "a requirement in" and deleting "the requirements of" to improve readability. Section 334.43(c)(1) has been amended by deleting "either" and "or not reasonable" to remove unacceptably vague language, and to delete the parenthetical "(e.g. bulk storage tanks, field-constructed tanks, and airport hydrant fuel distribution systems)" to avoid the impression that a variance would always be issued for such situations. Section 334.43(d) has been amended to change "executive director" to "agency," and to delete "or alternative procedure" to help clarify that a "variance" is the agency approval of an alternative procedure and/or equipment. Section 334.43(d)(2)(C) has been amended by adding "/operator's" to "owner's" to better reflect that this rule section applies to operators as well as owners, by making "representatives" singular to clarify the rule requirement, and by deleting the parenthetical "(e.g., operator, contractor, or consultant)" to better reflect that this rule section applies to operators as well as owners. Section 334.43(d)(2)(D) has been amended by replacing "variance or" with "the," and adding "and/or equipment," to clarify that a "variance" is the agency approval of an alternative procedure and/or equipment. Section 334.43(d)(3) has been amended by replacing "planning materials" with "documentation" to clarify the rule requirement, and by deleting "variance or," and adding "and/or equipment", to clarify that a "variance" is the agency approval of an alternative procedure and/or equipment. Section 334.43(d)(4) has been amended by deleting "sufficient," adding "which demonstrates," and "the satisfaction of agency staff," and by deleting the word "justify" to emphasize the point that technical PST program staff must be satisfied that they have been given sufficient supporting documentation to allow them to evaluate whether the standard will be met.

Section 334.43(d)(4) has been amended by adding “and appropriateness” to clarify that the reliability of the proposed alternative procedure and/or equipment is not the only factor in determining whether a variance will be granted, and by deleting “variance or” and adding “and/or equipment” to clarify that a “variance” is the agency approval of an alternative procedure and/or equipment. Section 334.43(d)(4)(B) has been amended to add “and” to clarify the range of requests for a variance that the agency may receive. Section 334.43(d)(5) has been amended by deleting “variance or,” by adding “and/or equipment,” and by replacing “is” with “are” to clarify that a “variance” is the agency approval of an alternative procedure and/or equipment. Section 334.43(d)(5) has been amended by inserting “requirement for which the variance is sought” in place of “methods or procedures specified in this subchapter,” by inserting “that requirement” in place of “the methods or procedures specified in this subchapter,” and by inserting “is” in place of “are” to improve rule clarity and readability. Section 334.43(d)(5) has been amended by deleting “unreasonable or” to remove unacceptably vague language. Section 334.43(d)(6) has been amended by deleting “adequate,” and by adding “that demonstrates, to the satisfaction of agency staff,” to emphasize the point that technical PST program staff must be satisfied that they have been given sufficient supporting documentation to allow them to evaluate whether the standard will be met. Section 334.43(d)(6) has been amended to delete “to reasonably demonstrate” as unacceptably vague, and to insert “use of” to improve readability. Section 334.43(d)(6) has been amended to delete “variance or,” and add the phrase “and/or equipment,” to clarify that a “variance” is the agency approval of an alternative procedure and/or equipment. Section 334.43(d)(6) has been amended by inserting “be,” by deleting “result in an underground storage tank system that is,” by inserting “adhering to,” by deleting “a system meeting,” by replacing “requirements” with “requirement(s)” to make singular, by inserting “for which the variance is

sought," and deleting "of this subchapter," to improve clarity and readability. Section 334.43(e) has been amended to add "If a variance is granted by the agency, the owner or operator," to delete "Owners and operators," to replace "records" with "copies," and to replace "any requests for approval of any variances or alternative procedures, and documentation of the executive director's approval of such requests, for the operational life of the UST system," with "the variance and supporting documentation (including the request for approval)" to clarify that this recordkeeping requirement is only applicable if a variance is granted by the agency, as well as to clarify that the owner and the operator do not have to both keep these records. Section 334.43(f) has been added to emphasize the point that the requirement at issue in this subchapter must be followed until such time as a variance has been granted which provides for alternative procedures and/or equipment. Section 334.43(g) has been added to emphasize that, once a variance is granted, the owner/operator must follow either the terms of that variance or the terms of the requirement for which the variance was sought.

Adopted §334.44, Implementation Schedules, has been amended. Section 334.44(a)(1) has been amended to replace "are used to store" with "contain, have contained, or will contain" to clarify that there are agency regulations which apply from the construction phase through the time an UST system is taken permanently out of service. Section 334.44(b)(1) has been amended to replace "are used to store" with "contain or have contained" to clarify that there are agency regulations which apply from the construction phase through the time an UST system is taken permanently out of service. This new language does not expand the rules being referenced by the implementation schedules in this section.

Adopted §334.45, Technical Standards for New Underground Storage Tank Systems. Section 334.45(b)(1)(A) has been amended to delete "one or more of the following standards" because old clause (i) has been incorporated into subparagraph (A), changed to reflect the new title of that standard, and clause (ii) has been deleted as it is an obsolete standard which has not been replaced. Section 334.45(b)(1)(B)(i) and (ii) have been amended to add language to reflect the current names of the referenced standards. Section 334.45(b)(1)(C)(i) and (ii) have been amended to reflect the current names of the referenced standards. Section 334.45(b)(1)(D) has been amended to add "or as a steel tank with a bonded fiberglass reinforced polyurethane coating" to reflect new available technology and to replace a period with a colon at the end. Section 334.45(b)(1)(D)(i) has been amended to add "fiberglass-reinforced plastic or fiberglass reinforced polyurethane" to reflect new available technology, and to replace a period with a semicolon at the end of the clause. Section 334.45(b)(1)(D)(ii) has been amended to delete "applicable" to eliminate ambiguity, and to replace a period with a semicolon at the end. Section 334.45(b)(1)(D)(iii)(I) and (II) have been amended to reflect the titles of the referenced standards. Section 334.45(b)(1)(D)(iii)(III) has been amended by adding ", or STI, or Underwriters' Laboratories of Canada (ULC) standard which incorporates the requirements contained in the standards listed in either subclause (I) or (II) of this clause; and" to allow the use of comparable standards from other specified standard making organizations, and by deleting "standard applicable to composite underground storage tanks" because it is unnecessary language. Section 334.45(b)(1)(D)(iv) has been amended to add "utilized in accordance with applicable industry standards" to add clarification and eliminate ambiguity. Section 334.45(b)(1)(E) and (F) has been added to reflect new available technology and provide corresponding requirements and standards. The old §334.45(b)(1)(E) has been renumbered as §334.45(b)(1)(G) and to be amended by changing "executive director" to "agency."

Section 334.45(c)(1)(A)(i) and (ii) have been amended to reflect the current titles of the referenced standards. Section 334.45(c)(1)(B)(iv) has been amended to reflect the current name of the standard and its current title. Section 334.45(c)(1)(C) has been added to reflect available technology and provide corresponding requirements and standards. The old §334.45(c)(1)(C) has been renumbered as §334.45(c)(1)(D) and to be amended by changing "executive director" to "agency." Section 334.45(c)(3)(A) has been amended to provide clarification and eliminate ambiguity by changing the parenthetical "(or approved equivalent)" to specify allowable alternative listing organizations which the agency will accept. Section 334.45(c)(3)(B) has been amended to provide clarification and eliminate ambiguity by changing the parenthetical "(or approved equivalent)" to specify allowable alternative listing organizations which the agency will accept; and to add terminology applicable to inherently flexible piping to reflect the current applicable industry standard. Section 334.45(c)(3)(C) has been amended to delete "a cathodic protection system" and replace it with "corrosion protection" to provide clarity, and to delete the reference to §334.49(c) and replace it with a reference to §334.49 to allow the application of all applicable methods of corrosion protection within the section. A new subsection (c)(3)(D) has been added to ensure compliance with the requirements of applicable listings provided by acceptable listing organizations. Section 334.45(d)(1)(B) has been amended by changing "313" to "213" to reflect the recodification of this chapter in the TAC. Section 334.45(d)(1)(C) has been amended by changing the phrase "commission or the executive director" to "agency." Section 334.45(d)(3)(A)(iii)(I) has been amended to reflect the current title of the referenced UL Standard 1316 and to delete the reference to ASTM Standard D 4021, an obsolete standard which has not been replaced. Section 334.45(d)(3)(A)(iii)(II) has been amended to reflect the current title of the referenced

standard. Section 334.45(d)(3)(A)(iii)(III) has been amended by changing "naturally" to "nationally" to correct a previous error, and by changing "executive director" to "agency."

Adopted §334.46, Installation Standards for New Underground Storage Tank Systems. Section 334.46(a)(1)(D) has been amended to change "executive director" to "agency." Section 334.46(b) has been amended to change "executive director" to "agency." Section 334.46(d)(4)(B) has been deleted to as an unnecessary requirement because it is no longer considered technically necessary to perform this test to be protective. The subsequent §334.46(d)(4)(C) has been renumbered to §334.46(d)(4)(B) and amended to add the word "underground" for clarification. Section 334.46(g)(2) has been amended to update the rule and statutory references relating to water well drillers and to start a new sentence after these changes by capitalizing the word "Any" to improve readability. Section 334.46(g)(3)(A) has been amended to update the rule and statutory references relating to Water Well Drillers and to start a new sentence after these changes by capitalizing the word "Any" to improve readability. Section 334.46(g)(3)(B)(iv) has been amended to update the reference relating to the Water Well Drillers rule. Section 334.46(h)(1)(A)(iv) has been amended to change "executive director" to "agency." Section 334.46(h)(1)(B) has been amended to change "commission" to "agency." Section 334.46(h)(2) has been amended to delete "owner and the" as unnecessary due to compliance self-certification requirements imposed on owners by HB 2815; to change "commission's" to "agency's;" to delete the term "tank registration" to reflect rule changes in Chapter 334, Subchapter A, which make the term "tank registration form" an outdated term because the agency has created a new form that will serve for both tank registration and compliance self-certification proposes; and to add the words "for Underground Storage Tanks (USTs) and UST Systems" to reflect the new title of §334.8. Section

334.46(i)(2)(A)(iii) has been amended to change “commission” to “agency.” Section 334.46(i)(2)(A)(iii)(I) has been amended to add “for Underground Storage Tanks (USTs) and UST Systems” to reflect the new title of the referenced section.

Adopted §334.47, Technical Standards for Existing Underground Storage Tank Systems. Section 334.47(b)(1)(A)(i) has been amended to include the addition of a new leak detection method in a new paragraph of §334.50(d). Section 334.47(b)(1)(A)(ii) has been amended to improve clarity by adding a sentence at the end specifying what constitutes an appropriate integrity assessment for certain tanks. Section 334.47(b)(1)(A)(v) has been amended to change “executive director” to “agency.” Section 334.47(d)(2)(A)(iii) has been amended to change “commission” to “agency.” Section 334.47(d)(2)(A)(iii)(I) has been amended to add the words “for Underground Storage Tanks (USTs) and UST Systems” to reflect the newly title of §334.7. Section 334.47(d)(2)(A)(iii)(II) has been amended to add “for Underground Storage Tanks (USTs) and UST Systems” to reflect the new title of §334.8. Section 334.47(d)(2)(B) has been amended to add “for Underground Storage Tanks (USTs) and UST Systems” to reflect the new title of §334.6.

Adopted §334.48, General Operating and Management Requirements. Section 334.48(c) has been amended to insert “§334.50(d)(1)(B) of this title” in place of “a code or standard of practice developed by a nationally recognized association or independent testing laboratory” to have a specific requirement. Also, since proposal of this subsection, the wording has been simplified by replacing the phrase “where petroleum substances 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" with a cross-reference to the definitions section of this chapter.

Adopted §334.49, Corrosion Protection. Section 334.49(a)(1) and (2) have been amended to add "underground metal" to add clarification on which components require corrosion protection and to delete the last phrase "for as long as the underground storage tanks system is used to store regulated substances" to clarify that there are agency regulations regarding corrosion protection which apply from the time of installation through the time an UST system is taken permanently out of service. Section 334.49(a)(3) has been amended to change "executive director" to "agency." Section 334.49(a)(4) has been amended to add "metal" to clarify which components require corrosion protect, to delete "necessarily" as unnecessary language, and to add "and also to other underground metal components associated with an UST system, including but not limited to:" for greater clarity. Section 334.49(a)(5) has been amended to change "the effective date of this subchapter" to "September 29, 1989," to maintain the originally intended date. Section 334.49(a)(6) has been added to provide clarification it is the most recent version of a listed standard that must be met, and new §334.49(a)(7) has been added to provide a cross-reference to requirements for placing a tank temporarily out of service. Section 334.49(b)(4) has been amended to add "or as a steel tank with a bonded fiberglass reinforced polyurethane coating, as a steel tank with a bonded polyurethane external coating, or as a steel tank completely contained within a nonmetallic external tank jacket" to list other acceptable factory-constructed tanks added at §334.45(b), to expand the §334.45(b)(1) references to include the additional acceptable factory-constructed tanks, and to add "(as applicable)" for greater clarity. Section 334.49(b)(7) has been added to provide an additional allowable alternative to other rule requirements

for corrosion protection or the upgrading of an existing corrosion protection system. Since proposal, §334.49(d)(1)(A)(ii) has had the phrase "Except for jacketed tanks meeting the requirements of §334.45(b)(1)(F), any" added to the rule language. Section 334.49(d)(1)(A)(iii) has been amended to change "executive director" to "agency." Section 334.49(d)(2) has been amended to delete the first "or" to add more options to the series, to add "a steel tank with a bonded fiberglass reinforced polyurethane coating, or a steel tank with a bonded polyurethane coating" to reflect dual-protected tank additions in §334.45(b), to add another subparagraph to the §334.45(b)(1) reference that contains the tank additions, to add "as applicable" after the reference for greater clarity, and to make "systems" plural because more than one cathodic protection system can be installed in a tank.

Adopted §334.50, Release Detection. Section 334.50(a)(1)(A) has been amended to add "underground" for greater clarity and to be more specific. Section 334.50(a)(1)(B) has been amended by deleting "and" to add to the series; and by adding ", utilized and interpreted (as applicable)," "and/or methodology provider's," and "consistent with the other requirements of this section" for greater clarification. Section 334.50(a)(1)(C) has been amended by replacing "installer" with "methodology provider/vendor" to be more specific and by adding "as verified by third party evaluation conducted by a qualified independent testing organization, using applicable United States Environmental Protection Agency protocol," to assure better compliance. Section 334.50(a)(1)(C)(i) has been amended by adding "including the summary portion of the independent third party evaluation" by adding "by the owner and/or operator" to be more specific, and by adding ", or methodology provider," to clarify agency expectations with regard to performance claims. Section 334.50(a)(1)(C)(ii)(III) has been amended to remove "and" to add more subclauses to list. Section 334.50(a)(1)(C)(ii)(IV) has been amended to

change its period to a semicolon for the same reason. Section 334.50(a)(1)(C)(ii)(V) adds an acceptable new technology on electronic leak monitoring systems for piping; and new §334.50(a)(1)(C)(ii)(VI) adds a new method of statistical inventory reconciliation. Section 334.50(a)(5) has been amended to add "for Underground Storage Tanks and UST Systems" in three places for consistency with the new titles of §§334.6 - 334.8. Section 334.50(a)(6) has been amended to add a cross-reference to §334.42(d). Section 334.50(a)(7) has been added to provide a cross-reference to §334.54(c). Section 334.50(b)(1)(A) has been amended to replace "for releases" with "in a manner which will detect a release" to be more specific about the manner of monitoring and to add §334.50(d)(10) to include a new leak detection method. Since proposal, the phrase "and in §334.50(d)(9) of this section" was added at §334.50(b)(1)(A) and (2)(A)(ii)(II). Section 334.50(b)(1)(C) has been amended to change the nominal capacity of "550" gallons to "1,000" gallons to be consistent with a protocol established by EPA and which has been allowed by this agency in the variance process. Section 334.50(b)(2) has been amended to replace "designed to" with "which will" to be more specific and to delete "and" because it is unnecessary. Section 334.50(b)(2)(A)(i)(I) has been amended to replace "which equals or exceeds" with "of" to provide clarification and to improve readability. Section 334.50(b)(2)(A)(i)(II) has been amended to insert the word "or" between the two remaining alternatives because of the deletion of the third alternative, and to delete "or by emitting or triggering audible and visible alarms" because over time the agency has concluded that this alternative is often ineffective because it relies on human action rather than automatic mechanical processes. Under this adoption, owners/operators can voluntarily use an alarm in conjunction with either of the remaining options listed in the rule, but may not use it alone. Section 334.50(b)(2)(A)(ii)(I) has been amended to delete "which equals or exceeds a rate" to improve readability. Section 334.50(b)(2)(A)(ii)(II) has been amended to include the new leak detection method

in §334.50(d)(10). Section 334.50(b)(2)(A)(ii)(III) has been added to reflect a new acceptable electronic leak monitoring technology. Section 334.50(b)(2)(B)(i)(I) has been amended to replace "piping" with "positive or negative pressure" to be more specific on the tightness test, to add "applicable to underground product piping and" to assure that the test is applicable to underground product piping, to delete "which equals or exceeds a rate" for better readability; to replace "gallon" with "gallons" to be consistent with commonly used terminology; and to delete "when the piping pressure is at 150% of normal operating pressure" to be consistent with the previous change that allows a positive or negative pressure tightness test. Section 334.50(b)(2)(B)(i)(II) has been amended to include the new leak detection method at §334.50(d)(10). Section 334.50(b)(2)(B)(ii)(II) has been amended by adding "all" to clarify the requirement. Section 334.50(b)(2)(B)(ii)(IV) has been amended by adding "aboveground," to be more specific about the location of the check valve. Section 334.50(b)(2)(B)(ii)(V) has been amended by deleting "A method is incorporated into the system design that will allow" and by adding language that specifies acceptable methods of verifying subclauses (I) - (IV) for greater clarity. Section 334.50(c)(3)(B) has been amended to include a new leak detection method in §334.50(d)(10). Section 334.50(d) has been amended by replacing paragraphs "(1) - (9)" with paragraphs "(2) - (10)" to include the new leak detection method in §334.50(d)(10) of this subsection and to clarify that the option §334.50(d)(1) of this section is no longer an allowable method of release detection and to replace paragraphs "(5) - (9)" with paragraphs "(5) - (10)" to include the new leak detection method in paragraph (10) of this subsection. Section 334.50(d)(1)(A)(iii) has been amended to delete "which equals or exceeds a rate" and to replace "gallon" with "gallons" to improve readability. Section 334.50(d)(1)(B)(ii) has been amended to replace "which equals or exceeds" with "as small as" to add clarity. Section 334.50(d)(1)(B)(iv) has been deleted as an alternative which is no

longer applicable, due to changes in allowable manual tank gauging procedures in §334.50(d)(2) and due to the ongoing rule requirement at §334.50(d)(1) disallowing the use of a combination of tank tightness testing and inventory control as a method of release detection after December 22, 1998. Section 334.50(d)(2)(A) has been amended to change nominal capacity of “550" gallons to “1,000" gallons to be consistent with a protocol established by EPA and with variances which have been allowed by this agency in the variance process. Section 334.50(d)(2)(B) has been deleted to reflect the ongoing rule requirement at §334.50(d)(1) disallowing the use of a combination of tank tightness testing and inventory control as a method of release detection after December 22, 1998. Section 334.50(d)(2)(C) has been renumbered to §334.50(d)(2)(B) due to the previous deletion and to be amended to change the nominal capacity of “2,000" gallons to “1,000" gallons to be consistent with a protocol established by EPA and which has been allowed by this agency in the variance process. Section 334.50(d)(2)(D) has been renumbered to §334.50(d)(2)(C) due to the previous deletion. Section 334.50(d)(2)(C)(i)(II) has been amended by deleting the phrase “of at least 36 hours” and by adding the following clarifying language: “The duration of the gauging period is dependant upon tank volume and diameter, as specified in clause (v) of this subsection.” Section 334.50(d)(2)(C)(v)(I) - (III) have been amended to add the minimum gaging period durations for various tank diameters and volumes reflected in a protocol established by EPA and which has been allowed by this agency in the variance process. Section 334.50(d)(4)(A)(ii)(II) and (B)(iii) have been amended by deleting “which equals or exceeds a rate” to improve readability. Section 334.50(d)(6)(D) has been added to include a requirement that background contamination should not interfere with monitoring for a release from an UST system into groundwater (a similar requirement exists in §334.50(d)(5)(D) of this section, regarding vapor monitoring). Section 334.50(d)(9) has been added to include a new leak detection technology allowed

by this agency. Also, the term "Statistical Inventory Reconciliation" has been spelled out in this final adopted version prior to using the abbreviation in §334.50(d)(9). Since proposal, §334.50(d)(9)(A)(iii) was changed to extend the number of days referenced. Also since proposal, §334.50(d)(9)(A)(iii)(V) was changed to simplify the listed categories. Also since proposal, the parenthetical "(no release indicated)" was deleted. Also since proposal, the phrases "'fail' (results inconclusive)' or 'fail' (data insufficient to perform reliable analysis)" and ", may be considered by the agency as failure on the part of the owner and/or operator to perform release detection for that period" have been deleted, and new language added concerning time allowed during which the owner/operator may investigate "inconclusive" reports. Old §334.50(d)(9) has been renumbered to §334.50(d)(10) due to the previous addition and to be amended to change "executive director" to "agency." Section 334.50(e)(2)(B) has been amended by adding ", verified," to include another method of confirming a claim and by replacing "or installer" with ", methodology provider/vendor or independent third party evaluator" for greater clarity. In the preamble paragraph for this rule section when this rule package was proposed, a typographical error was made in the text in three places where proposed §334.50(d)(9) was meant to be referenced, but it was actually referenced in that preamble as §334.50(d)(10). The first of these errors was in the sentence covering §334.50(c)(3)(B), which should have read "Section 334.50(c)(3)(B) has been amended to include a new leak detection method proposed in §334.50(d)(9)". The second and third of these errors were in the sentence covering §334.50(d), which should have read "§334.50(d) has been amended by.....to include the new leak detection method proposed in §334.50(d)(9).....and to replace paragraphs "(5) - (9)" with paragraphs "(5) - (10)" to include the new leak detection method proposed in paragraph (9) of this subsection". The rules involved, however, were themselves correctly printed when proposed.

Adopted §334.51, Spill and Overfill Prevention and Control. Section 334.51(a)(5) has been amended to add a cross-reference to §334.42(d). Section 334.51(b)(4)(A)(ii) has been amended to change "executive director" to "agency." Section 334.51(b)(4)(A)(iii) has been amended to change "executive director" to "agency" and to delete "or unreasonable" as redundant to "impracticable."

Adopted §334.52, Underground Storage Tank System Repairs and Relining. Section 334.52(b)(5)(C) has been amended to change "executive director" to "agency." Section 334.52(d)(2)(A)(iii) has been amended to change "commission" to "agency."

Adopted §334.54, Temporary Removal from Service. Section 334.54(b) has been amended by deleting "Beginning no later than the date on which any UST system has been out of service for a continuous period of three months," and capitalizing "Regardless" at the beginning of the first sentence, to remove language which is no longer applicable. Section 334.54(b)(2) has been amended to add "tank access points (e.g., fill risers, automatic tank gauging risers, Stage I vapor recovery risers)" to provide clarification and to provide additional assurance that temporarily out of service tanks are properly secured. Section 334.54(c)(2) has been amended to change the referenced subsection for what constitutes an empty system from subsection (e) (that is also renumbered) to subsection (d). Section 334.54(c)(3) has been amended to delete outdated and unnecessary language, given the passage of the final deadline for all UST upgrades, and to specify procedures and requirements for returning "protected and empty" and "protected and monitored" UST systems to service. Section 334.54(d) has been deleted as outdated and unnecessary language, given the passage of the final deadline for all UST upgrades; and the remaining subsections are renumbered due to the deletion. Section 334.54(f)(2) has

been amended to add "for Underground Storage Tanks (USTs) and UST Systems" to the title of reference §334.7 to reflect the new title; and paragraph (3) has been amended to change "commission's" to "agency's."

Adopted §334.55, Permanent Removal from Service. Section 334.55(a)(1) has been amended to change "executive director" to "agency" and to add the words "for Underground Storage Tanks (USTs) and UST Systems" to the title of referenced §334.6 to reflect its new title. Section 334.55(a)(6)(A) has been amended to change "executive director" to "agency" and to add the words "for Underground Storage Tanks (USTs) and UST Systems" to the title of referenced §334.6 to be consistent with its new title. Section 334.55(6)(B)(i) has been amended to change "operating" to "operated" to improve the grammar and to add paragraph "(10)" to the reference to §334.50(d) to include the addition of a new leak detection method. Section 334.55(6)(D)(i) and (ii) have been amended to change "executive director" to "agency;" and clause (ii) has been amended to add "for Underground Storage Tanks (USTs) and UST Systems" to the title of referenced §334.7 to reflect the new title. Section 334.55(a)(9) has been amended to change "executive director" to "agency." Section 334.55(b)(2) has been amended to change "commission" to "agency." Section 334.55(c)(2)(A) has been amended to change "executive director" to "agency." Section 334.55(e)(1) has been amended to delete the word "comprehensive" to distinguish this requirement from the site assessment required under Chapter 334, Subchapter D. Section 334.55(e)(1)(B) has been deleted to reflect the deletion of §334.54(d) and original subparagraphs (C) and (D) have been renumbered due to this deletion. Section 334.55(e)(1)(C) has been amended to change "executive director" to "agency" and to delete the word "comprehensive" as an unnecessary term; and §334.55(e)(1)(D) changes "executive director or the commission" to

"agency." Section 334.55(e)(2) has been amended by adding language requiring supervision of the site assessment by qualified licensed or registered personnel to fully inform the reader of this current requirement related to site assessments. Section 334.55(e)(5)(C) has been amended to change "executive director" to "agency." Section 334.55(e)(5)(D) has been added to assure that suspected or confirmed releases are properly reported, investigated and remediated, in accordance with the release reporting and corrective action requirements of Subchapter D.

Adopted new §334.56, Exempt or Excluded Status, has been added to specify the procedures necessary to change a regulated UST system's status from "regulated" to "exempt" or "excluded." Previous regulations did not adequately provide procedures for owners/operators to follow in these situations.

Subchapter D, Release Reporting and Corrective Action

The amendments in Subchapter D are to update its risk assessment terminology and to do regulatory reform amendments to streamline the rules and to improve clarity and readability.

Adopted §334.71, Applicability, has been amended to change a deadline year from 2001 to 2003 to conform with Chapter 350, Texas Risk Reduction Program, and to replace "Free Product Removal" with "Removal of Non-Aqueous Phase Liquids" to use a more standard risk assessment term. Also, since rule proposal, the phrase "executive director" has been changed to "agency" in two places.

Adopted §334.72, Reporting of Suspected Releases. At the beginning of the section, "aboveground storage tank (AST) and" has been added to clarify that ASTs are also subject to this rule requirement.

Also, “agency” replaces “appropriate district office or the Austin central office,” and the phrase “(see §334.50(d)(9)(A)(v) for reporting requirements associated with SIR inconclusive results)” was added; and “agency” replaces “commission.” Section 334.72(1) has been amended to include “AST or” to clarify that aboveground storage tanks are also subject to this rule requirement and to replace “free product” with “non-aqueous phase liquids (NAPL)” to use more standard risk assessment terminology. Section 334.72(2) has been amended to replace “and” with “or” to clarify the rule requirement and to adhere to the statutory language in HB 2815's, amended TWC, §26.346, and to add “AST or UST” to show that this rule requirements is also applicable to regulated ASTs. Also, since proposal, the phrase “that is consistent with or could indicate a release” has been added and §334.72(3)(A) has been amended to add “or the monitoring procedure is found to be ineffective, and is modified,” to add additional methods of correcting monitoring equipment errors.

Adopted §334.73, Investigation Due to Off-Site Impacts, has been amended to replace “executive director” with “agency,” to add “aboveground storage tank (AST) or underground storage tank (UST)” and “AST or” to clarify that regulated ASTs are also subject to these rule requirements, to replace “free product” with “Non-Aqueous Phase Liquids (NAPLs)” to use more standard risk assessment terminology, to replace “the commission” with “agency staff,” and to replace “its” with “the agency’s” for consistency with the previous change.

Adopted §334.74, Release Investigation and Confirmation Steps. At the beginning of the section, “Initial Site Characterization” has been replaced with “Site Assessment” and “Free Product Removal” replaced with “Removal of Non-Aqueous Phase Liquids” to use more standard risk assessment

terminology, “and” changed to “or” to clarify the rule requirement and adhere to the statutory wording in HB 2815's, amended TWC, §26.346, and “executive director” to be replaced with the term “agency.” Section 334.74(1)(A) has been amended to insert “or” to accommodate the deletion of “, or upgrade” because the deadline for upgrades is past, to include “aboveground storage tank (AST) or underground storage tank (UST)” to clarify that regulated ASTs are also subject to this rule requirement. Section 334.74(2) has been amended to add “AST or” to indicate that regulated ASTs are also subject to this rule requirement. Section 334.74(2)(A) and (B) have been amended to replace “for the excavation zone” with “from an excavated area” to clarify the language and to add “or other area(s) of the AST” to clarify that this rule requirement also applies to regulated aboveground storage tanks. Section 334.74(3) has been amended to replace “executive director” with “agency.”

Adopted §334.75, Reporting and Cleanup of Surface Spills and Overfills. Section 334.75(a) has been amended to add “aboveground storage tanks (AST) and underground storage tank (UST)” to clarify that regulated ASTs are also subject to this rule requirement, to add “the spill or overfill” to improve the clarity of what has been reported, to replace “commission” with “agency,” and to replace “Initial Site Characterization” with “Site Assessment”and to replace “Free Product Removal” with “Removal of Non-Aqueous Phase Liquids” to use more standard risk assessment terminology. Section 334.75(a)(1) has been amended to add “any” to help clarify that the requirements apply to any spill from a regulated UST or AST and to add “substance from an UST or any spill or overfill of petroleum product from an AST” to clarify that this rule requirement also applies to spills of petroleum product from ASTs; §334.75(a)(2) has been amended to add “any” to help clarify that the requirements apply to any spill from a regulated UST storing a hazardous substance and to add “from an UST” to indicate that only

hazardous substance spills from an UST are regulated, and to add "the Comprehensive Environmental Response, Compensation, and Liability Act" to spell out the acronym "CERCLA." Section 334.75(b) has been amended to delete "of UST systems" to remove the indication that the requirement only applies to USTs and to add "substance from an UST or any petroleum product from an AST" to indicate that this requirement applies to both regulated USTs and ASTs, and to break the first sentence into two sentences and insert at the beginning of the new second sentence "Owners or operators of USTs must contain and immediately clean up" to clarify that the hazardous substance part of the requirement only applies to USTs, and to replace "executive director" with "agency."

Adopted §334.76, Initial Response to Releases. At the beginning of the section, "aboveground storage tank (AST) or underground storage tank (UST)" has been added to clarify that ASTs are also subject to this rule requirement. Section 334.76(1) has been amended to replace "executive director" with "agency" and to insert term "completed" and "call, facsimile transmission" to clarify electronic reporting requirements. Section 334.76(2) has been amended to include "AST or" to clarify that ASTs are also subject to this rule requirement.

Adopted §334.77, Initial Abatement Measures and Site Check. Section 334.77(a) has been amended to replace "executive director" with "agency." Section 334.77(a)(1) has been amended to include "aboveground storage tank (AST) or underground storage tank (UST)" to clarify that regulated ASTs are also subject to this rule requirement; §334.77(a)(3) and (5) have been amended to add "AST or" to clarify that regulated ASTs are also subject to these rule requirements; and §334.77(a)(6) has been amended to replace the first "free product" with "Non-Aqueous Phase Liquids (NAPL)," to replace the

second “free product” with “NAPL,” and to replace “Free Product Removal” with “Removal of Non-Aqueous Phase Liquids” to use more standard risk assessment terminology. Section 334.77(b) has been amended to replace “executive director” with “agency.”

Adopted §334.78, Site Assessment. Section 334.78(a) has been amended to replace “executive director” with “agency.” Section 334.78(a)(4) has been amended to replace “free product” with “Non-Aqueous Phase Liquids (NAPLs)” and to replace “Free Product Removal” with “Removal of Non-Aqueous Phase Liquids (NAPLs)” to use more standard risk assessment terminology and §334.78(a)(5), (6), and (9) has been amended to replace “executive director” with “agency.” Section 334.78(b) has been amended to replace “executive director” with “agency” and to add “of an aboveground storage tank (AST) or underground storage tank (UST)” to clarify that regulated ASTs are also subject to this rule requirement. Section 334.78(b)(1), (2), and (4) - (6) has been amended to replace “executive director” with “agency” and in §334.78(6) to replace “commission” with “agency.” Section 334.78(c) has been amended to replace “executive director” with “agency.” Section 334.78(d) has been amended to replace “executive director without prejudice” with “agency.”

Adopted §334.79, Free Product Removal. The section title has been amended to “Removal of Non-Aqueous Phase Liquids (NAPLs)” to use more standard risk assessment terminology. The beginning of the section has been amended to replace the first “free product” with “Non-Aqueous Phase Liquids (NAPLs)” and to replace the second “free product” with “NAPLs” to use more standard risk assessment terminology and to replace “executive director” with “agency.” Section 334.79(1) has been amended to replace “free product” with “NAPL” to use a more standard risk assessment terminology.

Section 334.79(2) has been amended to replace “use abatement of free product migration” with “abate the migration of NAPLs” and to replace “free product removal system” with “NAPL recovery system” to use more standard risk assessment terminology. Section 334.79(4) has been amended to replace “executive director” with “agency” and to replace “free product removal” with “product recovery” to use more standard risk assessment terminology. Section 334.79(4)(A) - (C) and (G) have been amended to replace “free product” with “NAPL” to use more standard risk assessment terminology; and §334.79(4)(H) has been amended to replace “executive director” with “agency.”

Adopted §334.80, Investigation for Soil and Groundwater Cleanup. Section 334.80(a) has been amended to replace “In order to” with “To” to eliminate unnecessary words. Section 334.80(a)(2) has been amended to replace “free product” with “Non-Aqueous Phase Liquid” and to replace “Free Product Removal” with “Removal of Non-Aqueous Phase Liquids (NAPLs)” to use more standard risk assessment terminology; §334.80(a)(3) has been amended to replace “Initial Site Characterization” with “Site Assessment” and to replace “Free Product Removal” with “Removal of Non-Aqueous Phase Liquids (NAPLs)” to use more standard risk assessment terminology; and §334.80(a)(4) has been amended to replace “executive director” with “agency.” Section 334.80(b) has been amended to replace “executive director” with “agency.”

Adopted §334.81, Corrective Action Plan. Section 334.81(a) has been amended to replace “Initial Site Characterization” with “Site Assessment” to use more standard risk assessment terminology and to replace “executive director” with “agency.” Section 334.81(b) has been amended to replace “executive director” with “agency,” to replace “using risk-based corrective action to establish target cleanup

levels" with "§334.203 of this title (relating to Risk Based Criteria for Establishing Target Concentrations)" to make the rule requirement more specific, and to add the words "to achieve" to clarify the rule requirement. Section 334.81(b)(8) has been amended to replace "a remedial progress monitoring plan" with "operation, monitoring, and performance plan; and" to update the type of plan required; §334.81(b)(9) has been deleted because an operation and maintenance plan is now part of the operation, monitoring, and performance plan mentioned in the preceding amendment; and §334.81(b)(10) has been renumbered to account for the preceding deletion. Section 334.81(c) has been amended to replace "executive director" with "agency." Section 334.81(d) has been amended to replace "executive director" and "executive director without prejudice" with "agency" to eliminate any connotation that this agency would ever return documents with prejudice. Section 334.81(e) has been amended to replace "executive director" with "agency," to replace "modifications" with "any revisions" and "made" with "as requested" to clarify the rule requirement. Section 334.81(f)(1) - (3) have been amended to replace "executive director" with "agency" and §334.81(f)(4) has been amended to replace "commission" with "agency." Section 334.81(g) has been amended to replace "In order to" with "To" to eliminate unnecessary words and to replace "executive director" with "agency." Section 334.81(h) has been amended to replace "shall" with "must." Section 334.81(i) has been amended to replace "commission" with "agency" and to replace "shall" with "will."

Adopted §334.82, Public Participation. Section 334.82(a) has been amended to delete "a" and "plan" to simplify the wording and to replace "executive director" with "agency." Section 334.82(c) has been amended to replace "that complies with subsection (a) of this section" with "to affected parties" to eliminate an unnecessary reference back to §334.82(a) and to insert "action" to complete the plan title.

Adopted §334.83, Emergency Orders, has been amended to add "aboveground storage tank or" to clarify that regulated ASTs are also subject to this rule requirement.

Adopted §334.84, Corrective Action by the Commission. The section title has been amended to "Corrective Action by the Agency." Section 334.84(a) has been amended to replace "commission" with "agency." Section 334.84(a)(1) has been amended to add "aboveground storage tank (AST) or" to show that regulated ASTs are also subject to this rule requirement and to add the acronym "UST" after "underground storage tank" so it can be used in subsequent paragraphs; §334.84(a)(2) has been amended to replace "underground storage tank" with "AST or UST" to indicate that this requirement is applicable to both ASTs and USTs; and §334.84(a)(3) has been amended to replace "underground storage tank" with "AST or UST" to indicate that this requirement is applicable to both ASTs and USTs and to replace "executive director" with "agency." Section 334.84(b) has been amended to replace "commission" with "agency" and to replace "subchapter" with "chapter" for accuracy and consistency.

Adopted §334.85, Management of Wastes, has been amended to add "aboveground or" to clarify that this rule requirement is also applicable to regulated ASTs.

Subchapter E, Financial Responsibility

Subchapter E has been repealed in its entirety so that UST financial assurance requirements can be concurrently moved to Chapter 37, new Subchapter I, with some changes. Chapter 37 is intended to

consolidate all of the agency's financial assurance requirements (including mechanisms, wording of the mechanisms, and program specific subchapters) into one rule chapter.

Subchapter F, Aboveground Storage Tanks

The Subchapter F amendments are to incorporate changes to the petroleum storage tank program as a result of HB 2815 and to reflect changes similar to those made in Subchapter A to implement that bill. Amendments also update, clarify, and streamline the rules.

Adopted §334.121, Purpose and Applicability for ASTs. The title has been amended to add "Aboveground Storage Tanks (ASTs)" to reflect the title name change. Section 334.121(a) has been amended to replace "aboveground storage tanks" with "ASTs" because the acronym has already been defined. Section 334.121(b)(1) has been amended to insert "AST" in place of "aboveground storage tank" because this acronym has already been defined. Section 334.121(b)(1)(A), (C), and (D) is amended to update their references titles to the titles adopted in this rulemaking; and §334.121(b)(1)(B) has been amended to change its reference from "§334.122" to "§334.2" because the definition of "petroleum product" has been moved to Subchapter A because it is used in more than one subchapter. Section 334.121(b)(2) has been amended to replace "shall apply" and "aboveground storage tanks" with "are applicable" and "ASTs," respectively, to improve readability; §334.121(b)(3) has been amended to delete "shall" for better readability and to replace "aboveground storage tanks" with "ASTs" because this acronym has been previously defined; §334.121(b)(4) has been amended to replace "shall be" with "are" for better readability and to replace "aboveground storage tank" with "AST" because this acronym has been previously defined; §334.121(b)(5) has been amended to replace "aboveground

storage tank" with "AST" to improve readability; and §334.121(b)(6) has been is amended to delete "statutory" because it is unnecessary, to delete the title from the reference to §334.123 because it has already been cited once in this section, to replace "aboveground storage tank" with "AST" because the acronym has already been defined, and to replace "shall be" with "is" for better readability.

Adopted §334.122, Definitions for ASTs. The title has been amended to add "Aboveground Storage Tanks (ASTs)" to reflect the title name change. Section 334.122(a) has been amended to delete "shall" for greater readability. In §334.122(b), the definition of "Aboveground Storage Tank or AST" has been amended to correct the format and delete "(or AST)"; the definition of "Appropriate district office" has been deleted because it has a commonly understood meaning and does not require a regulatory definition; subsequent definitions were renumbered throughout to account for this deletion and subsequent additions and deletions; the definition of "Electric generating facility" has been amended to delete the title of the cross-referenced section, because it has previously been given within this section; the definition of "Facility" has been deleted to eliminate redundancy because this term is defined in Subchapter A; the definition of "Facility owner" has been deleted as unnecessary because it has a commonly understood meaning; and the definitions of "Operator," "Owner," "Petroleum product," "Release," "Retail service station," and "Tank" are deleted to eliminate redundancy because these terms are already defined in Subchapter A.

Adopted §334.123, Statutory Exemptions for ASTs. The title of this section has been amended to delete "Statutory" because it is unnecessary and add "Aboveground Storage Tanks (ASTs)." Section 334.123(a) deletes ", as provided in the Texas Water Code, §26.344" as an unnecessary reference.

Section 334.123(b)(1) and (2) have been amended by replacing “aboveground storage tanks” with its acronym because the acronym has been previously defined. New §334.123(c) has been added to make explicit that the agency may ask a tank owner and a tank operator to verify claimed exempt status.

Adopted §334.124, Commission Exclusions for ASTs. The title of this section has been amended to delete the term “Commission” from the title because it is unnecessary, and add “Aboveground Storage Tanks (ASTs).” Section 334.124(a) has been delete “by commission directive” because it is unnecessary. Section 334.124(a)(2) has been amended to replace “such” with “this” and “shall” with “must” to improve readability. Section 334.124(b) has been amended to replace “aboveground storage tank” with “AST” because this acronym has been previously defined, and to update the title of §334.126 to agree with the new title. New §334.124(c) has been added to make explicit that the agency may ask a tank owner and a tank operator to verify claimed excluded status.

Adopted §334.125, General Prohibitions and Requirements for ASTs. The title has been amended to add “Aboveground Storage Tanks (ASTs).” Section 334.125(a)(1) has been amended to become part of subsection (a) so that the subsection information can be reorganized. Section 334.125(a) has been amended to replace “paragraph (2)" in the first line with “paragraph (1),” to replace “person” with “common carrier (as defined in §334.2 of this title (relating to Definitions),” to replace the phrase “such tank is registered with the commission” with “the owner or operator has a valid, current registration certificate, issued by the agency,” and to delete the last sentence because of changes made to the PST program to implement HB 2815 and because of changes made to Subchapter A to implement that legislation. Section 334.125(a) has been amended to delete the phrase “or have deposited” because

tank owner/operator obligations are now covered in §334.125(b), and to update the title of §334.127 to agree with what has been adopted. New §334.125(a)(1) has been added to mirror certain changes made to Subchapter A--HB 2815 mandates extensive revamping of the PST program, and an area heavily affected is tank registration. Because of those changes, a new type of agency authorization has been created for regulatory delivery prohibitions as they apply to both USTs and ASTs (see preamble comments on §334.5 of Subchapter A). For new or replacement AST installations, this new "temporary delivery authorization" may serve in the listed circumstances as adequate for common carriers delivering to those tanks (also, see preamble language for §334.127(h) of this subchapter). Since proposal, the phrase "he observes that the" has been inserted before the phrase "the owner or operator has a valid, current registration certificate" to be consistent with the delivery prohibition language in §334.5(b) of this title and to clarify the requirement. New §334.125(a)(2) has been added to further clarify what the common carrier must observe before making his delivery to the AST(s) in question. Old §334.125(a)(2) language has been deleted because the regulations for delivery to newly installed ASTs is now covered by the new language earlier in this section. Section 334.125(b) has been amended by adding new language that makes it explicit, as it is in Subchapter A, that the tank owner or operator must show the proper documentation to the common carrier before delivery into the tanks is accepted (in the old rule, owner/operator obligations existed in subsection (a) of this section). Old §334.125(b) and (c) language has been deleted as redundant to §334.126 and §334.127 of this subchapter, respectively.

Adopted §334.126, Installation Notification for ASTs. The title has been amended to add "Aboveground Storage Tanks (ASTs)." Section 334.126(a) has been amended to delete "on or after the

effective date of this subchapter," because this language is unnecessary and to replace "shall" with "must" to improve readability. Section 334.126(a)(1) has been amended to replace "executive director" with "agency." Section 334.126(a)(1)(A) has been amended by replacing "commission's" with "agency's," and "a commission" with "an agency;" and to update "district office" to "regional office" to reflect current agency terminology; §334.126(a)(1)(B) has been amended to change "agent or" to "or" and to change the second "or" to "e.g." to clarify the rule language; §334.126(a)(1)(C) has been amended to replace "commission's" with "agency's," to delete "as" and "as possible" to tighten unacceptably vague language, and to change "designated" to "authorized" to clarify the rule requirement; §334.126(a)(1)(D) has been amended to replace "aboveground storage tanks" with its acronym because the acronym has been previously defined; §334.126(a)(1)(E) has been amended to change "designated" to "authorized" to clarify the rule requirement, to replace "commission's" with "agency's," and to update "district" to "regional" to reflect current agency terminology; §334.126(a)(1)(F) has been amended to replace "aboveground storage tanks" with its acronym because the acronym has been previously defined and to delete "(relating to Construction Notification)" in the reference to §334.6 because this section title has been previously cited in this section. Section 334.126(a)(2) has been amended by replacing "executive director" with "agency," and by replacing "aboveground storage tank" with its acronym because this acronym has been previously defined in this section; §334.126(a)(3) has been amended to replace "aboveground storage tank" with its acronym because this acronym has been previously defined in this section; and §334.126(a)(4) has been amended to replace "owner or operator" with "person" to explicitly include landowners who wish to perform this activity, whether or not they consider themselves to be tank "owners" or "operators," and to update the titles of §334.6 and §334.126 to agree with the new titles. Section 334.126(b) has been amended to

delete “statutorily” in §334.126(b)(1) because this word is unnecessary and to update the titles of referenced §§334.123, 334.124, and 334.127.

Adopted §334.127, Registration for ASTs. The title has been amended to add “Aboveground Storage Tanks (ASTs).” Section 334.127(a)(1) has been amended to replace “shall” with “must” to improve readability, to replace “commission” with “agency,” add “authorized agency” in front of “forms” for greater clarity, and to change “supplied by or approved by the executive director” to “in accordance with subsection (e) of this section” to clarify rule requirements. Section 334.127(a)(1)(A) has been amended to delete “statutorily” as unnecessary, and to update the title of reference §334.123 to reflect the new title; and §334.127(a)(1)(B) has been amended to delete “by commission directive” as unnecessary, and to update the title of referenced §334.124 to reflect the new title. Section 334.127(a)(2) has been amended to add “and operator,” “or operator,” and “and operator remain” to reflect that under this section, AST owners and operators are now jointly and severally liable for all requirements of this section. This will mirror the liability scheme of the remainder of this chapter (except for tank fees). Section 334.127(a)(2) has been amended to replace “aboveground storage tank” with its acronym because the acronym has been previously defined, to change “shall be” to “are” for better readability, to combine the second and third sentences for greater clarity, to replace “shall be held” with “and operator remain” and to delete “by such representatives” to improve readability and to clarify rule requirements. Section 334.127(a)(3) has been amended to replace “aboveground storage tanks” with its acronym because this acronym has been previously defined, to change “shall” and “be” to “are” for better readability, to delete “annual facility” because it is unnecessary, to update the reference to §334.128 to reflect its new title, to add “or operator” to reflect that the liability under this

section is joint and several for AST owners and operators, and to insert "or timely" after "properly" to clarify the rule requirement. Although the commission has issued Registration Certificates for many years when proper tank registration information is received on the designated agency form, in the past this rule section did not memorialize that fact. Due to the commission computer program limitations discovered after these rules were proposed (see full discussion in this preamble in §334.5(b)), and to address comments made by TPCA in §334.5(b) (see "Specific Comments" in this preamble for rationale), it has become important to clearly distinguish between the registration certificate, which is issued pursuant to agency receipt of proper tank registration information, and the new delivery certificate, which will be issued pursuant to agency receipt of proper UST compliance self-certification information. The new rule provision in §334.127(a)(4) accomplishes this. The commission will use the registration certificate as the document to be produced for delivery prohibition purposes, since AST owners and operators are not required to perform compliance self-certification under HB 2815 and will not now be receiving delivery certificates. Section 334.127(b) has been amended to add "or operates" to reflect that the liability under this section is now joint and several for AST owners and operators, to replace "commission" with "agency," and to change "supplied by or approved by the executive director" to "an authorized agency" to clarify the rule requirement. Section 334.127(c) has been amended to insert "or operates" to reflect that the liability under this section is joint and several for AST owners and operators, to replace "aboveground storage tank" with its acronym because the acronym has been previously defined, and to replace "supplied by or approved by the executive director" with "agency on an authorized agency form" and to insert "first," to clarify the rule requirement. Section 334.127(d) has been amended to add "or operator" to reflect that the liability under this section is joint and several for AST owners and operators, to replace "aboveground storage

tank" with its acronym because the acronym has been previously defined, to replace "shall" with "must" in four locations to improve readability, to replace "executive director" with "agency" in two locations; to delete "necessarily" to clarify the rule requirement, and to replace "Such" with "This" to improve readability, to change "supplied by or approved by the executive director" to "an authorized agency" and "which has been completed in accordance with subsection (e) of this section" to clarify the rule requirement, to replace "commission's unique" with "Texas Natural Resource Conservation Commission (TNRCC)" and to add "in the appropriate space on the form" to clarify the rule requirement. Section 334.127(e) has been amended to change "Registration" to "Required" and change "providing AST registration information" to improve readability. Section 334.127(e)(1) has been amended to replace "tank" with "AST" to increase clarity, to add "or operator" to reflect that the liability under this section is joint and several for AST owners and operators, to replace "shall" with "must" to improve readability, to delete "required" as unnecessary, and to change "supplied by or approved by the executive director" to "indicated on the agency's authorized form" to improve clarity; §334.127(e)(2) has been amended to change "shall" to "must" in three places for better readability, to delete "as" and "as possible" to tighten unacceptably vague language, to insert ", operator" and "of the owner or operator" to reflect that liability under this section is joint and several for AST owners and operators, and to change "the owner's designated" to "an authorized" to clarify the rule requirement, and to replace "executive director" with "agency;" §334.127(e)(3) has been amended to replace "tank"with "AST" for greater clarity; to add "or operators" to reflect that the liability under this section is joint and several for AST owners and operators, to replace "shall" with "must" for better readability, and to replace "aboveground storage tanks" with its acronym because this acronym has been previously defined; §334.127(e)(4) has been amended to replace "Tank" with "All AST" and

"tanks" with "or operate ASTs" for greater clarity, to add "or operators" to reflect that make the liability under this section is joint and several for AST owners and operators, to replace "shall" with "must" for better readability, and add "where regulated ASTs are located, unless otherwise allowed under subsection (f) of this section" to clarify rule requirements; and §334.127(e)(5) has been amended to replace "shall" with "must" for greater readability. Section 334.127(f) has been amended to replace "aboveground storage tanks" with its acronym because this acronym has been previously defined in this section, to replace "shall" with "must" for greater readability, to insert "or operator" to reflect the liability under this section is joint and several for AST owners and operators, and to correct the period at the end to a colon. Section 334.127(f)(1) has been amended to insert "or operator" and "or operator's" to reflect that the liability under this section is joint and several for AST owners and operators, to replace "may" with "must" to clarify the rule requirement, and to correct the period at the end to a semicolon; §334.127(f)(2) has been amended to insert "or operator must" and "or operator's;" and delete "owner's," to reflect that the liability under this section is joint and several for AST owners and operators, to replace "shall" with "must" for better readability, to delete ", except that records for any period prior to the effective date of this subchapter shall not be required" because the effective date of the rule is changing, to replace "commission" with "agency" and to add "; and" and delete the period at the end; and §334.127(f)(3) has been amended to insert "or operator's" to reflect that the liability under this section is joint and several for AST owners and operators, to replace "shall" with "must" for better readability, and to replace "executive director's" with "agency's." Section 334.127(g) has been amended to replace "tank" with "AST" to improve clarity; to replace "commission" and "executive director" with "agency;" to insert "and/or operator" to reflect that the liability under this section is joint and several for AST owners and operators, and to replace "shall be

required to" with "must" for better readability. New §334.127(h) language provides for a 90-day temporary authorization for delivery to new or replacement ASTs, to reflect this new type of authorization and its relationship to delivery prohibitions (see preamble comments for §334.125 and §334.5). The old language in §334.127(h) has been deleted as unnecessary and redundant.

Adopted §334.128, Annual Facility Fees for ASTs. The title has been amended to add "Aboveground Storage Tanks (ASTs)." Section 334.128(a)(1) has been amended to insert "will" in place of "shall" for better readability, to insert "agency" in place of "commission," and to update the title of §334.127; §334.128(a)(2) has been amended to insert "will" in place of "shall" and insert "must" in place of "shall" for better readability, and to insert "AST" in place of "aboveground storage tank" because this acronym has been previously defined; and §334.128(a)(3) has been amended to insert "agency" in place of "executive director." Section 334.128(b)(1) has been amended to insert "agency" in place of "executive director" and to insert "will" in place of "shall" for better readability; §334.128(b)(2) has been amended to insert "will" in place of "shall" to improve readability, and to insert "ASTs" in place of "aboveground storage tanks" because this acronym has been previously defined. Section 334.128(c)(2) has been amended to insert "agency" in place of "executive director" and to insert "will" in place of "shall" for better readability. Section 334.128(d) has been amended to insert "agency" in place of "commission" and to insert "will" in place of "shall" for better readability. Section 334.128(e) has been amended to insert "will" in place of "shall" for better readability, to insert "AST" in place of "aboveground storage tank" because this acronym has been previously defined, and to insert "TWC" in place of "Texas Water Code" because this acronym has been previously defined.

Adopted §334.129, Release Reporting and Corrective Action for ASTs, has been amended to add "Aboveground Storage Tanks (ASTs)" and §334.129(a) and (b) has been amended to replace "aboveground storage tank" with "AST" because this acronym has already been defined and to replace "shall" with "must" to improve rule readability.

Adopted §334.130, Reporting and Recordkeeping for ASTs. The title adds "Aboveground Storage Tanks (ASTs)." Section 334.130(a) has been amended to insert "must" in place of "shall" for better readability. Section 334.130(a)(1) has been amended to update the title of §334.126; §334.130(a)(2) has been amended to insert "AST" in place of "aboveground storage tank" because this acronym has been previously defined, and to delete the title of referenced §334.126 because it has been previously cited in this section; §334.130(a)(3) has been amended to insert "ASTs" in place of "aboveground storage tanks" because this acronym has been previously defined and to update the title of §334.127; §334.130(a)(4) has been amended to insert "ASTs" in place of "aboveground storage tanks" because this acronym has been previously defined and to update the title of §334.128; §334.130(a)(5) has been amended to update the title of §334.129; and §334.130(a)(6) has been amended to insert "agency" in place of "executive director." Section 334.130(b)(1)(A) has been amended to insert "ASTs" in place of "aboveground storage tanks" because this acronym has been previously defined and to insert "must" in place of "shall" for better readability; and §334.130(b)(1)(B) has been amended to insert "and operators" to reflect that the liability under this section is joint and several for AST owners and operators, to insert "ASTs" in place of "aboveground storage tanks" because this acronym has been previously defined, and to delete the title of referenced §324.127 because this has already been cited in this section. Section 334.130(b)(2) has been amended to insert "ASTs" in place of "aboveground

storage tanks" and to insert "AST" in place of "aboveground storage tank" because this acronym has been previously defined, to insert "must" in place of "shall" and to insert "are" in place of "shall be" for better readability, and to delete the title of referenced §334.127 because it has been previously cited in this section.

Adopted §334.131, Enforcement for ASTs, has been repealed because the agency has consolidated all enforcement rules into Chapter 70, which followed statutory enforcement consolidation into an unified TWC, Chapter 7.

Adopted §334.132, Other General Provisions for ASTs. The title has been amended to add "Aboveground Storage Tanks (ASTs)." Section 334.132(a) has been amended to insert "must" in place of "shall" for better readability, to delete "Texas Air Control Board," and "Texas Water Commission" and insert "Texas Natural Resource Conservation Commission" to reflect the consolidation of those two agencies. Section 334.132(b) has been amended to insert "ASTs" in place of "aboveground storage tanks" because this acronym has been previously defined, to insert "are" in place of "shall be" for better readability, and to delete "contractor, operator, or other" because these additional words are unnecessary, to insert "the" in place of "an aboveground storage tank" to improve readability, and to delete "to be principally in charge of any activities or procedures required under this subchapter" to remove a legally inappropriate qualifying phrase. Section 334.132(c)(1) has been amended to insert "AST" in place of "aboveground storage tank" because this acronym has been previously defined, to insert "agency" in place of "commission," and to insert "must" in place of "shall" for better readability. Section 334.132(c)(1)(B) has been amended to insert "agency" in place of "commission."

Section 334.132(c)(2) has been amended to insert “agency’s” in place of “commission, its” and to delete an unnecessary comma. Section 334.132(c)(2)(A) has been amended to insert “AST” in place of “aboveground storage tank” because this acronym has been previously defined. Section 334.132(c)(3) has been amended to insert “agency” in place of “commission,” to insert “direct” in place of “order” to improve readability, to insert “AST” in place of “aboveground storage tank” because this acronym has been previously defined, and to delete “aboveground storage” because it is unnecessary with the previous amendments. Section 334.132(c)(4) has been deleted in its entirety as unnecessary and redundant because it duplicates language in the TWC, Subchapter I. Section 334.132(c)(5) has been deleted because the citation is no longer accurate and the language duplicates that now found in Texas Health and Safety Code, §753.008.

Subchapter G, Target Concentration Criteria

Subchapter G has been amended to update some risk assessment terminology and criteria and to do regulatory reform amendments to streamline the rules and to improve clarity and readability.

Adopted §334.201, Purpose and Applicability. Section 334.201(a) and (b) has been amended to replace “executive director” with “agency.” Section 334.201(b) has been amended to replace “the effective date of these rules” with “November 8, 1995" to maintain the originally intended date.

Adopted §334.202, Definitions. The definition of “Institutional Control” has been amended to replace “executive director” with “agency.” The definition of “Potential beneficial use” has been amended to

replace “were” with “was” to correct to a singular verb and to replace “and/or” with “or” to improve rule readability and clarify the rule requirement.

Adopted §334.203, Risk-Based Criteria for Establishing Target Concentrations. Section 334.203(1)(A) has been amended to replace “executive director” with “agency” and to delete “or not” to improve rule readability. Section 334.203(1)(B) - (D) and (F) have been amended to change “executive director” to “agency.” Section 334.203(1)(I)(i) has been amended to delete the term “reasonable” to remove ambiguity from the rule. Section 334.203(1)(I)(iii) and (iv) have been amended to change “executive director” to “agency.” Section 334.203(1)(I)(vi) has been amended to replace “free product” with “non-aqueous phase liquid” and to change “free product” to “of non-aqueous phase liquid” to use more standard risk assessment terminology (consistent with similar changes being made throughout the chapter), to change the title of referenced §334.79 from “Free Product” to “of Non-Aqueous Phase Liquid” to reflect the new title of that rule section, to change “executive director’ to “agency.” Section 334.203(1)(J)(i) has been amended to change “executive director” to “agency” and “commission” to “agency.” Section 334.203(1)(J)(ii) has been amended to replace “two” with “15” to reflect a change in risk assessment criteria which is more protective of human health and safety. Section 334.203(1)(L) - (O) have been amended to change “executive director” to “agency.” Section 334.203(2), (5), and (6) have been amended to insert “agency” in place of “executive director.” Section 334.203(2)(L) has been amended to insert a comma after operator and to insert “the agency,” in place of “executive director.” Section 334.203(2)(M) and (N) have been amended by inserting “agency” in place of “executive director.” Section 334.203(3) has been amended to insert “agency” in place of

"commission." Section 334.203(5)(E), (G), and (6) have been amended by inserting "agency" in place of "executive director."

Adopted §334.204, Criteria for Selection of Land Use. Section 334.204(2) has been amended to replace "executive director" with "agency." Section 334.204(3) has been amended to replace "commission" with "agency." Section 334.204(6) has been amended to replace "executive director" with "agency."

Adopted §334.205, Institutional Control Requirements, has been amended to replace "executive director" with "agency." Section 334.205(2), first line, has been amended to insert a comma after operator.

Adopted §334.206, Criteria For Institutional Control Use, has been amended to replace "executive director" with "agency." Section 334.206(a)(3) has been amended to insert "Land" into the current title of the professional board identified in the rule to update it. Section 334.206(a)(6) has been amended to insert "of" in place of "at" and to delete "Texas Natural Resource Conservation Commission or subsequent" for greater clarity.

Adopted §334.208, Model Institutional Controls, lead-in language has been added for correct formatting and as an explanation for the figure that is contained in this section. The "Model Institutional Control for Properties" figure has been amended in two signature locations near the end of the document to

change the first two numbers in the year portion of the date from “19” to “20” to update the document for the new millennium.

Subchapter H, Petroleum Storage Tank Reimbursement Program

Subchapter H has been amended to reflect the two year extension to the expiration date of the Petroleum Storage Tank (PST) Reimbursement Program from “2001" to “2003" pursuant to HB 2816 and to reflect the six month extension to the corrective action plan deadline from December 23, 1997 to June 23, 1998 to reflect a twelve month extension to the corrective action plan goals deadline, and to reflect the new 90 day processing time necessary for reimbursements pursuant to HB 2815. Amendments also streamline the rules and to improve clarity and readability.

The title of the Subchapter H has been amended to delete the outdated term “Interim” at the beginning.

Adopted §334.301, Applicability of this Subchapter. Section 334.301(b)(1) and (2) have been amended to change “executive director” to “agency.” Section 334.301(c) is amended to change “commission” to “agency,” and has been amended to reflect the two year extension to the expiration date of the PST reimbursement program from “2001" to “2003" pursuant to HB 2816's TWC, amended §26.361(a). Section 334.301(d) has been deleted because it is obsolete; this subsection is related to the processing of applications submitted prior to June 16, 1991. Subsequent subsections were renumbered due to the deletion of this subsection. Old §334.301(e) has been renumbered to (d), had its title pluralized, and been clarified that any person seeking reimbursement must meet all of the requirements in the subchapter. Section 334.301(f) has been deleted because no such rules were adopted by the agency.

Section 334.301(e)(2) and (3) have been amended by changing “executive director” to “agency.” Section 334.301(i) has been deleted because it pertains to the processing of applications during the 1994 - 1995 biennium. Subsequent subsections were renumbered due to the deletion of this subsection.

Adopted §334.302, General Conditions and Limitations Regarding Reimbursement. Section 334.302(a) has been amended to delete the unnecessary words “In order to” and replace with “To.” Section 334.302(a)(1) and (2) have been amended to change “executive director” to “agency.” Section 334.302(a)(3) has been amended to change “commission” to “agency.” Section 334.302(b) has been amended to change “executive director” and “commission” to “agency.” Section 334.302(c) has been amended to change “commission” to “agency.” Section 334.302(c)(1) has been amended to change “executive director” to “agency,” and to reflect the change to the title of referenced §334.314. Section 334.302(c)(4) has been amended to change “commission” to “agency.” Section 334.302(c)(5) has been amended to improve the readability, and to reflect the two year extension to the expiration date of the PST reimbursement program from 2001 to 2003 pursuant to HB 2816's TWC, amended §26.361(a). Section 334.302(d)(1) has been amended to correct the title of the §334.304 cross-reference. Section 334.302(d)(2) has been amended to change “executive director” to “agency.” Section 334.302(d)(3) has been amended to correct and amend the §334.303 cross-reference title; §334.302(d)(4) has been amended to correct the §334.310 cross-reference title, and to add “respectively” for greater clarity. Section 334.302(d)(5) has been amended to correct the §334.308 cross-reference title. Section 334.302(d)(6) has been amended to correct the §334.309 cross-reference title. Subsection (e) deletes the §334.310 cross-reference phrase “(relating to Requirements for Eligibility–Interim Period)” because it has already been given once in this section. Section 334.302(j) has been amended to change

"executive director" to "agency" and to change "commission, nor its employees" to "nor" and "agency." Section 334.302(l) has been amended to change "executive director" to "agency."

Adopted §334.303, Time to File Application. The section title has been amended to "When to File Application" to improve readability. Section 334.303(a) has been amended to add language clarifying the time frame over which the agency will accept applications for reimbursement based upon the expiration date of the reimbursement program (September 1, 2003), and the 90-day processing time necessary for reimbursements pursuant to HB 2815's TWC, new §26.35731(c) and HB 2816's TWC, amended §26.361(a). Section 334.303(b) has been amended to add clarify that only "a complete application will be considered for reimbursement." Section 334.303(c) has been added to explain that an application will not be considered complete until the required supporting technical information, reports, and/or documentation required by agency rules at Subchapter D have been filed with the agency.

Adopted §334.304, Who May File Application, has been amended to change "executive director" to "agency staff."

Adopted §334.305, Where and How Documentation Must be Filed. Section 334.305(a) has been amended to incorporate some of the language from its current paragraph (1), which has been deleted to remove a specific address that might change and instead specify in §334.305(a) the use of the address on the application, and to delete §334.305(a)(2) to remove the requirement to submit a copy of the application to the agency's regional office. Section 334.305(b) has been amended to change "executive

director" to "agency." Section 334.305(c) has been amended by changing "executive director" to "agency," by changing "executive director in case of hand delivery" to "agency," and to delete "date postmarked on the return receipt in the case of mailing or courier services, and the" to clarify and simplify the agency's receipt date for documents received.

Adopted §334.306, Form and Contents of Application. Section 334.306(a) has been amended to change "executive director" to "agency." Section 334.306(b) has been amended to change the "shall" to "must" to improve readability. Section 334.306(b)(1) and (5) have been amended to change "executive director" to "agency." Section 334.306(b)(7) has been amended to change to the word "evidence" to "proof" and change "evidence" to "submission" to add clarification and to improve readability, and to replace "be accompanied by" with "include" to improve readability. In §334.306(b)(7)(C), the word "or" has been deleted because of the subsequent addition of a new §334.306(b)(7)(E). Section 334.306(b)(7)(D) has been amended to clarify that an affidavit of payment to the person who performed the corrective action, signed by the person who performed the corrective action, must be notarized to verify the signature validity, and to add the word "or" at the end so that a new §334.306(b)(7)(E) can be added. Section 334.306(b)(7)(E) has been added to allow the use of an affidavit of cost paid in full, accompanied by a promissory note to pay in full, to serve as acceptable proof of payment. Section 334.306(b)(9) has been amended to change "executive director" to "agency." Section 334.306(c) has been amended to update and clarify the language on when an application may be filed. Section 334.306(c)(1) has been amended to clarify that an application may be filed after the completion of a phase "or a pre-approved activity;." Section 334.306(c)(2) has been amended to change "executive director" to "agency." Section 334.306(d) has been amended to change "executive director" to

"agency" and to delete "without prejudice" because it is not legally appropriate in this context. Section 334.306(e) has been amended to change "executive director" to "agency." Adopted §334.306(f)(3) has been amended to delete "and remediation planning" from the site assessment phase. Section 334.306(f)(4) has been added to include both risk assessment and the "remediation planning" deleted in §334.306(f)(3). Subsequent paragraphs were renumbered due to the addition of this paragraph. Section 334.306(f)(6) has been amended to include the descriptor "monitoring" in the post-remediation phase for greater clarity. Section 334.306(f)(7) added a new "site closure" phase to more accurately describe the phases of corrective action.

Adopted §334.307, Technical Information Required. Section 334.307(a) has been amended to change "executive director" to "agency." Section 334.307(a)(1) has been amended to change "executive director" to "agency," and to correct the Subchapter D cross-reference title. Section 334.307(b) has been amended to change "executive director" to "agency," and to remove the unnecessary words "without prejudice" as legally inappropriate in this context.

Adopted §334.308, Allowable Costs and Restrictions on Allowable Costs. Section 334.308(b) has been amended to change "commission" to "agency." Section 334.308(c)(3) has been amended to remove the specific advance approval requirement for a temporary water supply because there is a general requirement for preapproval of all corrective action activities already in §334.310(f), and to change "executive director" to "agency." Section 334.308(c)(5) has been amended to delete observation wells because they are used as part of leak detection and not for the remediation discussed in this subchapter. Section 334.308(c)(8)(B) has been amended to change "executive director" to "agency staff." Section

334.308(c)(15) has been amended to change "executive director" to "agency." Section 334.308(c)(18) has been amended to clarify the type of cost reimbursable to obtain access to off-site property. Section 334.308(c)(19) has been amended to clarify how the determination of the reasonable value of time spent by the applicant in planning and administering the applicant's corrective action plan will be made, and to delete the gender specific pronoun "his own" and replace it with "the applicant's;." Section 334.308(c)(20) has been amended to delete "or confirmation of the" to clarify the requirement, and to change "executive director" to "by agency staff." Section 334.308(c)(22) has been amended to change "executive director" to "agency." Section 334.308(d)(2) has been amended to change "executive director" to "agency." Section 334.308(e)(2) has been amended to change "executive director" to "agency." Section 334.308(f) has been amended to change "executive director" to "agency." Section 334.308(g)(5) has been amended to change "executive director" to "agency." Section 334.308(g)(15) has been amended to change "executive director" to "agency staff." Section 334.308(g)(16) has been amended to change the section number for referenced §334.321 to §334.84, to amend the title of §334.84, and to change "executive director" to "agency." Section 334.308(g)(20) has been amended to move a concept being deleted at the end of the paragraph to the beginning of the paragraph to improve readability, to add a new §334.308(g)(20)(A) to clarify that cost will not be reimbursed for a regulated substance that is not a petroleum product, and to add a new §334.308(g)(20)(B) rewording the language deleted in §334.308(g)(20) regarding a petroleum product that has been commingled with a regulated substance that is not a petroleum product.

Adopted §334.309, Reimbursable Costs, has been amended to change "commission" to "agency."

Adopted §334.310, Requirements for Eligibility. Section 334.310(a)(1)(B) has been amended to reflect the two year extension to the expiration date of the PST reimbursement program from “2001" to “2003" pursuant to HB 2816's TWC, amended §26.361(a). Section 334.310(a)(1)(F)(i)(I), (III), and (IV) have been amended to change “executive director” to “agency.” Section 334.310(a)(1)(F)(ii)(I) has been amended to change “executive director” to “agency.” Section 334.310(a)(2) - (5) have been amended to change “executive director” to “agency.” Section 334.310(c) has been amended to change “executive director” to “agency.” Section 334.310(e) has been amended to change “Commission” to “Agency.”

Adopted §334.312, Owner/Operator Contribution. Section 334.312(a) has been amended to change “executive director” to “agency.” Section 334.312(d) has been amended to change “commission” to “agency,” and to reflect a six month extension to the corrective action plan deadline from December 23, 1997 to June 23, 1998 pursuant to HB 2815's TWC, amended §26.3512(g) and (h). Section 334.312(e) has been amended to change “commission” to “agency” and to reflect a 12 month extension to the corrective action plan goals deadline from “1998" to “1999" and to change an “or” to “and” in the first date citation to improve readability. Section 334.312(g)(1) and (2) have been amended to change “executive director” to “agency.”

Adopted §334.313, Review of Application by Executive Director. The section title has been amended to delete “by Executive Director” because agency staff actually performs the review of the application. Section 334.313(a) has been amended to change “executive director” to “agency.” Section 334.313(a)(1) has been amended to change “executive director” to “agency,” and to add a lead-in

phrase for the subsequent procedures for determining application completeness. Section 334.313(a)(1)(A) has been added indicating that a complete application form must contain a completed application, legible copies of invoices, proof of payment, preapproval documentation, technical information requested in the application form, and a completed Application Checklist. Section 334.313(a)(1)(B) is added indicating that the applicant has 30 days to respond to deficiencies or reapply. Section 334.313(a)(1)(C) is added indicating that the 30-day response time to deficiencies can be extended by the agency for 30 days one time. Section 334.313(a)(1)(D) is added indicating that after the application is determined complete the agency will do a technical and financial review. Section 334.313(a)(1)(E) is added indicating that complete applications with preapproved costs will be processed before applications without preapproved costs and the applicant will be so notified. Section 334.313(a)(1)(F) is added indicating that if the corrective action on an application is determined unacceptable, the applicant will be notified and the application will not be processed until the corrective action has been determined to be acceptable. Section 334.313(a)(1)(G) is added indicating the received date will be the date the complete application, or additional required information, is received by the agency. Section 334.313(b) has been amended to insert “will not be considered a complete claim and will not be processed” in place of “may be returned by the executive director without prejudice” to clarify that an application that does not have all the required information will not be considered complete and thus will not be processed, and to remove “without prejudice” as legally inappropriate language in this context. Section 334.313(b) has been amended to insert “This” in the second sentence in place of “Return of the application by the executive director without prejudice” to be consistent with the previous change and to be amended to incorporate a deadline date of June 1, 2003 for submission of returned applications based upon the expiration date of the reimbursement program, September 1, 2003,

and the 90-day processing time necessary for reimbursements pursuant to HB 2816's TWC, amended section §26.361(a) and HB 2815's TWC, new §26.35731(c). Section 334.313(c) has been amended to change “executive director” to “agency.” Section 334.313(d) has been amended to clarify that substantive review involves “technical and financial review,” to change “executive director” to “agency,” to change “he” to “it” to be consistent with the previous change, to break-out some of the information into a new §334.313(d)(1) and to add a new §334.313(d)(2). Section 334.313(d)(1) language has been amended to change “may” to “will” to indicate that further review of the application will be postponed until additional required information is received, to change “executive director” to “agency” and add a new sentence indicating that the date received will be the date the agency receives the required additional information. Section 334.313(d)(2) is added to allow issuance of the fund payment report within the new legislatively required 90 days, but withhold payment for the insufficiently documented costs or insufficiently documented corrective action activity. Section 334.313(e) has been amended to change “executive director” to “agency.” Section 334.313(f) has been amended to change “commission” to “agency.”

Adopted §334.314, Executive Director’s Fund Payment Report. The section title has been changed to “Fund Payment Report.” Section 334.314(a) has been amended to change “executive director” to “agency.” Section 334.314(b) has been amended to change “executive director” to “agency,” and to change the period for response to the fund payment report from 45 days from the date of receipt to 60 days from the date on the fund payment report. Section 334.314(c) and (d) has been amended to change “executive director” to “agency.” Section 334.314(e) has been amended to change “executive

director" to "agency," and to change the word "his" to "its" and "he" to "it" to be consistent with the previous change.

Adopted §334.315, Protest of Fund Payment Report. Section 334.315(a) is amended to change the word "he" to "the applicant" to avoid using a single gender pronoun, and to change the period for protesting the fund payment report from 45 days from the date on which the applicant receives the fund payment report to 60 days from the date on the fund payment report. Section 334.315(b) has been amended to change "executive director" to "agency." Section 334.315(b)(2) has been amended to change "executive director's" to "Texas Natural Resource Conservation Commission" to reflect current agency terminology. Section 334.315(b)(4) has been amended to delete "executive director's" to be consistent with the new title of this section, and to delete the unnecessary wording "of any other complaint the applicant has relating to the claim" and replace it with a clarification that documentation supporting a protest should be included with the statement of protest submitted to the agency. Section 334.315(d) has been amended to change the time to file a petition for relief from "45" to "60" days from the date of notification from the agency that informal negotiations have ceased and the final formal protest meeting has been held, and to change "executive director" to "agency."

Adopted §334.318, Recovery of Costs, has been amended to change "commission" to "agency."

Adopted §334.320, Responsibilities of Owners and Operators. The section has been changed to "Responsibility of Owners, Operators, and Others" to reflect all applicable parties under this section. Section 334.320(b) and (c) have been amended to change "executive director" to "agency."

Adopted §334.321, Corrective Action by the Commission. In the section title, "Commission" has been changed to "Agency." Section 334.321(a) - (d) have been deleted because these limitations are an unnecessary repeat of those found in Subchapter D, §334.84. Also, the subsection designation has been removed from current §334.321(e) due to the previous deletions; "executive director" has been changed to "agency;" and language has been added to clarify that work authorized by the agency to be performed by the owner or operator is subject to the estimated cost preapproval requirements in this subchapter.

Adopted §334.322, Subchapter H Definitions. The following definitions have been deleted and added to Subchapter A, §334.2 because they are used in more than one subchapter: "Abate," "Aboveground storage tank," "Backfill," "Corrective action," "Corrective action plan (remedial action plan)," "House Bill 1214," and "Hydraulic fluid." The title of the definition of "Commingled" has had "substance" deleted, to be moved to Subchapter A, §334.2, and a cross-reference to §334.2 for the definition added here. The definition of "Confirmed" has been amended to change "executive director" to "agency." The definition of "Eligible owner" has been amended to add "held or" for greater clarity, and to delete the obsolete last sentence. The definition of "Emergency abatement" has been amended to add "mitigating" to be inclusive of all mitigating actions, to add "in an emergency" to clarify the definition, to delete "by mitigating fire, explosion, and vapor hazards," to make the definition inclusive of all mitigating actions, and to change "executive director" to "agency." The definitions of "Petroleum Product" and "Petroleum Storage Tank" are moved to Subchapter A, §334.2, with a cross-reference to §334.2 added here. The remaining definitions are renumbered to accommodate these changes.

Subchapter I, Underground Storage Tank Contractor Registration and Installer Licensing

Subchapter I amendments streamline the rules and improve clarity and readability.

Adopted §334.402, Application for Certificate of Registration. At the beginning of this section, the unnecessary words "in order" have been deleted. Section 334.402(1) has been amended to change "executive director" to "agency." Section 334.402(2)(B) has been amended to add "an authorized representative's name and title, when the applicant is not an actual individual" in place of "the business representative's name and title" because the business representative may not be the person authorized to sign for the company when it is a company registering rather than an individual. Section 334.402(2)(C) has been amended to change "business" to "an authorized" to conform with the previous change. Section 334.402(2)(D) has been amended to delete "financial assurance, including" to conform with subsequent changes in §334.402(2)(D)(i) and (ii). Section 334.402(2)(D)(i) has been amended: to add "proof" in place of "evidence" to be more specific about what is required; to update the name of the agency from "Texas Water Commission" to "Texas Natural Resource Conservation Commission;" to change "executive director" to "agency;" and to delete "; and a financial statement prepared in conformity with accounting principles as defined by the American Institute of Public Accountants, indicating an applicant's current net worth of not less than $25,000; or" to move this documentation requirement to the following §334.402(2)(D)(ii) for greater clarity. Section 334.402(2)(D)(ii) has been amended to add the last documentation requirement deleted from §334.402(2)(D)(i), to add a second alternative documentation of a letter from a certified public accountant, and to delete the less specific "other evidence of financial assurance which is determined by the executive director to be sufficient for the purposes of the section." Section 334.402(2)(E)(i) - (iii) have been amended to change "executive

director" to "agency." Section 334.402(2)(F) has been amended to delete the notarization requirement because it is unnecessary. Section 334.402(2)(G) has been added to clarify that the application/issuance fee must be paid when the application is submitted. A typographical error was made in the proposal of this subparagraph--the "or" at the end should not have been bracketed for deletion. That error has been corrected at adoption.

Adopted §334.403, Issuance of Certificate of Registration. Section 334.403(a) has been amended to change "commission" to "agency;" to add "the initial application/issuance fee" in place of "fees" to further clarify that the total fee of $150 is the sum of the application and issuance fees; and to delete "The $100 issuance fee shall be refunded if the application is withdrawn or denied." because processing is required whether or not the application is approved. This is also consistent with the fee provisions of other commission licensing programs. Section 334.403(b) has been amended to change "executive director" to "agency;" to delete the requirement for comments to be sent by certified mail return receipt requested because this will reduce agency costs and first class mail is adequate; to delete the return of the $100 issuance fee because considerable processing effort will have already occurred; to add the words "may be" to allow some flexibility on denying certificates of registration in unusual but justified special circumstances; and to delete the words "without prejudice" because they are not legally appropriate in this context. Section 334.403(c) has been amended to change "executive director" to "agency."

Adopted §334.404, Renewal of Certificate of Registration. Section 334.404(b) and (c) have been amended to change "commission" to "agency." Section 334.404(d) has been amended to add new

language to clarify that submission of a properly completed application includes proper payment of associated fees and certification of adequate financial requirements, to replace "executive director" with "agency," and to delete the remaining language to clarify it in §334.404(d)(1) - (3). Section 334.404(d)(1) has added language to clarify that the current certification will be considered provisionally renewed if the applicant submitted the renewal application by the deadline and has not yet received notification of the agency's renewal decision by the expiration date. Section 334.404(d)(2) has added language to clarify that the current registration will not be considered provisionally renewed if the applicant did not file the renewal application prior to the expiration date, and the applicant has not received notification of renewal by the expiration date. Section 334.404(d)(3) clarifies that renewal certificates issued after the previous expiration date will have an expiration date of one year following the previous expiration date. This also means that some certificates of registration may not be for a full year, depending on when the renewal application was received. Section 334.404(e) has been amended to have the demonstration of financial requirements made by certification and have the applicant be subject to submitting documentation of financial requirements on demand rather than resubmitting this documentation with each renewal. Section 334.404(g) has been amended to change "executive director" to "agency;" and to specify issuance of a renewal approval letter in place of a certificate to reduce TNRCC workload and cost.

Adopted §334.405, Denial of Certificate of Registration. The title of this section has been amended to add "Grounds for" to the beginning of the title to be more accurate and specific. The beginning of the section has been amended to change "executive director" to "agency." Section 334.405(4) has been amended to change "executive director" to "agency."

Adopted §334.406, Fee Assessments for Certificate of Registration. For simplification and clarification, §334.406(1)(A) has been amended to change the application fee to a combined application/issuance fee of $150; §334.406(1)(B) specifying the issuance fee separately has been deleted and the remaining provisions renumbered. For further simplification and clarification, newly renumbered §334.406(1)(F) has been amended to cite the actual $25 late renewal fee instead of cross referencing where to find it in the rules. Section 334.406(2) has been amended to change "executive director" to "agency." Section 334.406(3) has been added to indicate that all related fees are nonrefundable, because processing takes place whether or not the application for a certificate of registration is approved or disapproved. This new policy is consistent with other commission licensing programs.

Adopted §334.407, Other Requirements for Certificate of Registration, has been amended. Section 334.407(a) has been amended to change "executive director" to "agency." Section 334.407(a)(4) has been amended to change "business" to "authorized" in conformance with the amendment to §334.402(2)(B). Section 334.407(b) has been amended to delete the unnecessary word "such," to change "responsibility" to "requirements" in conformance with changes to §334.402, and to change "commission" to "agency." Section 334.407(d) has been amended to delete the "Texas Air Control Board" because this agency was combined with the Texas Water Commission to form the Texas Natural Resource Conservation Commission and to amend "Texas Water Commission" to read "Texas Natural Resource Conservation Commission" for the same reason.

Adopted §334.409, Revocation, Suspension, or Reinstatement of Certificate of Registration and License, has been amended to change "executive director" to "agency."

Adopted §334.411, Type of Hearing. The title of the section has been changed to "Procedures for Revocation, Suspension, or Reinstatement of a Certificate of Registration and License" to match the new contents of this section. The existing wording of this section has been deleted as unnecessary because it is outdated and acts as a statutory recitation. New §334.411(a) - (d) have been adopted so that the procedures for revocation, suspension, or reinstatement of the certificate will be laid out more specifically. This language is consistent with that used elsewhere in this subchapter and in Subchapter J (Registration of Corrective Action Specialist and Project Managers for Product Storage Tank Remediation Projects) for revocations, suspensions, and reinstatements.

Adopted §334.412, Definitions. Section 334.412(1) has been deleted because the definition of "business representative" already appears in the commission's generally applicable definitions in 30 TAC Chapter 3. New §334.412(1) has been amended by using "UST" further on in this paragraph, by adding "by the agency" for greater clarity, and by adding "the contractor" in place of "same" for greater clarity. Section 334.412(3) has been deleted because "commission" is also already defined in Chapter 3. Former §334.412(4) and (5) have been renumbered due to the previous deletions. Section 334.412(6) has been deleted because "executive director." Section 334.412(7) has been renumbered due to the previous deletions and §334.412(7)(D)(ii)(I) has been amended to reflect that the Texas Water Well Drillers Board licensing responsibilities have been transferred to the Texas Department of Licensing & Regulation. Section 334.412(8) has been deleted because this definition is already defined

in Subchapter A. Section 334.412(9) and (10) have been renumbered due to deletions. Section 334.412(11) - (13) have been deleted because "operator," "owner," and "person" are already defined in agency general definitions in 30 TAC Chapter 3. Section 334.412(14) and (15) have been renumbered to account for the deletions. Section 334.412(16) has been deleted because the definition is already in Subchapter A. Section 334.412(17) - (19) have been renumbered to account for deletions.

Adopted §334.413, License for Installers and On-Site Supervisors has been repealed because it was only necessary to have this section until rules were adopted by the commission that define the requirements necessary for the issuance of installer and on-site supervisor licenses, and that has been done.

Adopted §334.414, License for Installers and On-Site Supervisors. Section 334.414(b) has been amended to change "commission" to "agency." Section 334.414(c)(1) has been amended to change "commission" to "agency." Section 334.414(d) has been amended to change "commission" to "agency."

Adopted §334.416, Requirements for Issuance of License A and License B. Section 334.416(a) has been amended to add "applicant" in place of "installer or on-site supervisor" because it is more accurate (it does not matter if the applicant is an installer or an on-site supervisor); and to change "commission" to "agency." Section 334.416(e) has been amended to change "executive director" to "agency." Section 334.416(f) has been amended to change "executive director's" to "agency's." In §334.416(g) and (h), the phrase "prior to the examination" is added to clarify that required courses

must be completed prior to taking the license examination. Section 334.416(i) and (i)(7) have been amended to change "executive director" to "agency."

Adopted §334.417, Application for License A and License B. Section 334.417(a)(5) has been amended to change "a list and description" to "documentation" to allow the agency to better verify that the courses were taken. Section 334.417(a)(6) has been amended to change "executive director" to "agency." Section 334.417(b) has been amended to change "executive director" to "agency" and to add that the initial application fee of $200 should accompany the licensing application. Section 334.417(c) has been amended to add "take" in place of "schedule" and to change "executive director's" to "agency's." Section 334.417(d) has been amended to delete "without prejudice" because this wording is not legally appropriate in this context, to add "application" in place of "examination" because the application and examination fee are combined, and to change "executive director" to "agency."

Adopted §334.418, Notification of Examination, has been amended by adding "application" in place of "examination" because the application and examination fee are combined and by changing "executive director" to "agency." The phrase "on each specific UST category" has been deleted from §334.419(i) to focus the test evaluation more onto the overall knowledge of the applicant.

Adopted §334.419, License A and License B Examination. Section 334.418(a), (d) - (f), and (h) have been amended by changing "executive director" to "agency." Section 334.418(g) has been amended by

changing "commission's" to "agency's." The phrase "on each specific UST category" has been deleted from §334.419(i) to focus the test evaluation more onto the overall knowledge of the applicant.

Adopted §334.420, Issuance of License A or License B. Section 334.420(a), (c), and (d) has been amended by changing "executive director" to "agency."

Adopted §334.421, Renewal of License. Section 334.421(b) has been amended to change "executive director" to "agency." Subsection (c) has been amended to change "executive director" to "agency." Section 334.421(c)(1) has been amended to add "documentation of" in place of "evidence satisfactory to demonstrate" to allow the agency to better verify that the courses were taken. Section 334.421(d) has been amended to add new wording that the applicant must submit renewal fees and course completion certificates with the application, and to delete the last sentence because the concept is covered in more detail in new §334.421(d)(1) and (2). Section 334.421(d)(1) adds language to clarify that the current license will be considered provisionally renewed if the applicant submits a timely renewal application and has not yet received notification of the agency's renewal decision by the expiration date. Section 334.421(d)(2) adds language to clarify that the current license will not be considered provisionally renewed if the applicant did not submit the renewal application on time and the applicant has not received notification of renewal by the expiration date. Section 334.421(d)(3) clarifies that licenses issued after the previous expiration date will have an expiration date of one year following the previous expiration date. This also means that some licenses may not be for a full year depending on when the renewal application was received. Section 334.421(f) has been amended to change "executive director" to "agency." Section 334.421(g) has been amended to delete the former

language and add new language to clarify that eight hours of courses are required for License A or B, and eight hours each of the courses required for License A and License B are required to renew both, except that when the same course is required for both Licenses A and B, the course hours can be counted twice. Section 334.421(h) has been deleted because this requirement has been incorporated into the language of the preceding amendment. Section 334.421(i) and (j) has been renumbered due to the deletion. Newly renumbered §334.421(h) has been amended to change and to delete "and (h)" to be consistent with the deletion of the original subsection (h) and to change "executive director" to "agency." Newly renumbered §334.421(j) has been amended to delete "and (h)" to be consistent with the deletion of the original subsection (h).

Adopted §334.422, Denial of License A or License B. The title of this section was changed to add "Grounds for" at the beginning to be more descriptive of the contents of the section. The beginning of the section has been amended to change "executive director" to "agency." Section 334.422(4) has been amended to delete "or" at the end so that new §334.422(5) and (6) can be added. Section 334.422(5) has been added for denial of renewal because of applicant default on loans guaranteed by the Texas Guaranteed Student Loan Corporation. This is added in accordance with the Texas Education Code, Chapter 57. The wording of this paragraph has been clarified since proposal. Section 334.422(6) has been added for denial of renewal because an applicant is delinquent on child support payments. This is added in accordance with the Texas Family Code, Chapter 232. The wording of this paragraph has been clarified since proposal. Section 334.422(5) has been renumbered due to previous paragraph additions.

Adopted §334.423, Fee Assessments for License A and License B. Section 334.423(a)(1) has been amended to add “initial license application fee - $200" and to delete “examination fee - $50.00” to clarify that the initial application fee is required and that the fee includes the examination fee. Section 334.423(a)(2) has been amended to add “examination fee - $50.00 (retests only)” and to delete “initial license application fee - $200" to clarify the $50 fee is for examination retests only. Section 334.423(a)(4) has been amended to add the actual $25 amount of the renewal fee instead of cross referencing where to find the fee amount in the rules. Section 334.423(c) has been deleted because this fee has been eliminated. Section 334.423(d) has been renumbered due to the previous deletion, and to change “executive director” to “agency;” and amended to delete the cross-reference for the late renewal fee amount that has been added in §334.423(a)(4). Section 334.423(d) has been added to indicate that all related fees are nonrefundable, because processing takes place whether or not the application for a license is approved or disapproved. This new policy is consistent with other commission licensing programs.

Adopted §334.424, Other Requirements for a License A and License B. Section 334.424(a) has been amended to change “executive director” to “agency.” Section 334.424(b) has been amended by adding the word “all” and by changing the chapter number from “313" to “213" to reflect the new location for the Edwards Aquifer rules. Section 334.424(c) has been amended to delete the “Texas Air Control Board,” which was combined with the Texas Water Commission to form the Texas Natural Resource Conservation Commission, and to amend “Texas Water Commission” to reflect the name of the new organization, “Texas Natural Resource Conservation Commission.”

Adopted §334.426, Revocation, Suspension, or Reinstatement of a License A and License B, has been amended to change "executive director" to "agency." Since proposal, a clarifying subsection (d) was added to this section concerning defaulted student loans and delinquent child support payments.

Adopted §334.428, Type of Hearing. The title of the section has been changed to "Procedures for Revocation, Suspension, or Reinstatement of a License A and License B" to match the new contents. The old wording of this section has been deleted as unnecessary because it is outdated and acts as a statutory recitation. New §334.428(a) - (d) has been adopted so that the procedures for revocation, suspension, or reinstatement of the licenses will be laid out more specifically. This language is consistent with that used elsewhere in this subchapter and in Subchapter J for revocations, suspensions, and reinstatements.

Adopted §334.429, Penalties Effective On or After September 1, 1995, has been repealed in its entirety as outdated, due to the consolidation of enforcement-related rules into Chapter 70, which itself followed a statutory enforcement consolidation.

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

Subchapter J amendments streamline the rules and improve clarity and readability.

Adopted §334.452, Exemptions from Subchapter J. Section 334.452(a)(1) deletes "Statutory" to be consistent with the change to the title of the referenced section. Section 334.452(a)(2) has been

amended to delete “Commission” to be consistent with the changes to the title of the referenced section. Section 334.452(d)(2)(A) has been amended to change “TWC” to “agency” and change “TWC” to “agency.” These amendments are also necessary because the Texas Water Commission was merged into this agency. Section 334.452(d)(2)(C) has been amended to add language to refer to “air program regulations” rather than “applicable Texas Air Control Board regulations.” These amendments are necessary because the Texas Air Control Board was merged into the TNRCC. Section 334.452(h) has been amended to replace “commission” with “agency.” Section 334.452(i) has been amended by deleting “On or after September 1, 1995, a qualified" because the original implementation date is no longer needed, by deleting and adding various terms applicable to professional engineers as necessary to comply with the language of the most recent version of the Engineering Practice Act; by replacing “commission” with “agency;” by reflecting the current name of the Texas Board of Professional Engineers, by referencing the new §334.452(j) that contains enforcement provisions moved from Subchapter A, §334.11(c)(3)(A), and by deleting two references to §334.11(c)(3)(A) that has been repealed and its language moved to new §334.452(j) of this section. Section 334.452(j) has been added to reflect the movement of old enforcement language applicable to professional engineers, who also hold registration with the TNRCC as corrective action project managers, from Subchapter A, §334.11(c)(3)(A)(ii), which is repealed, to this section, to amend that old language by changing various terminology applicable to professional engineers or to the Texas Board of Professional Engineers as necessary to comply with the language of the most recent version of the Engineering Practice Act, and to delete a previous cross-reference in the repealed language to this subchapter.

Adopted §334.453, General Requirements and Prohibitions. Section 334.453(a)(1) has been amended to delete "offered to be" and ", and performed by" to leaving just "performed by" for easier readability and to delete the unnecessary word "natural." Section 334.453(a)(2) has been amended to delete the unnecessary word "natural." Section 334.453(a)(4) has been amended to replace "commission" with "agency." Also, the word "business" has been deleted because a business representative is not always authorized to sign for the company for all purposes. Section 334.453(b)(1)(A) has been amended to delete the unnecessary words "offer to;" to correct the word "service" to "services;" and to insert the word "performing" in place of "offering to perform" for easier reading. Section 334.453(b)(1)(E)(ii) has been amended to remove the word "interim" to refer to the new name of Subchapter H. Section 334.453(b)(2)(C) has been amended to delete the unnecessary word "natural." Section 334.453(b)(2)(D) has been amended to replace "commission" with "agency." Section 334.453(c) has been amended to remove the reference to repealed §334.11 and replace it with a reference to "Chapter 70 of this title (relating to Enforcement) and Texas Water Code, Chapter 7." Section 334.453(e) has been amended to replace "commission" with "agency."

Adopted §334.455, Notice to Owner or Operator. Section 334.455(c)(5) has been amended by deleting the word "Interim" to refer to the new name of Subchapter H and by replacing "TWC" with "agency" because "TWC" is now an obsolete acronym for this agency. Section 334.455(f)(1) has been amended by changing "by" to "with" to clarify that the agency accepts the registration and is not the registrant, and by changing "Texas Water Commission" to "agency" because the Texas Water Commission was merged into this agency. Section 334.455(f)(2) has been amended by replacing "Texas Water

Commission's" with "agency's" because the Texas Water Commission was merged into this agency and by replacing "commission" with "agency."

Adopted §334.456, Application for Certificate of Registration for Corrective Action Specialist. Section 334.456(2)(B) has been amended to change "the business" to "an authorized" because a business representative is not always authorized to sign for the company for all purposes and to add ", when the applicant is not an actual individual" for greater clarity. Section 334.456(2)(C) has been amended to change "business" to "authorized" for greater clarity and consistency with the previous change. Section 334.456(2)(D) has been amended to change "financial assurance, including" to "documentation of" to avoid possible confusion of these requirements with financial assurance requirements found at Chapter 37. Section 334.456(2)(D)(i) has been amended to replace the word "evidence" with the word "proof" for greater clarity and to replace "Texas Water Commission, Petroleum Storage Tank Division" with "Texas Natural Resource Conservation Commission" because the Texas Water Commission was merged into the TNRCC. Section 334.456(2)(D)(ii)(I) has been amended to add "(balance sheet)" to clarify the type of financial statement required, and to delete "business" to clarify that the signature must be by a person authorized to sign for the company. Section 334.456(2)(D)(ii)(II) has been amended to delete a vague requirement on "other evidence of financial assurance which is determined by the executive director to be sufficient for the purposes of this section" and replace it with the more specific requirement for "a letter from a certified public accountant, who is not employed by the applicant or does not receive payment from the applicant on a regular basis, verifying the applicant's net worth to be not less than $25,000." Section 334.456(2)(E)(ii) has been amended by deleting "; or" and inserting a period in its place. Section 334.456(2)(E)(iii), which states "other

documentation of quality of performance which is determined by the executive director to be sufficient, pursuant to this section." has been deleted because no other evidence of quality of performance is acceptable. Section 334.456(3) has been amended to delete the requirement that the application be "notarized" as an unnecessary requirement.

Adopted §334.457, Application for Certificate of Registration for Corrective Action Project Manager. Section 334.457(2)(B)(iii), which states "other documentation of quality of performance which is determined by the executive director to be sufficient, pursuant to this section." has been deleted because no other evidence of quality of performance is acceptable. Section 334.457(3)(A) has been amended to replace "commission" with "agency." Section 334.457(3)(A)(i) was inadvertently deleted in a previous rulemaking and has been added back, without change, as new language in this adopted rule. Section 334.457(3)(A)(ii) was also inadvertently deleted in a previous rulemaking and has been added back as new language in the adopted rule, modifying the former language applicable to professional engineers to comply with the language of the most recent version of the Engineering Practice Act; removing unnecessary language requiring executive director approval, given the requirements stated in §334.452(i); adding the word "requirement" and replacing "may be" with "is" to provide clarification and to be more specific; and adding a reference to §334.452(i) for clarification. Section 334.457(3)(B) has been amended to replace "commission" with "agency." Section 334.457(4) deletes the requirement for the application to be "notarized" as an unnecessary requirement. Section §334.457(6) adds the requirement to take the examination for the project manager certification within 120 days after approval of the application and to add the option to reapply if an application is denied. The requirement to take the examination within 120 days of application will allow the commission not to retain application

records for a longer period of time; and it will still allow the applicant a reasonable amount of time within which to take the examination. Also, if an application is denied, an applicant should have the option to reapply.

Adopted §334.458, Review and Issuance of Certificates of Registration. Section 334.458(a) has been amended to delete "administratively" to clarify that an application is complete when all requirements have been met, not just the administrative requirements in the application form. Section 334.458(b) has been amended to delete "administrative" and "administratively" to clarify that an application is complete when all requirements have been met, not just the administrative requirements within the application form. Also, this subsection has been amended to remove gender specific language by replacing "he determines" with "it is determined;" "he shall inform" with "shall be informed;" and "he shall cease his review" and "return" with "review will cease" and "will be returned." In addition, this subsection has been amended to remove "without prejudice" because it is legally inappropriate in this context and to add a reference to §334.457 for greater clarity. Section 334.458(c)(1) has been amended to replace the unnecessary gender word "his" with the word "the" and to delete the word "administratively" to clarify that an application is complete only when all requirements have been met, not just the administrative requirements within the application form. Section 334.458(c)(1) has been amended to add "including payment of the applicable fees" to clarify that payment of fees is a requirement for a complete application. Section 334.458(d) has been amended to delete the word "annually" on certificate of registration renewal because registration renewal has been amended from annually to every two years in the referenced §334.460, Renewal of Certificate of Registration for Corrective Action Specialist and Registration for Corrective Action Project Managers.

Adopted §334.459, Continuing Education Requirements for Corrective Action Project Managers. Section 334.459(a) has been amended to add an exception to the requirement applicable to professional engineers and to provide a reference to §334.452(i), to replace the annual requirement for 16 hours of continuing education with the 32 hours that will be required if the registration is renewed every two years, to remove unnecessary words “in order,” and to delete the unnecessary words “each time it is due for renewal.” Also in §334.459(a), a new second sentence is added in parentheses to clarify that 16 hours of education are required for annual renewals during the transition to the two year renewal. Also in §334.459(a), the unnecessary words “In order to” are deleted; “16" has been deleted to comport with previous changes in this subchapter; “within the 12 months immediately preceding” has been clarified with the words “prior to;” and “he submits an administratively complete application for renewal” has been clarified with “a completed application for renewal is submitted” because the word “he” is gender specific and an applicant must submit more than the “administrative” information before the application is considered complete. Section 334.459(b) has been amended to remove the unnecessary words “In order to” and replace them with “To” at the beginning of the first sentence. Section 334.459(e) has been amended to add the wording “required continuing education instruction” to replace “16,” which would be incorrect with the 32 hours of continuing education for a two-year period. Section 334.459(f) has been amended to correct the words “certificate” to “certificates” because more than one certificate may be required to document training, and to delete “each year” because a two-year registration renewal has been inserted in §334.460.

Adopted §334.460, Renewal of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager, has been amended. Section 334.460(a) has been amended to add

two new sentences and a lead-in phrase to the third as follows: "As of the effective date of this rule, the agency will transition to renewal of certificates of registration on a two-year basis. For one year after the effective date of this subsection, existing certificates with even registration numbers will be renewed for one year and certificates with odd registration numbers will be renewed for two years. Following this designated period, each." This staggered two-year renewal period will add efficiency to the program by reducing the number of renewals that have to be processed each year by one-half. The last sentence of §334.460(a) has been amended to replace the "one year" terminology with "two years" and to change the "renewal" to "expiration" date for greater clarity. Section 334.460(d) has been deleted and replaced with "The renewal application must be accompanied by all information needed for the application to be complete, including the required financial documentation, and any other information necessary for the agency to complete the renewal process." This amendment is inserted as part of breaking §334.460(d) into two new paragraphs separating the requirements for an application to be considered complete for corrective action specialists from those for corrective action project managers for greater clarity. The requirement to resubmit financial information in the deleted language was replaced with a certification that the company has continued to meet the financial requirements in new §334.460(d)(1) to simplify and reduce the paper work burden on the regulated community. In §334.460(d)(2), the previous provision which allowed an applicant for project manager registration to reapply for certification without resubmitting the required documentation is not included. This allows the commission not to retain files of original applications indefinitely. Section 334.460(f) has had its current language deleted and replaced with new language to clarify the status of registration when the renewal application is received, or is not received, 30 days prior to expiration of the current registration. This amendment is part of breaking §334.460(f) into two new paragraphs for greater

clarity. Section 334.460(f)(1) clarifies how applicants will not be adversely affected by processing times that go beyond the expiration date, as long as the application is properly and timely filed. Section 334.460(f)(2) clarifies that provisional renewal will not be in effect for those applications that are not properly and timely filed. Section 334.460(g), has been amended to delete "does not apply" and replace it with "has not met all requirements" for renewal, to delete the specific gender pronoun "his," to change the one year from the expiration date to complete a renewal application to 30 days in conformance with the change in §334.460(f)(2), to change the specific gender pronoun phrase "date his previous expiration expires, he must submit" to "expiration date," and to add "must be resubmitted" at the end of the sentence. The second sentence has been amended to delete "does not apply" and replace it with "has not met all requirements," to delete the specific gender pronoun "his," to change the one year from the expiration date to complete a renewal application to 30 days in conformance with the change in §334.460(f)(2), to change the specific gender pronoun phrase "date his previous expiration expires, he must" to "expiration date," and to add "must be resubmitted" at the end of the sentence. These amendments eliminate specific gender pronouns and allow the agency to retain records of expired licenses for 30 days rather than for an entire year to be consistent with other TNRCC certification programs. Section 334.460(h) has been amended to delete "certificate of registration" and replace it with "documentation of approval" to allow the agency greater flexibility on the type of documentation issued.

Adopted §334.461, Denial of Certificate of Registration. Section 334.461(1) has been amended to add "and fees" to clarify that registration can be denied when an application for registration is submitted without the required fees, to replace "he is seeking" with "being sought" to eliminate the gender

specific language, and to remove “the application may be denied without prejudice” because it is legally inappropriate in this context and is redundant to the rule section’s introductory language. Section 334.461(2)(B) deletes the word “Interim” to refer to the new title of Subchapter H. The “or” at the end of §334.461(5) has been deleted so that new §334.461(6) and (7) can be inserted. Section 334.461(6) has been added for denial of renewal because of applicant default on loans guaranteed by the Texas Guaranteed Student Loan Corporation. This is added in accordance with the Texas Education Code, Chapter 57. The wording of this paragraph has been clarified since proposal. Section 334.461(7) has been added for denial of renewal because an applicant is delinquent on child support payments. This is added in accordance with the Texas Family Code, Chapter 232. The wording of this paragraph has been clarified since proposal. Section 334.461(6) has been renumbered to allow for the newly added paragraphs.

Adopted §334.462, Other Requirements. Section 334.462(a)(4) has been amended to replace “business” with “authorized” and to add a cross-reference to the rule requirement for an authorized representative to sign an application for registration. This amendment is inserted because a business representative may not be the authorized person to sign on behalf of the company for all purposes, and also to be consistent with the other similar amendments. Section 334.462(b) has been amended to replace “responsibility” with “information” to avoid possible confusion of this requirement with the financial assurance requirements in Chapter 37. Also, “during which” is added and “such” is deleted to improve readability. Section 334.462(c) has been amended to add a reminder at the beginning of the first sentence about the exemption of professional engineers from the project manager continuing education requirement and to provide a reference to §334.452(i). Also in this subsection, “16" has

been deleted to conform with the change from one-year to two-year registration renewal in the referenced §334.459. A further amendment of this subsection is the addition of the word "requirement" to clarify that continuing education is not optional. Section 334.462(d) has been amended to delete "Texas Air Control Board" and to change "Texas Water Commission" to "Texas Natural Resource Conservation Commission" because the Texas Air Control Board and the Texas Water Commission have been merged into the Texas Natural Resource Conservation Commission.

Adopted §334.463, Grounds for Revocation or Suspension of Certificate of Registration. Section 334.463(a)(1) has been amended to replace the gender specific word "he" with "the corrective action specialist." Section 334.463(a)(1)(A) and (C) have been amended to delete the "or" at the end and to place the "or" at the end of §334.463(a)(1)(D) for proper rule formatting. Section 334.463(a)(1)(B) has been amended to remove the word "Interim" to refer to the new title of Subchapter H. In §334.463(a)(1)(D), the word "this" replaces "the" for proper rule formatting. In §334.463(a)(1)(E), (b)(1)(E), and (4), "agency" is substituted for "commission." Section 334.463(a)(3) and (5) have been amended to change the gender specific word "his" to "the" and add "of a corrective action specialist,." Section 334.463(b)(1) has been amended to replace the gender specific word "he" with "the corrective action project manager." Section 334.463(b)(1)(A) and (C) have been amended to delete the "or" at the end and to place the "or" at the end of §334.463(b)(1)(D) for proper rule formatting. In §334.463(b)(1)(D), the word "this" replaces "the" for proper rule formatting. Section 334.463(b)(2) has been amended to change the gender specific word "his" to "the" and add "of a corrective action project manager." Section 334.463(b)(3) has been amended to change the gender specific word "his" to "the" and add "of a corrective action project manager."

Adopted §334.465, Procedures for Revocation or Suspension of a Certificate of Registration. Section 334.465(b) has been amended by updating the cross-reference from Chapter "337" to Chapter "70." Section 334.465(c)(1) has been amended to update the example suspension times to be consistent with other agency certification programs (as part of an ongoing commissioners' directive to achieve consistency among TNRCC programs wherever possible). Section 334.465(d) has been amended to replace "commission" with "agency." Since proposal, a clarifying subsection (e) was added to this section concerning defaulted student loans and delinquent child support payments.

Adopted §334.466, Reinstatement of a Certificate of Registration. Section 334.466(a) has been amended to replace "executive director" with "agency." Section 334.466(c) has been amended to add ", including a professional engineer," as a clarification to include professional engineers in the requirements for reinstatement after revocation of a certificate of registration, to replace "commission" with "agency," to substitute "may" for "must" because a holder who has a certificate revoked has the option of not reapplying for reinstatement, and to add the phrase "Following the period of revocation" because it clarifies when that applicant can reapply for a certificate of registration after revocation.

Adopted §334.467, Fee Assessments for Certificates of Registration. Section 334.467(a) has been amended to remove the capitalization from "Corrective Action Specialists" for consistency with the rest of the rule and to delete "on or after September 1, 1995" because there are substantive changes now being made to the rule. Section 334.467(a)(1) has been amended to change the initial application fee for a corrective action specialist from $200 to $400 to reflect the new fee that would be appropriate for the two-year registration. Section 334.467(a)(2) has been amended to delete the word "annual" and "-

$175;" to lead into a new breakdown of the corrective action specialist renewal fees during the transition from the one to two-year renewal. Section 334.467(a)(2)(A) has been added to show the current one-year $175 renewal fee, which will be used by half of the applicants during the transition year. Section 334.467(a)(2)(B) has been added to show the new two-year renewal fee of $350 that will be paid by half of the applicants during the transition year and all of the applicants after that. Section 334.467(a)(3) has been amended to replace a semicolon with a colon at the end and to delete the reference "-assessed in accordance with Chapter 12 of this title (relating to Payment of Fees)" because the renewal fees are now being added to this subsection. Section 334.467(a)(3)(A) adds the one-year late renewal fee of $25 to this section for use during the transition from one-year to two-year renewal. Section 334.467(a)(3)(B) adds the two-year late renewal fee of $50 to this section for use by half of the applicants the first year and all of the applicants thereafter. Section 334.467(b) has been amended to remove capitalization from "Corrective Action Project" for consistency with the rest of the rule and to replace the words "registered professional engineers" with "professional engineers who are currently duly licensed to practice engineering in the State of Texas," to comply with the language of the most recent version of the Engineering Practice Act. Section 334.467(b)(1) has been amended to substitute "$250, includes the initial $50 examination fee" for the former one-year "$100" initial application fee. This amendment changes the initial application fee for a project manager to reflect the new two-year registration period and show that the $50 exam fee is included. Section 334.467(b)(2) has been amended to add "(required for retakes)" to clarify that this $50 fee is required for exam retakes only. Section 334.467(b)(3) has been amended to delete the "annual" and "-$75;" to lead into a new breakdown of the corrective action project manager renewal fees during the transition from the one-year to two-year renewal. Section 334.467(b)(3)(A) shows the one-year renewal fee of $75 dollars that will

have to be used by one-half of the applicants during the first year transition from a one-year renewal to a two-year renewal. Section 334.467(b)(3)(B) adds the new two-year renewal fee of $150 that will be used by half of the applicants during the first transition year and then by all of the applicants after the first year. Section 334.467(b)(4) has been amended to delete the reference "-assessed in accordance with Chapter 12 of this title;" because the late renewal fees are added to this subsection. Section 334.467(b)(4)(A) adds the one-year late renewal fee of $25 for use by half of the applicants during the first year transition year from a one-year to a two-year registration period. Section 334.467(b)(4)(B) adds the new two-year late renewal fee of $50. This fee will be used by half of the applicants during the transition year and then everyone thereafter. Section 334.467(c) has been amended to replace "commission" with "agency."

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

Adopted §334.481, Definitions. The following was added, "Words used in more than one subchapter are defined in Subchapter A of this chapter (relating to General Provisions). Words widely used in more than one chapter are defined in Chapter 3 of this title (relating to Definitions)." to tell the reader where to find meaning of words that are not defined in this section. The definition of "Aboveground storage tank" has been deleted to eliminate redundancy because this term is defined in Subchapter A. Subsequent definitions are renumbered to account for this deletion and subsequent deletions wherever necessary. The definitions of "Activities associated with the exploration, development, and production of oil or gas or geothermal resources" and "Active geologic processes" are deleted because they are not used in this subchapter. The definition of "Application" has been deleted as unnecessary. The

definition of “Areal expansion of an existing facility” has been deleted as the term is no longer technically needed. The definition of “Authorized” has been amended to replace “executive director” with “agency.” The definition of “Class B facility” has been amended to replace “shall” with “must” to improve readability. The definition of “Clean fill standard” has been amended to delete “, e.g. soil cleaned to less than .5 mg/kg for each constituent of BTEX, and less than 10 mg/kg for TPH” because the contaminant levels that define “clean fill” are in §334.503 and are not needed in a definition. The definition of “Executive Director” has been deleted to eliminate redundancy because this term is defined in Chapter 3 of this title. The definition of “Existing facility” has been deleted because the term is unnecessary. The definition of “Final closure” has been amended to delete “so that waste management activities are no longer conducted at the facility unless subject to the provisions of this title” because this language is not needed. The definition of “Leaking petroleum storage tank (LPST) site” has been deleted to eliminate redundancy because this term has been defined in Subchapter A. The definition of “Management” has been deleted because it is unnecessary. The definition of “Maximum allowable inventory” has been amended to delete the term “definition” to be consistent with the previous change to the “Clean fill standard” definition that removed the criteria (concentration limits) from that definition. The definitions of “Operator” and “Owner” are deleted to eliminate redundancy because these terms are defined in Subchapter A. The definition of “PST-Waste Manifest” has been amended to replace “executive director” with “agency” and to delete “in order” to improve readability by removal of unnecessary words. The definition of “Person” has been deleted because this term is defined in Subchapter A. The definition of “Petroleum substance” is also deleted to eliminate redundancy because this term is defined in Subchapter A. The definition of “Sole-source aquifer” has been amended to delete the phrase “of 1974" as unecessary to the citation, and to delete the last two

sentences: "The Edwards Aquifer has been designated a sole-source aquifer by the United States Environmental Protection Agency. The Edwards Aquifer Recharge and Transition Zones are specifically those areas delineated on maps in the offices of the executive director." This amendment clarifies that the Edwards Aquifer is not the only sole-source aquifer. The definition of "Treatment" has been amended to delete the unnecessary words "in order" to improve readability and improve clarity and to delete the last sentence "The term treatment does not include the reduction of contaminant levels by dilution." The definition of "Underground storage tank" has been deleted to eliminate redundancy because this term is defined in Subchapter A.

Adopted §334.482, General Prohibitions. The title of the section has been amended by replacing the word "Prohibitions" with "Requirements" to better reflect the contents of the section. Section 334.482(b) language has been deleted and replaced by new language which, along with new §334.482(c) - (f), have been added to clarify how a variance from any of the requirements in this subchapter may be obtained. The new language makes it clear who may obtain a variance, what procedures they must follow to request a variance, the role of the agency in the review process, and the standard of that review, the documentation that should be submitted to support the request, recordkeeping requirements, and the obligations of a person who has had a variance approved.

Adopted §334.484, Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities. Section 334.484(a) has been amended to insert "December 27, 1996" in place of "the effective date of these rules" to preserve and maintain the original meaning of the rules. Section 334.484(b) has been amended to replace "executive director" with "agency." Section 334.484(c) has

been amended to insert “December 27, 1996" in place of “the effective date of these rules” to preserve and maintain the original meaning of the rules; to replace “executive director” and “commission” with “agency;” and to replace the term “shall” with the term “must” to improve readability. Section 334.484(c)(21) has been amended to replace “executive director” with “agency;” to insert “agency’s cental office” in place of “executive director of the commission, and a copy shall be submitted to the commission’s field office in the district where the proposed facility will be located” to clarify where the application should be submitted and to eliminate the need to send a copy to the region office. Section 334.484(d) has been amended to replace “shall” with “must” to improve readability. Section 334.484(e) has been amended to replace “executive director” with “agency.” Section 334.484(f) has been amended to replace “shall” with “must” to improve readability; to replace “executive director’s” with “agency’s;” and to delete “and to the appropriate region office” to eliminate the need to submit a copy of the information to the region office. Section 334.484(h) has been amended to replace “executive director” with “agency.”

Adopted §334.485, Suspension or Revocation of Registration. Section 334.485(a)(5) has been amended to replace “executive director” with “agency.” Section 334.485(b) has been amended to replace “he shall” with “the executive director will” to remove a gender specific word and to improve readability. Section 334.485(b)(1) and (2) have been amended to replace “shall” with “will” to improve readability; and §334.485(b)(3) has been amended to replace “shall” with “must” to improve readability.

Adopted §334.486, Denial of Application for Registration or Renewal. The subsection designation “(a)” has been deleted because subsection (b) has been deleted; and “executive director” has been

replaced with "agency." Section 334.486(3) has been amended to insert at the end "under Chapter 37, Subchapter K, of this title (relating to Financial Assurance Requirements for Class A or B Petroleum-Substance Contaminated Soil Storage, Treatment, and Reuse Facilities)" to reflect the new location of the financial assurance requirements for these facilities. Former §334.486(b) has been deleted because its language is legally inappropriate in this context.

Adopted §334.487, Renewal of Registration. Section 334.487(b) has been amended to insert "agency will" in place of "commission shall." Section 334.487(c) has been amended to insert "agency will" in place of "executive director shall." Section 334.487(d) has been amended to insert "agency" in place of "executive director." Section 334.487(e) has been amended to insert "agency will" in place of "executive director shall" and to improve readability.

Adopted §334.488, Authorization for Class C and Class D Facilities. This section has been amended to replace "Executive director" with "Agency."

Adopted §334.490, Notification and Mobilization Requirements for Class B Facilities. Section 334.490(1) has been amended to replace "commission region field" with "agency regional," to use the latest designation for regional offices. Section 334.490(3) - (5) have been amended to replace "executive director" with "agency." Section 334.490(6) has been amended to replace "commission" with "agency."

Adopted §334.492, Public Notice. Section 334.492(2) has been amended to replace "executive director" with "agency." Section 334.492(2)(F) has been amended to replace "Texas Natural Resource Conservation Commission" with "agency." Section 334.492(4)(E) has been amended to replace "executive director" with "agency." Section 334.492(5) has been amended to replace "commission's Austin" and "commission region" with "agency's central" and "agency regional," respectively, to use current agency terminology with regard to the central and regional offices.

Adopted §334.493, Public Meetings for Class A Facilities. Section 334.493(a) has been amended to replace "executive director" with "agency" and to replace the gender specific word "his" with "its." Section 334.493(b) has been amended to replace "executive director" with "agency" and to replace "his or her" with "its" to remove gender specific terminology. Section 334.493(c) has been amended to replace "commission" with "agency" and to replace "executive director" with "agency." Section 334.493(d) has been amended to replace "executive director" with "agency."

Adopted §334.494, Closure and Facility Expansion, has been amended to replace "executive director" with "agency" to replace "executive director's" with "agency's" and to replace "region field" with "regional" to use current agency terminology.

Adopted §334.495, Location Standards for Class A Petroleum-Substance Waste Storage or Treatment Facilities. Section 334.495(a) has been amended to replace "commission shall" with "agency will" and to improve readability. Section 334.495(b)(5) has been amended to replace "executive director" with "agency." Section 334.495(c) has been amended to replace "executive director" with "agency," and to

replace “the Texas Natural Resource Conservation Commission” with “this agency” to improve readability. Section 334.495(d) has been amended to replace “executive director” with “agency,” and to replace “his” and “he” with “its” and “it,” respectively, to improve readability.

Adopted §334.496, Shipping Procedures Applicable to Generators of Petroleum-Substance Waste. Section 334.496(a) has been amended to delete “in order” to remove some unnecessary words to improve readability. Section 334.496(a)(2) has been amended to replace “executive director” with “agency.”

Adopted §334.497, Recordkeeping and Reporting Procedures Applicable to Generators. Section 334.497(1) has been amended to replace “commission” with “agency.” Section 334.497(5) and (6) have been amended to replace “executive director” with “agency.”

Adopted §334.499, Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities. Section 334.499(b)(2), (c)(2)(D), (3), and (d) have been amended to replace “executive director” with “agency.”

Adopted §334.500, Recordkeeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities. Section 334.500(a)(2) has been amended to replace “commission” with “agency;” §334.500(a)(3) has been amended to insert “agency’s central office” in place of “executive director and to the commission’s appropriate region office,” to eliminate the requirement to

send duplicate information to the agency's regional office. Section 334.500(b), (d), and (e)(7) have been amended to replace "executive director" with "agency."

Adopted §334.501, Additional Reports, has been amended to replace "executive director" with "agency."

Adopted §334.502, Design and Operating Requirements of Stockpiles and Land Surface Treatment Units, has been amended. Section 334.502(a)(2) and (f) have been amended to replace "executive director" with "agency."

Adopted §334.503, Reuse of Petroleum-Substance Waste. Section 334.503(b) has been amended in several places to add back requirements on reuse of petroleum-substance waste that were mistakenly deleted with the adoption of new Chapter 350, Texas Risk Reduction Program, and instead should have been retained in this subchapter until implementation of the new Texas Risk Reduction Program on September 1, 2003. Section 334.503(b) has been amended to replace "shall" with "will" and "shall" with "must" to improve readability; to replace "executive director" with "agency;" and to delete the last wording "This information that shall be maintained under §334.503(c)(3)(A) - (C) of this section includes, but is not limited to:" to facilitate the addition of new §334.50(c)(1) and (2) in this section. In §334.503(b)(1) provides the requirements for maintaining information after implementation of the Texas Risk Reduction Program on these wastes on September 1, 2003; and former §334.503(b)(1) - (7) have been renumbered to subparagraphs (A) - (G) to accommodate this change. Section 334.503(b)(2) is specifies recordkeeping and reporting requirements before implementation of the Texas Risk Reduction

Program. Section 334.503(c)(1) provides reuse approval requirements for petroleum-substance waste reuse prior to implementation of the Texas Risk Reduction Program on these wastes; former §334.503(c)(1) and (2) have been renumbered to accommodate the insertion of new paragraph (1). Section 334.503(c), newly renumbered paragraph (2) has been amended to replace "executive director" with "agency." Section 334.503(c), newly renumbered §334.503(c)(3)(A) has been reorganized by deleting the sentences "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 (relating to Texas Risk Reduction Program Rule), and shall not be at such concentrations which compromises the integrity of the cold-mix asphalt product. Authorization for the facility shall 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." In §334.503(c)(3)(A), two new clauses add the criteria for reuse in cold-mix-emulsion before and after implementation of the Texas Risk Reduction Program on September 1, 2003. Section 334.503(c)(3)(B) has been reorganized by deleting the last three sentences and by creating two new clauses to provide the requirements for reuse in hot-mix asphalt before and after implementation of the Texas Risk Reduction Program on September 1, 2003. Section 334.503(c)(3)(C) has been reorganized by deleting the last three sentences and creating two new clauses to incorporate the requirements for reuse of petroleum-substance wastes in road base or parking lot stabilized base before and after implementation of the Texas Risk Reduction Program on September 1, 2003. Section 334.503(c)(3)(D) language has been deleted because §334.482(b) already states that a variance may be sought for requirements under this subchapter. Section 334.503(c)(3)(D) partially

reinstates language for reuse of petroleum-substance wastes in road base or parking lot stabilized base when the base will not be covered with asphalt or concrete (similar language was accidently deleted in the 1999 rulemaking which promulgated the Texas Risk Reduction Program rules), and in addition, establish a procedure that must be followed for the reuse of contaminated soil in road base or parking lot stabilized base prior to the implementation of the Texas Risk Reduction Program. Section 334.503(c)(3)(E) partially reinstates language to determine when petroleum-substance wastes will be considered clean enough to be used as fill, and also, to establish a procedure that must be followed for the reuse of contaminated soil to be considered "clean fill" prior to the implementation of the Texas Risk Reduction Program on these wastes. In addition, language has been added to clarify that tankhold bedding and backfill for tank systems must follow the requirements of §334.46(a)(5) of this title (relating to Installation Requirements for New Tank Systems).

Adopted §334.504, Contaminant Assessment Program and Corrective Action, has been amended. Section 334.504(a) - (c) have been amended to insert "agency" in place of "executive director." Section 334.504(d) has been amended to insert "agency" in place of "executive director." Section 334.504(e) has been amended to insert "agency" in place of "executive director" and to insert "agency's central" in place of "commission's Austin" and to insert "agency regional" in place of "commission region" to incorporate current agency terminology.

Adopted §334.506, Contingency Plan, has been amended to replace "executive director" with "agency."

Adopted §334.507, Emergency Procedures. Section 334.507(e)(2) has been amended to replace "local Texas Natural Resource Conservation Commission" with "agency" to improve rule readability. Section 334.507(j) and (k) have been amended to replace "executive director" with "agency."

Adopted §334.508, Closure Requirements Applicable to Class A and Class B Facilities. Section 334.508(a), (c)(1), and (d) have been amended to replace "executive director" with "agency." Section 334.508(g) has been amended to replace "shall" with "must" to improve readability.

Subchapter L, Overpayment Prevention

Subchapter L amendments streamline the rules and improve clarity and readability.

Adopted §334.531, Responsibility of Recipients of Money from the PSTR Fund and Persons Paid by Recipients of Money from the Petroleum Storage Tank Remediation Fund. Section 334.531(a) has been amended to change "executive director" to "agency," and to delete "necessity of" to clarify that the work performed will be the subject of audit. Section 334.531(c) has been added to explain that failure to provide documentation or information requested during the audit may result in denial of the costs. The subsequent subsection was renumbered due to the addition of new §334.531(c). Newly renumbered §334.531(d) has been amended to change "executive director" to "agency."

Adopted §334.532, Payments. Section 334.532(a) has been amended to change "executive director" to "agency." Section 334.532(b) has been changed to update the title of the cross-reference to section 334.310 and to change "Texas Natural Resource Conservation Commission" to "agency."

Adopted §334.533, Audits. The first sentence of this section has been deleted, and the second sentence has been amended to delete "generally accepted" and to add a reference to the statutory auditing standards at the end to more closely mirror the statutory audit requirements. Language in §334.533 is also deleted to more closely mirror statutory audit requirements. Section 334.533 has been amended to change the word "shall" to "may" and delete "a minimum" to add flexibility to the audit process within the requirements of the statute (TWC, §26.35735). Section 334.533(4) of this section has been amended to add a cross-reference to §334.560, Reimbursable Cost Guidelines, and §334.309, Reimbursable Cost, and to delete the phrase "as those terms are defined by this chapter" because it is no longer necessary with the added cross-references.

Adopted §334.534, Notice of Overpayment. Section 334.534(a) has been amended to change "executive director" to "agency." Section 334.534(d) has been amended to delete a specific address that might change and instead specify the use of the address on the notice of overpayment. Section 334.534(e) has been amended to change "executive director" to "agency."

Adopted §334.535, Objections to the Notice of Overpayment and Formal Petition for Hearing, has been amended to change the word "shall" to "must" because its usage is not necessary to make rule requirements legally enforceable.

Adopted §334.537, Failure to Return Overpayment or Cooperate with Audit or Investigation, has been amended to change "commission" to "agency."

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 334 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted amendments and repeals are intended to make the rules easier to read and understand, improve program efficiency, and also to implement state law requirements in HBs 2109, 2815, and 2816. Under HB 2815, owner/operators of certain USTs will have to annually certify that their tanks are in compliance with listed "administrative requirements and technical standards." There is no change to the obligation to comply with these ongoing requirements and technical standards.

While the adopted rule does not constitute a "major environmental rule," a discussion of the four factors listed at Texas Government Code, §2001.0225(a), will further clarify the nature of this rulemaking proposal. The adopted rules do not exceed a standard required by federal law. The principle new state law requirement is the compliance self-certification program established in HB 2815. Federal law at 40 Code of Federal Regulations (CFR) Part 281 requires that Texas have

requirements in place to prevent and to detect releases and spills to maintain program delegation. The commission has had rules in place that address these requirements, and the new self-certification program in this rulemaking requires tank owners/operators to annually certify their compliance with these state rules. The rules adopted to implement HB 2815 do not exceed the standard set by that bill. Other rule changes are intended to streamline and clarify commission rules concerning AST and USTs, and do not exceed federal standards for program delegation. Also, the adopted rules do not exceed the authority given the commission in TWC and in amendments to it made through HBs 2815, 2816, and 2109. In addition, the adopted rules do not conflict with any requirements of the delegation agreement between Texas and EPA on state implementation of the 40 CFR Part 280 UST program (as referenced in 40 CFR Part 281). Finally, these adopted rules do not adopt rules solely under the general powers of the commission. A general effort to streamline and clarify commission PST rules was undertaken as part of the commissioners' ongoing regulatory reform effort, under the specific statutory authority of TWC, §§26.345, 26.351, 26.352, 26.3573(j), and 26.454.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this adoption under the Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to implement HBs 2109, 2815, and 2816 and their corresponding changes to the TWC and to do limited commissioner's regulatory reform amendments to streamline the rules, improve program efficiency, and improve clarity and readability. This action will not create a burden on private real property. The vast majority of the adopted new rules were written to establish a compliance self-certification program, as required by HB 2815. The rules adopted to create this program would

institute a system whereby owners and operators of certain USTs share a responsibility to annually certify that those tank systems are in compliance with "administrative requirements and technical standards." The commission rules which constitute "administrative requirements and technical standards" have been in place for years. Because the new certificating program will induce owners and operators of these USTs to achieve better compliance with these ongoing agency regulations, it will actually result in fewer parcels of private real property being burdened with contamination resulting from releases and spills. Certification itself will not burden, restrict, or limit an owner's right to property. The rules adopted to implement the remainder of the legislative bills also do not add substantive requirements that would burden private real property. In fact, the rules adopted to implement HB 2109 would make the overall rule chapter less stringent by limiting the environmental liability for qualifying local taxing authorities that foreclose on properties with storage tanks. The rules adopted as part of the commissioner's regulatory reform effort also do not create a burden on private real property, since they are written to streamline and to clarify the rules. As a whole, this rulemaking will not be the cause of a reduction in market value of private real property, and does not create a burden on private real property and will not constitute a takings under the Texas Government Code, §2007.

While maintaining its assertion that this rulemaking action does not create a burden on, or restrict or limit, private real property, the commission believes that a number of exemption under Texas Government Code, §2007.003(b), describe situations which could be said to be applicable to the adopted rules. To the extent that LPST sites constitute a "public or private nuisance," the compliance certification program being implemented in this rule should lead to increased compliance with agency

regulations that are designed to prevent and detect releases and spills of regulated substances. In addition, there are times when LPST sites constitute a "grave and immediate threat to life or property." As stated above, the compliance certification program that has been implemented should lead to increased compliance with commission rules designed to prevent and detect releases and spills of regulated substances. Greater compliance with these rules will lead to fewer LPST sites, which in turn will reduce the number of such sites that would be classified as constituting an "emergency." Having proper release detection systems in place for USTs can make the difference between a small release that can be abated quickly versus a large release that can have serious impacts to human health and safety (e.g., vapor inhalation on-site and through transport via sanitary sewers, explosions, and drinking water impacts). LPST sites can constitute "real and substantial" threats to public health and safety, both in an emergency context and in the long term due to acute and carcinogenic effects. The compliance certification rules adopted to implement HB 2815 should serve to increase compliance with commission rules designed to prevent and detect releases and spills from tank systems. Increased compliance should reduce the number of LPST sites, and reduce the severity of the ones that do occur. This result can be said to "significantly advance the health and safety purpose."

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has prepared a consistency determination pursuant to 31 TAC §505.22, and has found that the adopted rulemaking is consistent with the applicable Texas Coastal Management Program (CMP) goals and policies. The rulemaking is subject to the CMP and must be consistent with applicable CMP goals and policies which are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality,

quantity, functions, and values of Coastal Natural Resource Areas (CNRAs). CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities. In particular, the CMP policy most applicable to these rules is to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and to comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6801 et seq.

These rules concern regulation of USTs and some ASTs and petroleum-contaminated waste/soil treatment facilities and soil reuse.

The adopted rules contains new or amended requirements mandated by legislation/state law and limited regulatory reform amendments to streamline the rules and improve clarity and readability. These rules do not significantly change petroleum-contaminated soil treatment facility and reuse requirements or storage tank technical and operating requirements beyond those required by federal or state law. Concerning safe and appropriate storage, management, and treatment of petroleum-contaminated soils, the standards have been adjusted to reflect good science gathered over many years experience since the original rules were first written. The original numbers were estimates projected to be appropriate, given the information available to the commission at the time those rules were promulgated. After several years of evaluating data, the commission is convinced that a new standard, which reflects the current commission risk-based approach to waste assessment and remediation, is more technically sound while remaining protective of the environment. The tank compliance certification program is expected

to increase compliance with rules designed to prevent and detect releases and spills, so that the coastal areas (like other parts of the state) should experience fewer instances of contamination, and those instances that do occur should be detected earlier so they can be abated earlier. Therefore, the commission has determined that these rules are consistent with the applicable CMP goal and policies because the new or amended requirements are mandated by state law and the regulatory reform amendments do not have an adverse effect on the CNRAs.

HEARINGS AND COMMENTERS

A public hearing on the proposed rules was held in Austin on July 25, 2000, at 10:00 a.m. in Building E, Room 201S at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle. The hearing was structured for the receipt of oral or written comments by interested persons. No individuals presented oral statements during the public hearing. The comment period closed on August 1, 2000.

A total of 28 commenters provided both general and specific comments on the proposed rules. The following commented on the proposal: Association of Electric Companies of Texas, Inc.; Blackwell Independent Oil Company; BP Amoco; Chambers Pump Service; City of Texas City; United States Department of Air Force; United States Environmental Protection Agency (EPA); ExxonMobil Refining & Supply Company; FFP Operating Partners, L.P.; Flying J, Inc.; Industry Council on the Environment (ICE); McLain Oil Company; Modern Welding Company of Texas, Inc.; Montana Department of Environmental Quality; Reliant Energy; Rudy's Country Store and Bar-B-Q; 7-Eleven, Inc.; Steel Tank Institute; Southwestern Bell Corporation, Inc.; Jerry's Mini-Mart; Texas Association

of Storage Tank Professionals (TASTP); Texas Petroleum Marketers and Convenience Store Association (TPCA); TOSCO Marketing Company; TXU; Ultramar-Diamond Shamrock; USTMAN Technologies, Inc.; and two individual commenters.

ANALYSIS OF TESTIMONY

SPECIFIC COMMENTS

§334.2 Definitions

I.C.E. commented that the proposed definition for "abatement" should "recognize that only one compartmented tank may be the source of a release….Only that compartment may need to be emptied of regulated substance." 7-Eleven, Inc. commented that the definition "should be clarified to include actions taken on any part of the tank system."

In response to both of these comments, the commission adopts this definition with changes in the second sentence to clarify what activities are included in the term.

The United States Air Force commented that the proposed definition for "common carrier" is overly broad. In particular, they say "cargo tank" is not defined elsewhere. They state as an example that "a common carrier could include any person delivering regulated substance to an UST from any type of wheeled device (e.g., an individual who has a one-gallon container of used oil secured in the bed of his pickup truck for delivery to a central used oil collection point that happens to be a UST)." The United States Air Force recommends changing the definition "to reflect the common usage meaning found in Webster's New World Dictionary which is 'one who transports passengers or goods for hire'."

In response to this comment, the commission believes the more specific definition proposed by the commission is more technically appropriate and more consistent with the requirements and intent of HB 2815 than the suggested dictionary definition. Under the recommended definition, for example, the ambiguous nature of the term "goods" could be argued to exclude parties clearly meant to be included in the coverage of HB 2815. Also, such a revision would constitute a major change to the rule which could be said to impact other stakeholders than those impacted by the proposed rules, which is a type of change that cannot legally be made at this stage of the rulemaking process. The commission further does not believe that the example given by the commenter is illustrative of the real-world scenarios in this segment of the regulated community. Consequently, the commission declines to make the change suggested.

7-Eleven, Inc. recommends that a definition be added for the term "double-walled" that reads "a storage tank that has an outer tank wall, or integral piping that has an outer wall that provides secondary containment of the primary tank or piping."

In response to this comment, the commission declines to add this new rule language. As a legal matter, it would be inappropriate to broach a new definition of this type at this stage of the rulemaking process. Also, the commission believes that this subject matter is already appropriately addressed from a technical standpoint both in this section at the definition of "secondary containment" and in Subchapter C, §334.45(d).

I.C.E. supports the staff's inclusions of the phrase "day-to-day" into the definition of "operator" at proposal.

I.C.E., ExxonMobil, 7-Eleven, Inc., and FFP Operating Partners, L.P. ("FFP") assert that the definition "responsible party" is unnecessary, as it is not used elsewhere in Chapter 334. I.C.E. and 7-Eleven, Inc. also claim that the definition will cause confusion, rather than alleviate it as intended by staff, and could have unintended consequences in third-party litigation. ExxonMobil believes the proposed definition would allow the commission to name "innocent" landowners, financial institutions, and real estate investors "into the liability pool" with a concurrent chilling effect on lending practices, and goes on to state that it "does not believe that this was the intent of the Legislature in passing HB 2815 and HB 2816." The TASTP commented that it is opposed to "any definition that might place a lien holder financially responsible for investigation or resulting remediation of a UST facility." The TPCA attributes the commission's reason for proposing the definition as helping "reduce confusion of agency personnel" regarding Responsible Party ("RP") designations, and goes on to state its belief that commission staff are using TWC, §26.121(c) as its legal justification for the proposed definition--which it argues in not appropriate legal authority. TPCA and FFP believe that the proposed definition aids in the naming of parties other than tank owners or operators as parties responsible for LPST site clean-ups, and goes on to state why they believe that is an inappropriate result which could have a fiscal impact on businesses in areas such as commercial loans. Specifically, TPCA and 7-Eleven, Inc. believe that lending institutions, corporate fiduciaries, and local taxing units may come to believe that the agency is no longer acknowledging ongoing TWC liability protections. TPCA recommends that the word "person" in the proposed definition be substituted with the phrase "owner or operator." 7-

Eleven, Inc. questions the staff's reasons given for the proposed definition, stating "TNRCC legal staff explains that it has proposed this promulgation as a means of decreasing unnecessary inquiries to TNRCC concerning PST cleanup actions…Legal staff purportedly is required to use an inordinate amount of resources in responding to persons inquiring as to why another party has been sued but they have not….The notion of potentially responsible parties calling TNRCC's Legal Branch to effectively invite an enforcement action seems unlikely in the extreme….However, if this unlikely phenomena is truly a resource drain…..agency guidance is better suited to education of the public than is a one-sentence definition…". I.C.E., ExxonMobil, and TPCA also state that, at a minimum, the definition should be placed in commission guidance as opposed to rule.

In response to these comments, the commission reiterates that the definition was proposed for the purpose of defining in rule a long-standing, commonly used term in the PST program. The executive director's staff have seen for some time that there is often confusion within the public and regulated community arising from the fact that the commission differentiates between the total universe of persons who have legal liability for the presence of contamination, versus those parties from that pool that the agency actually designates to perform the cleanup. As generally used in the PST program, the term "Responsible Party" is applied to one who not only has legal responsibility but who also has been directed by the commission to perform corrective action at the LPST site. While all parties with a legal liability could be designated as Responsible Parties at each LPST site (similar to the Superfund program), the usual situation is that after the equities of the individual case are weighed, one party is selected from the group and designated the Responsible Party. The commission looks to that party to bring the site to proper closure.

Commission legal and technical staff do in fact spend a significant portion of their time fielding inquiries on this point.

The definition was not proposed in order to expand the commission's authority to designate Responsible Parties. Separate legal authority forms the basis of the commission's theory of legal liability, and the proposed definition did not name any class of potential Responsible Parties. The purpose of the proposed definition was to provide a reference for the public to understand the manner in which the term is used in the PST program. However, because of the resulting consternation, and because the term is not used in this chapter, the commission has decided not to adopt the proposed definition. As suggested by some of the commenters, commission staff will pursue putting a more comprehensive explanation of the Responsible Party designation into program guidance.

The commission emphasizes that it has not changed its conviction that TWC, §26.121(c) attaches liability to landowners in certain cases. The potential of landowner liability under that section often encourages a reluctant landowner to consent to access by third parties to perform corrective action on the landowner's property. On rare occasions in the PST program, landowners have been compelled under TWC, §26.121(c) to perform the cleanup. The commission's view is that TWC, §26.121(c) is not incompatible with, or contradictory to, the statutory protections which exist for lenders, corporate fiduciaries, and now taxing units found in TWC, Chapter 26, Subchapter I. The PST program fully recognizes and observes those provisions.

In response to ExxonMobil's comment, the definition was not proposed under the authority of HBs 2815 or 2816, and in fact the proposal is not related in subject matter to those bills.

I.C.E. recommends that a definition of "suspected release" be added, but does not suggest specific language.

In response to this comment, the commission declines to add a new definition. As a legal matter, it would be inappropriate to broach a new definition of this type at this stage of the rulemaking process. Also, the commission believes that this subject matter is already appropriately addressed from a technical standpoint in Subchapter D, §334.72.

I.C.E. stated the for the definition of "tank hole": "nowhere else in the proposed rule is this term used."

In response to this comment, the commission states that the definition is necessary because it does appear in several regulations in this chapter: in the definition of "observation well" in this section and in Subchapter C, §334.45(e)(4)(B) and §334.47(b)(4)(C).

7-Eleven, Inc. recommends that the phrase "in whole or in part" be inserted after the words "UST system." in the definition of "temporary removal from service."

In response to this comment, the commission believes that the definition is technically appropriate and consistent with the rules in Subchapter C in which it is used, and adopts the definition as proposed without the recommended change. The language of Subchapter C, §334.54 does not allow a UST system to be taken "partially" out-of-service.

I.C.E. asks if we are purposely excluding dispensers as part of UST systems in the definition of "underground storage tank system."

In response to this comment, the commission states that the additions of the word "underground" at proposal were purposeful and reflect the commission's position that aboveground equipment above the shear valve is not covered within the definition.

In §334.5(a)(2), I.C.E. asks for clarification of the term "threatened release" in this rule (though that phrase was existing language, rather than proposed language).

In response to this comment, the commission finds that the phrase in question is redundant in this particular rule and has removed it at adoption for clarity.

In §334.5(b), TPCA supports the use of two documents and urges the commission to "issue a delivery certificate only when presented with a completed self-certification form."

In response to this comment, under the adopted rule the commission will issue two documents--the registration certificate and the compliance self-certification certificate. When these rules were proposed, staff thought that the delivery certificate would serve to represent both that the tank(s) at issue had been self-certified compliant (as required under the new §334.8(c)) and that it had been registered (as required in §334.7). Under that scheme, the long-standing delivery prohibition in this subsection concerning tank registration could be combined with the new delivery prohibition (created by HB 2815) for compliance self-certification. Since the rules were proposed, commission staff has become aware of limitations concerning the modification of existing computer software to facilitate the new compliance self-certification program. These limitations make it unworkable for the delivery certificate to have the dual effect contemplated at the rule proposal stage. The adopted version of the rules reflects the different mechanics of the two delivery prohibition concepts contained at proposal. In the final adopted §334.5, for those tanks required under the new §334.8(c) to self-certify compliance, the delivery certificate will be the only document the common carrier is required to see under the delivery prohibitions in §334.5(b). For those tanks that will not need to receive a delivery certificate under §334.8(c) at a given time (for example, the phase-in group described in §334.8(c)(2)), but which are still required to be registered under §334.7, the registration certificate is the only document the person depositing the substance into the tank is required to see under the delivery prohibitions in §334.5(b) during that time period. Those tank owners/operators in the first group (those that will be receiving delivery certificates) will still get registration certificates under §334.7, but those certificates will not play any part in the delivery prohibition for the tanks covered by their delivery certificates. Rather, the registration certificates can be shown to commission inspectors as part of demonstrating

compliance with commission tank registration requirements. Section 334.5(b) has been divided into two sections to clarify how the delivery prohibition works for each group.

In §334.6(b)(2)(C), 7-Eleven, Inc. recommends that the phrase "or authorized representative" be inserted after the phrase "the owner or operator," with no rationale given for the recommendation.

In response to this comment, the commission believes that it is appropriate for this obligation to fall to owners or operators under the regulation and therefore adopts the rule as originally proposed. An owner or operator may decide to have an authorized representative (possibly the contractor actually performing the construction activity) make the required notification, but the ultimate responsibility for ensuring that the notification is made should remain with the owner or operator in situations of this kind.

In §334.6(b)(5), 7-Eleven, Inc. recommends that the phrase "only" be deleted from the rule (though that word was existing language, rather than proposed language). No rationale is given for the recommendation.

In response to the comment, the commission declines to make the change. The word in question is appropriate to affect the rule's intent as to the 180-day period, and no arguments have been presented by the commenter to the contrary.

In §334.8(a)(1), 7-Eleven, Inc. and I.C.E. recommend to insert the phrase "in whole or in part" after the phrase "replace an UST system," to require installer certifications where the installation is of "separate components of multi-compartment USTs."

In response to this comment, the commission does not believe it is appropriate to make this change to the rule without full comment on it from the segment of the regulated community that would be most effected by it–PST professionals. The requested change could not legally be made at this stage of the rulemaking process.

In §334.8(c)(1) and (2), the United States Air Force commented that making the compliance self-certification program applicable to all regulated substance USTs, versus just motor fuel USTs, exceeds the legislative intent of HB 2815. It references, in support of this claim, the phrase "An Act relating to the petroleum storage tank program" at the beginning of HB 2815.

In response to this comment, the commission cannot agree with the United States Air Force's interpretation of the requirements of HB 2815. The bill adds language at TWC, §26.3467(a) which states: "The owner or operator of an underground storage tank into which a *regulated substance* is to be deposited shall provide the common carrier a copy of the certificate of compliance for the specific underground storage tank into which the *regulated* substance is to be deposited before accepting delivery of the *regulated substance* into the underground storage tank" (emphasis added). It is clear that HB 2815 covers tanks storing regulated substances where the delivery is made by common carrier, and by law "motor fuels" are a subset of regulated

substances (see the definition of "underground storage tank" in TWC, §26.342(16), and "regulated substance" in TWC, §26.342(12)). Also, the title to HB 2815 referred to by the commenter is a reference to the TNRCC Petroleum Storage Tank Program, which is the name of a particular part of the agency. Under the terms of TWC, Chapter 26, Subchapter I, that program area regulates "regulated substances" as defined in that subchapter. Despite its name, the TNRCC PST program does not only deal with tanks containing petroleum substances. The commission declines to adopt the language urged by the commenter.

In §334.8(c)(3)(D)(ii), the United States Air Force recommends that "the proposed requirements be revised to exclude fees, penalties and interest which may be in dispute at the time of annual renewal."

The payment of annual facility fees is a requirement of Subchapter B of this chapter, and the requirement is part of the annual compliance self-certification under this clause. The commission UST registration and self-certification form implements the requirements of this section. The language at the certification signature line of the form illustrates the nature of the self-certification under the rule. That language states that the owner/operator is certifying that the information provided on the form is true, accurate and complete "…Based on my current knowledge and understanding…" The commission believes that certifying parties should be able to make the required certification when acting in good faith in the scenario described by this commenter, and therefore declines to make the change suggested.

In §334.8(c)(3)(D)(iv), the commission received a great many comments concerning the scope of "technical standards" in this rule for purposes of compliance self-certification. The commenters expressed concern about the recordkeeping requirements that are cross-referenced in the four specific rules listed in §334.8(c)(3)(D)(iv), and urged that many of these recordkeeping requirements reach too far back in time to be reasonable as a subject for a "snapshot in time" compliance self-certification and are also not part of the "core" elements of each rule. Various examples within the rules were offered to support this concern. The large majority of the commenters on this subject (ExxonMobil, 7-Eleven, Inc., I.C.E., FFP, and TPCA) recommend that the commission limit these recordkeeping requirements, for compliance self-certification purposes only, to 60 days prior to the date the certification is made. TASTP recommends that the owner or operator only be required to certify to recordkeeping requirements that would be specifically listed in §334.8(c)(3)(D)(iv), or in the alternative that there be no recordkeeping element at all to the technical standards compliance self-certification. BP Amoco, the Association of Electric Companies of Texas, Inc. ("AECT"), and Reliant Energy recommend that the technical standards compliance self-certification only include "the specific physical equipment the agency has identified, along with the recordkeeping that is integral to the standards (corrosion protection, release detection, and spill and overfill prevention and control), and should clarify that the owner or operator's execution of the certification reflects the status of the UST at the time of certification." Similarly, Verizon expresses concerned over recordkeeping elements of the certification, and suggests "The certification should be solely for the period of time when the form was signed." TXU states that "Requiring all recordkeeping data to be included in the certification process would place a significant burden on the regulated community without any corresponding environmental benefit," but does not suggest alternate language for the rule.

ExxonMobil also suggests that the language in §334.8(c)(3)(D)(iv) not require a compliance self-certification to specific rule citations, but rather just to "a method of Corrosion Protection, a method of Release Detection, a method of Spill and Overfill Protection, or a method approved as a Variance and Alternative Procedure by the commission which meets applicable requirements." On the same point, however, TPCA states it "….agrees with the commission's belief that this reference to particular administrative rules provides a degree of certainty with respect to compliance….", then goes on to make the point (summarized above) about "core" technical standards.

In agreement with the majority of these comments, the commission has decided to add language to this clause which states that a compliance certification concerning the listed "technical standards" only includes, as to recordkeeping requirements in the listed regulations or cross-referenced by them, a certification concerning records for the previous 60 days from the date the certification is being made (ie. the date the certification portion of the annual form is signed and dated). It is the commission's belief that this should address concerns about certain recordkeeping requirements that extend further back in time, and the stated difficulty for tank owner/operators in certifying compliance as to records of that age. In making this decision, the commission was obligated to balance the concerns of the commenters concerning the scope of the compliance certification with the obligation for the commission to implement the wording and intent of HB 2815. Under the bill, the compliance certification must encompass "administrative requirements and technical standards." It has been suggested to commission staff by stakeholders that peculiarities in the organization of the bill (specifically, that the phrase "administrative requirements and technical standards" only appears in new TWC, §26.346(c)(3)) allow the commission to give less (or no)

weight to the phrase. The commission disagrees. The phrase is clearly meant to articulate the scope of the compliance certification program, and to disregard it in whole or in part due to its placement in the bill's sections would be tantamount to flouting the intent of this entire piece of legislation. This would not be an appropriate action for the commission to take. Similarly, it would not be appropriate for the commission to further shrink the scope of the certification as to recordkeeping associated with "technical standards." The most expansive reading of "technical standards" in the bill would likely include the entirety of Chapter 334. In adopting the scope outlined above, the commission is balancing the mandates of HB 2815 with the general concerns expressed by the regulated community.

In response to the comment by ExxonMobil, the commission does not believe it would be appropriate to define "technical standards" in a way that does not give specific rule citations. This would lead to a level of ambiguity as to what was being certified that would compromise both the self-policing effect of the new compliance self-certification program and of any agency enforcement actions that are brought under it. As TPCA comments, there is a benefit to specificity here, providing certainty for both the commission and for those persons making the certifications.

The commission would also like to take this opportunity to reiterate that, with the exception of the recordkeeping/reporting issue discussed above, the commission considers the compliance certification required under this new rule to be a "snapshot in time" (ie. the day the certification portion of the annual form is signed and dated).

In §334.8(c)(4), several commenters (7-Eleven, Inc., AECT, TXU, Reliant Energy) forward the proposition that the commission form being used to facilitate the implementation of the compliance self-certification program must itself be contained in a rule in its entirety, because it contains language which articulates the scope of the certification. 7-Eleven, Inc. believes that the form itself "defines the scope of the potential liability of the signatory," continuing that "The definition, by TNRCC, of the terms and scope of the compliance certification is an important and inherently regulatory act and should be subjected to all rule making requirements." I.C.E. states that the form "constitutes a rule as that term is defined in the Texas Administrative Procedures Act, because it affects rights on a state-wide basis….As such, we believe that the form itself, which is at the heart of the certification process that these rules contemplate, must go through proper notice and comment procedures applicable to all rules." Several commenters also objected to the specific language contained on the form at the certification signature line (I.C.E., 7-Eleven, Inc., BPAmoco, and Verizon), and some suggest substitute language (though the form was not part of the proposal sent to the *Texas Register* for this rule package). BPAmoco objects to the sentence in that section of the form that reminds those certifying that there are potential criminal penalties associated with falsely certifying, and also urges the commission to allow electronic submission of the form each year.

The commission does not agree with these commenters that the UST registration and compliance self-certification form must be included in rule, and further does not believe that the commission should choose to make it so. The commission, like all state and federal agencies, has a myriad of forms it uses to implement the mandates given to it by statute and carried out through the promulgation of rules under those statutes. The law has never supported the idea that such forms

must always be encompassed verbatim within commission rules, and as a practical matter it would be difficult for government to function in this way. The new compliance self-certification regulations do have state-wide applicability, but the UST registration and compliance self-certification form merely serves to implement those rules. It is not practical for every rule to contain all the details (how names and addresses are filled out, etc.) of how submissions of information to the commission under the rule will be conducted. These details are appropriately contained in forms and their accompanying instruction sheets and, as long as these documents do not exceed the authority under the rule in question, there is no requirement or need those documents to be included verbatim within the body of the rule. The form in question is an adaptation of the long-standing PST program UST registration form. In creating this new compliance self-certification program, the registration and the self-certification forms were combined into one form to lessen the paperwork burden on the regulated community. The commission periodically updates its forms and will likely do so with this form after the initial round of certifications are received and analyzed. The commission welcomes comments to TNRCC staff during that process, as it is our desire that this and other commission forms be the best they can be.

Concerning the comment by BPAmoco, it should be noted that the criminal liability associated with the new compliance self-certification program is created by the wording of HB 2815, not by any wording on the form. The form only mentions the liability as a notice to owners/operators of what the statute says as to criminal liability. BPAmoco also urges that the form be allowed to be submitted electronically. The commission agrees, and is making efforts toward that end. The

commission welcomes input on the mechanics of this matter, which should be submitted to the director of the TNRCC Registration and Evaluation Division.

In §334.8(c)(4)(C), I.C.E. objects to the requirement in this rule that "when tank ownership at a facility changes, a new certification under this subsection must be made within 30 days of the ownership change," stating that this should only be required when it is the tank owner who made the most recent compliance certification (as opposed to the tank operator). 7-Eleven, Inc. also makes this comment, and suggested language which hinges the obligation on which party made the last compliance certification.

Concerning both comments, the proposed requirement for new self-certification whenever the ownership of a tank changes is necessary to maintain an equitable breakdown with regard to the total number of facilities which must annually renew each month. Not doing so would eventually result in a significant imbalance in the commission's month to month workload associated with the annual delivery certificate renewal process. This could conceivably lead to delays in issuance of delivery certificates, which would in turn interrupt product deliveries at the affected facilities. Also, not doing so could lead to tanks not being certified compliant on an annual basis, as required under HB 2815, depending on the owner identification number of the new owner. The commission therefore declines to make any change in this language. As to the comment from 7-Eleven, Inc., the commission legally cannot, at this stage of the rulemaking, adopt a rule in this subparagraph that would create a new obligation for tank operators, since that segment of the regulated community was not referenced in the proposed version of the rule.

In §334.8(c)(5)(A), Southwestern Bell Corp. does not wish to obtain a TNRCC delivery certificate for each of its facilities, citing excessive administrative costs. It also objects to the requirement in clause (iii) to post the certificate at the facility (these comments were couched in terms of financial assurance, but it appears to the agency that the company was referring to the delivery certificate itself). Verizon makes similar objections, citing a claimed difficulty for common carriers in observing the posted delivery certificates at unmanned facilities.

In response, the commission points out that it is clear under HB 2815 that the compliance self-certification program mandated by the bill is tank-specific. For each regulated tank, the owner or operator must make a compliance certification on the designated form, following which the commission issues a delivery certificate for that tank, which the owner/operator must then show the common carrier before a delivery of a regulated substance can be made into that tank. To make the process as efficient as possible, the commission has put together a program whereby compliance certifications for all regulated tanks at a facility may be made on one form, and the commission will issue one delivery certificate for that facility which identifies on its face the specific tanks for which the compliance certification was made. Whereas HB 2815 doesn't specifically require posting of the delivery certificate at the facility, the bill does require that the certificate be made available to the common carrier before a delivery can be made. If a facility is unmanned, then posting will be the way that the requirement of HB 2815 can be satisfied. In this section the commission is adopting a separate requirement for the posting of delivery certificates at the facility. This is not being done as a requirement of HB 2815, but rather (as discussed at rule proposal) to facilitate a resource-sharing agreement between the commission and TDA

whereby investigators of each agency will report whether "postings" at a facility required by the other agency's rules are in place. The commission expects to make more efficient use of its resources in the field as a result of this agreement. The posting requirement remains in these rules.

In §334.8(c)(5)(A)(ii), BPAmoco objects to the word "immediately" in the proposed clause, commenting "it is unclear what immediate means." The comment recommends deletion of the word.

In response, the commission states that the word "immediately" is meant to be interpreted using its common meaning. When an investigator goes to a facility for an inspection, and requests to see the delivery certificate for that facility, the owner or operator has an obligation to produce that certificate for the inspector at that time. Commission staff will of course be reasonable in the enforcement of this rule, but the intent is clear--the owner or operator should be able to produce this document while the inspector is there with minimal delay. Support for the proposition that the inspector should be able to see the delivery certificate on request can be found in new TWC, §26.3465. The commission declines to make the change urged by the commenter.

In §334.8(c)(5)(B)(iii), I.C.E. objects to the schedule for the initial rounds of compliance self-certifications, arguing that some tank owners or operators will have to make their second certifications a short time after the first are made (depending on the Tank Owner ID Number, which under the proposed rule determines the renewal schedule). I.C.E. "strongly recommends that the current schedule for annual re-certification be modified such that the first re-certifications will be required in

January 2002," and argues that the requirement in HB 2815 for the certification to be "annual" can be legally interpreted in a manner which would allow the recommended rule language change. 7-Eleven, Inc. makes the same comment.

In response to these comments, the commission is adding language that would not make the first annual renewal due until the year 2002, with the due date during that year determined by the tank owner's TNRCC Owner Identification Number. This should address the commenters concerns about the administrative burden of the timing of the implementation of the new compliance self-certification program.

In §334.8(c)(5)(C), the United States Air Force objects to the standardized tank labeling system laid out in this rule, stating "for a large facility with a great many regulated USTs, this requirement would impose an unnecessary and costly administrative burden on the owner and operator of the USTs….Since all regulated USTs currently are (or should be) identified by a unique number, this proposed requirement to renumber/relabel all USTs seems arbitrary and capricious, intended solely for the convenience of the agency." The comment goes on to urge that there be no new tank labeling system in these regulations.

In response to this comment, the commission reiterates the reasons for this subparagraph that were stated in the preamble at proposal--a standardized labeling system is necessary for several reasons, most important of which is that HB 2815 charges the agency with developing a compliance self-certification program that is *tank specific*. A common carrier must be able to tell,

by matching the delivery certificate issued by the agency for that facility to the labels on the tanks there at the facility, which tanks are covered by that certificate. Only then can he control his own liability under HB 2815. The common labeling system also aids the tank owner/operator in meeting his HB 2815 obligations--since he is barred from allowing deliveries into tanks which are not covered by the certificate. The commenter makes an assumption that USTs in Texas are already identified with "a unique number." This is an incorrect assumption. Over the years of tank registration in Texas, tank owners have not always assigned numbers to the tanks at the facility(s) they are registering. The commission tank registration database does not, therefore, have unique numbers assigned to all registered tanks, and therefore cannot issue tank-specific delivery certificates to implement this new program until all regulated UST owners/operators provide these numbers. A uniform labeling system is the most efficient way to achieve this goal, so that the commission will not be delayed in processing certifications and issuing delivery certificates, which in turn minimizes the chances of facilities experiencing delays in fuel deliveries because a commission delivery certificate is not in place. The commission declines to make the change suggested.

In §334.8(c)(6)(A)(iii), I.C.E. objects to the phrase "in the opinion of the executive director" in this clause, stating that it would allow for "possible arbitrary action by the agency." The comment goes on to argue that there is insufficient statutory authority for this phrase in the proposed rule, and makes the recommendation that the language be changed so that the commission is required to find "good cause" independently (rather than being allowed to make a finding that "the executive director has the opinion that good cause exists)." 7-Eleven, Inc. makes the same comment, and suggests the language be

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

In response to these comments, the commission agrees that the language suggested by 7-Eleven, Inc. is legally appropriate and has changed the rule accordingly.

In §334.10(b)(1)(B), BPAmoco objects to the word "immediately" in this subparagraph (though it was existing language), commenting "it is unclear what immediate means." The comment recommends deletion of the word.

In response, the commission states that the word "immediately" is meant to be interpreted using its common meaning. When an investigator goes to a facility for an inspection, and requests to see the records in question for that facility, the owner or operator has an obligation to produce them for the inspector at that time. Commission staff will of course be reasonable in the enforcement of this rule, but the intent is clear--the owner or operator should be able to produce these records while the inspector is there with minimal delay. The commission declines to make the change urged by the commenter to this existing rule language.

In §334.10(b)(1)(C), I.C.E.'s comments appear to urge the agency to include in this rule an exclusive list of types of situations that would allow for records to be maintained off-site, "for the convenience of enforcement personnel as well as employees of owners and operators." 7-Eleven, Inc. makes the same comment, and suggests specific language to that effect.

In response to this comment, the commission declines to make the suggested change because it believes that the matter is addressed in sufficient detail in existing rule language.

In §334.45(b), The Steel Tank Institute (STI) supports the proposed additions made to this rule.

In §334.46(d)(4)(B)(i) - (iii), STI and Modern Welding Company of Texas, Inc. ("Modern Welding") support the deletion of the initial electrical isolation test for steel/FRP composite tanks in "§334.46(d)(B)(i) - (iii)", however, the commission notes that both STI and Modern Welding have apparently omitted the paragraph (4) in their reference to "§334.46(d)(B)(i) - (iii)," though the commission assumes the commenters are referring to §334.46(d)(4)(B)(i) - (iii).

In §334.48(c), 7-Eleven, Inc. believes that the term "retail service station" in connection with the phrase "where petroleum substances used as motor fuels are stored" is redundant and should be deleted, given the definition of "retail service station" in §334.2. The language that is the subject of this comment was existing language.

In response to this comment, the commission agrees that the wording of this subsection can be simplified without any sacrifice to its effect. To achieve this, the phrase "where petroleum substances 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" is replaced with the phrase "(as defined in §334.2 of this title (relating to Definitions))."

In §334.49(d)(1)(A)(ii), the Steel Tank Institute (STI) requests that the periodic electrical isolation test requirement in §334.49(d)(1)(A)(ii) be revised or waived for jacketed steel tanks.

The commission agrees that any electrical isolation testing requirements deleted or waived for properly designed and manufactured clad/composite/coated tanks should also be deleted or waived for properly designed and manufactured jacketed tanks. Since the rule does not require initial isolation testing of jacketed tanks, the phrase "Except for jacketed tanks meeting the requirements of §334.45(b)(1)(F), any" has been added to §334.49(d)(1)(A) to remove the requirement for periodic isolation testing of jacketed tanks.

In §334.50(b)(1)(A), I.C.E. recommends that the proposed phrase "in a manner which will detect a release" be changed to read "in a manner which will detect a reportable release," based on the claim that "this allows an owner/operator (O/O) to repair dispenser-related or submersible-pump-related leaks of very small volume losses without reporting." Without this change, I.C.E. asserts that "a release detection vendor cannot miss a leak--regardless of size, and regardless of the probabilities of detection." Ultramar Diamond Shamrock Corp. ("UDS") objects to the changes proposed for this rule, stating that "the current language is clear," and adds "perhaps the term 'monitoring' should be defined as the time at which a release detection result is received by the facility operator."

USTMAN also recommends that no changes be made to this subparagraph, saying the proposed changes are unclear and would require a tank owner or operator to "detect a release monthly, whether or not one has occurred." The comment goes on to object to the proposed changes based on USTMAN's

concerns about the proposed changes relating to statistical inventory control (SIR) in §334.50(d)(9). Rudy's Country Store and Bar-B-Q ("Rudy's"), Flying J, Inc., Circle K Stores Inc. ("Circle K"), and the City of Texas City object to the proposed changes as well, based on concerns about the proposed changes relating to SIR in §334.50(d)(9). The commenters object to the 35-day maximum as it applies to SIR.

In response to this comment, the commission has added language to §334.50(b)(1)(A) referencing an additional exception at §334.50(d)(9) applicable to SIR analysis results. The commission declines to make further changes because the concept of what constitutes a reportable release is already covered in §334.72, and on a method-by-method basis relating to release detection, in the rule.

In §334.50(b)(2)(A)(ii)(II), UDS makes the same comments and suggestions as to this subclause as it did in §334.50(b)(1)(A). Rudy's makes the same comments as to this subclause as it did in §334.50(b)(1)(A). The commenters object to the 35-day maximum as it applies to SIR.

In response to this comment, the commission has added language to §334.50(b)(2)(A)(ii)(II) referencing an exception at §334.50(d)(9) applicable to SIR analysis results. The commission declines to make further changes because the concept of what constitutes a reportable release is already covered in §334.72, and on a method-by-method basis relating to release detection, in existing rule.

In §334.50(d)(9), the agency received many comments concerning the proposed language in this paragraph which would make SIR a listed method of release detection, as opposed to a method that in the past has been granted on a case-by-case basis through the variance process in the subchapter. While I.C.E. believes it is necessary for the commission to list SIR as an acceptable release detection method in rule, it had numerous comments concerning the proposed language. USTMAN approves of specific listing of SIR as an available method, but also has numerous comments concerning the proposed language. The EPA commented that "EPA has no data verifying that this method will meet the definition of 'other method' under 40 CFR §280.43(h), which requires that the method can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 95% and a probability of false alarm of 0.05%, or the implementing agency may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in the regulations." An individual commenter stated that, as to SIR, he does "not recommend any changes to existing rules."

SIR is currently utilized for release detection at a significant number of USTs in Texas. Past commission authorization for SIR is through its variance procedure in §334.43. EPA rule language applicable to "Other methods" of release detection at 40 CFR Part 280, §280.43(h)(1) require that such a method be able to detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05 (not 0.05%). Said section (in 40 CFR §280.43(h)(2)) also allows an implementing agency to approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in 40 CFR §280.43(c) - (h). The commission

believes that new rule requirements applicable to SIR in §334.50(a)(1)(C)(ii) and (d)(9)(a)(ii) meet EPA's requirements for "Other methods" of release detection, and that due to its widespread use, the SIR method of release detection should be included in rule as a listed method of release detection. The commission further believes that requiring a combination of SIR and inventory control, with inventory control procedures performed in accordance with the requirements of §334.50(d)(1)(B), can result in an enhancement of the overall effectiveness of the SIR methodology.

In §334.50(d)(9)(A)(i) and (ii), EPA, I.C.E., TPCA, Rudy's, Circle K Stores, Inc., and The City of Texas City comment that inventory control is not technically necessary as a component of an effective SIR methodology, and recommend that it not be a requirement for SIR usage as a release detection method. 7-Eleven, Inc. agrees, and goes on to state that "Because neither TNRCC nor the U.S. EPA has evaluated the performance impacts of using such a 'tandem' release detection method, a requirement by TNRCC that SIR operators use an 'unapproved' combination of SIR and conventional inventory control could undermine EPA's delegation of the PST program to the state of Texas." FFP also comments that inventory control is an unnecessary component of the proposed SIR language, and adds that it would create an undue burden on the tank owner and operators who wish to use SIR as their release detection method. UDS states "It is strongly suggested that some type of fuel inventory reconciliation process be implemented by SIR users to monitor the quality of data being sent to the SIR vendor….Release reporting requirements should not be based on Inventory Control parameters, which are much less sensitive than other approved methods of release detection…..This data quality control process can be accomplished with facility procedures, accounting procedures or the SIR Vendor

analysis," but does not suggest new language--just the deletion of the inventory control requirement. USTMAN recommends that inventory control be deleted as unnecessary, and states "…to combine inventory control as an adjunct to the SIR method is inconsistent with the State and national effort to discontinue use of inventory control." USTMAN also states that "The SIR vendor has no control over the calculation of inventory control and cannot provide that it meets the requirements of §334.50(a)(1)(C)," and adds "USTMAN would not object to requiring the owner/operator to calculate inventory control for the purpose of receiving an initial rough indicator or a problem tank, so long as this requirement is for users of all methods of release detection and is stated as a requirement separate from the SIR process." USTMAN's specific recommendation is to replace the phrase "and inventory control" with "data collection" and to change the reference "paragraph (1)(B)" to "paragraph (1)(B)(iii)."

The commission believes that requiring that inventory control be performed and reconciled in accordance with §334.50(d)(1)(B) will: 1) result in higher quality data being provided to SIR vendors and reduce inconclusive analysis results, and 2) provide a backup to the SIR analysis results in the form of required reconciliation and attendant reporting requirements which will offset the additional time provided to the SIR methodology in these new rules with respect to the turnaround of monthly analysis results and the reporting of inconclusive analysis results. The commission declines to make the changes suggested. The method will remain SIR and inventory control.

In §334.50(d)(9)(A)(iii), EPA argues that federal law requires for PST program approval that the implementing state agency require, for all release detection methods, that the owner/operator be able to demonstrate each month that he has not had a release in that time period. Although the Texas rules allow for 35 days, as opposed to "monthly" as listed in the federal regulations, EPA approved the Texas PST program anyway. Knowing that Texas is being asked by other commenters to extend the 35 days when SIR is the release detection method used, EPA states "Any extension of the already approved time frame will be considered as less stringent than the Federal requirements, and therefore could jeopardize the State's program approval." I.C.E., ExxonMobil, Circle K Stores Inc., and Jerry's Mini Mart comment that the inherent logistics of mailing data off to an SIR vendor for analysis and the mailing back of a report to the owner/operator demand that SIR be given special consideration over other release detection methods and be allowed more than 35 days from the beginning of the monitoring period to demonstrate that a leak did not occur during that monitoring period. Other commenters agreed, and suggested specific changes to the number of days allowed in the rule: 7-Eleven, Inc. agrees and ask that "60 days" replace "35 days." FFP, TPCA, and TASTP agree and ask that "45 days" replace "35 days." UDS agrees and urges that the 35 day figure be changed to either 45 or 50 days (though this comment appears to conflict with the company's comment on §334.50(b)(1)(A), which states that 35 days should be enforced as to release detections methods). USTMAN, Blackwell Independent Oil Co., and Rudy's agree, and ask that the rule require "That the owner/operator must receive SIR analysis reports by the 20th day of the month following the month analyzed." Flying J, Inc. believes that "A total of 50 days is a reasonable SIR cycle." The City of Texas City suggests "a minimum of 15-20 days after the monitoring period ends to allow the transmission of the data to and from the SIR vendor and to conduct the analysis."

The commission recognizes that SIR is the only form of allowable monthly release detection which normally requires that analysis of data be done off-site, often by an out-of-state vendor, and that attendant data flow requirements warrant extra time. Rule language in §334.50(d)(9)(A)(iii) has been amended to allow 15 days after the end of each calendar month monitored for a SIR vendor to provide an analysis report of the inventory data which was analyzed for that calendar month.

In §334.50(d)(9)(A)(iii)(V), the commission received numerous comments concerning the requirements for use of certain terminology in this subclause. The Montana DEQ supports the commission efforts "to further define the terms used in SIR reports….The EPA definitions of pass, fail, and inconclusive are merely guidelines….Texas or any other state has the option and right to go beyond the minimum EPA guidelines." I.C.E. "strongly recommends that the terminology used to report the results of SIR analyses be revised to reflect standardized terms used by the vast majority of regulators nationwide, as well as all or nearly all SIR vendors: 'pass', 'fail', and 'inconclusive'." 7-Eleven, Inc., FFP, TPCA, UDS, and TASTP concur with this comment. USTMAN, Rudy's, and the City of Texas City make the same suggestion, complaining that the proposed categories will increase costs for vendors which would then be passed on to their clients. Flying J, Inc. seems to be urging that there be no category called "inconclusive"--just "pass" and "fail," which it suggests are the only categories allowed by federal law for Texas to use.

In response to these comments, and to simplify the terminology, language in §334.50(d)(9(A)(iii)(V) has been modified to delete the terms "pass (no reportable release detected)," "fail (reportable release detected)," "fail (reportable release suspected)," "fail

(results inconclusive)," and "fail (data insufficient to perform reliable analysis)" and replace them with the terms "pass," "fail," and "inconclusive". In addition in §334.50(d)(9(A)(iv) the term "pass (no release indicated)" has been changed to "pass" to provide consistency in terminology.

In §334.50(d)(9)(A)(iv), this proposed requirement was based on the idea that a report from an SIR vendor that says anything other than "pass" means that by definition a release must be suspected. Several commenters objected to this underlying assumption. I.C.E., while allowing that "SIR does suffer from a relatively high percentage of 'inconclusive' or 'suspected release' results, compared to other release detection methods," states that the owner or operator "be allowed first to investigate the problem, without calling in a 'suspected release' to the agency….Only if an investigation turns up no data-related cure for the result should the O/O call in the suspected release and start a more thorough site investigation." If this recommendation is not accepted by the commission, I.C.E. asks that in the alternative the commission "could continue to treat inconclusive results as suspected releases, but revise the mandated leak investigation procedures to allow owners/operators to conduct an investigation of leak detection equipment/procedures prior to performing tank tightness testing…..If the investigation identifies and corrects a 'non-leak' cause of suspected release results, then the O/O would not perform tightness testing….All investigation procedures and results would be documented and retained by the O/O for review by the agency….Such a revision to the release investigation procedures would have the clear advantage of leveling the playing field among all forms of release detection systems." 7-Eleven, Inc. seconds both the original I.C.E. comment and its alternative suggestion. FFP makes a similar comment, and suggests the creation of a new §334.72(3)(C) which would state "in the case of SIR, two consecutive 'Inconclusive' SIR UST system analysis reports is received by the owner/operator" such

that "owners/operators would not be required to take Investigation and Confirmation Steps as required by §334.74 unless two consecutive 'Inconclusives' are received by the owner/operator." TPCA seconds the FFP comment, and in addition suggests new language to be inserted in §334.74(1) which would read: "(1) Leak Detection Confirmation: In response to a suspected release, owners and operators may conduct an initial investigation of leak detection monitoring equipment, systems, data, or analyses to identify any non-leak related cause of a finding of a suspected release; (A) If a non-leak cause of a suspected release is confirmed, the owner or operator must follow the procedures required in paragraph (4) of this section; (B) If a non-leak cause is not confirmed, the owner or operator must satisfy the requirements of paragraphs (2) and (3) of this section." UDS recommends that "Suspected release reporting…be required upon receipt of any 'Fail' and any second (consecutive) 'Inconclusive' status call." USTMAN argues that "Inconclusive SIR results are indicative of data collection or equipment problems only, not of potential releases…..While it is important that the UST operator attempt to identify and correct the cause of the inconclusive, requiring its reporting as a suspected release would seem only to create extra work for the UST operator and extra paperwork for the TNRCC staff." USTMAN specifically recommends that under the new rule "…only an initial fail result or a second consecutive inconclusive be reported as a suspected release, unless no non-leak cause for an initial inconclusive can be documented….[also] That UST operators be required to conduct and document an investigation to determine the cause of an initial inconclusive…..Completion of a SIR vendor's checklist could be acceptable documentation of an investigation." Rudy's goes farther still, stating "We oppose being required to report any fail reports as inconclusive." The City of Texas City states that "The requirement that all four types of fail reports…..to be treated as suspected releases subject to tank tightness testing…will result in a major cost increase….(though this appears to conflict

with the company's comments concerning proposed §334.50(d)(9)(A)(v), which states "…inconclusive results should be reported…..).

The commission maintains that an inconclusive SIR analysis result should be reported as a suspected release. This section references §334.72, which in turn references §334.50(d)(9)(A)(v). The language at §334.50(d)(9)(A)(v) has, however, been amended to allow a period of 72 hours for owners or operators to investigate an inconclusive result to determine whether it can be properly quantified as a "pass" before reporting of that inconclusive result as a suspected release is required. In addition, the commission has changed the term "pass (no release indicated)" to "pass" to provide consistency in terminology with amendments to terminology in §334.50(d)(9)(A)(iii)(v).

In §334.50(d)(9)(A)(v), the possibility of commission enforcement when an owner or operator only has an "inconclusive report" in hand by the deadline elicited many comments. EPA states firmly that "An 'inconclusive' in one month means that release detection was not performed for that month, and that a release is a possibility….This is a violation of the regulations," but an investigation by the owner/operator within the allowed timeframe may be able to show the commission that a release did not occur. EPA continues "If a cause for the 'inconclusive' is unable to be determined, then a tightness test must be performed within that time frame…..If this process is not followed, then that is also a violation and subject to penalties…..It is also important that any such steps taken be included in the SIR monthly report…..To summarize, owners/operators of USTs, regardless of release detection method used, must be able to determine whether a tank has passed or failed within the allotted time frame…" (35 days in

Texas) such that an inconclusive report "is a violation and subject to penalties." EPA goes on to discuss how enforcement discretion can be used in situations where it is discovered subsequent to the "inconclusive" report that a release did not occur. Flying J, Inc. seems to suggest that a second month be given to reconcile the figures that caused the first month's "inconclusive" report before it could be termed a violation. I.C.E. believes that this clause is meant as an "indirect" attempt by the commission to "limit the use of SIR," and goes on to suggest that "The section be revised to: (1) allow owners/operators to perform an investigation to cure inconclusive results; and (2) condition civil liability on a showing by the agency that the O/O has negligently or intentionally failed to gather complete and accurate inventory data or has failed to validate questionable data." 7-Eleven, Inc. seconds this comment, as does TPCA (which also suggests specific language). FFP proposed that "a 'Fail' or an 'Inconclusive' only be considered as a failure to perform leak detection if the owner/operator fails to perform Release Investigation and Confirmation Steps as required by §334.74," and suggests that the clause be changed to reflect this position. UDS states that "The occurrence of an 'Inconclusive' does not constitute failure to perform release detection, but the failure of investigation by the facility operator does." UDS recommends that "In addition to the proposed rule, investigation/documentation should be required after incidence of a single 'Inconclusive' and precision testing after consecutive 'Inconclusives'.....This would create a sense of urgency by facility operators and cause diligent investigation/corrective action after one 'Inconclusive' while penalizing (via testing costs, lost fuel sales) an operator after two 'Inconclusives'." Despite EPA's comments to the contrary, and commission staff reading of the documents involved, USTMAN asserts that considering an inconclusive report as a failure to conduct release detection "is inconsistent with current EPA guidance on SIR inconclusive results and with regulations or guidance on this subject issued by any other state."

USTMAN, along with Rudy's, also contends that this clause would constitute a stricter treatment of SIR than that given other release detection methodologies, and adds that the language will cause confusion. McLain Oil Company argues that some agency inspectors will abuse their discretion under this clause. Similarly, Circle K Stores Inc. recommends that "this entrapment provision not be made a part of the regulations." The City of Texas City states "One inconclusive or insufficient data report should not be treated as a failure.....While the inconclusive results should be reported, violations should not be determined as a result of this report....Additional investigations should be conducted to determine the cause of the inconclusive report."

The commission has amended the language in §334.50(d)(9)(A)(v) to allow latitude for appropriate action on the part of owners or operators with regard to inconclusive SIR analysis results by allowing a period of 72 hours for owners or operators to investigate an inconclusive result to determine whether it can be properly quantified as a "pass" before reporting of that inconclusive result as a suspected release is required. The commission has also eliminated the ambiguous phrase "may be considered by the agency as failure on the part of the owner and/or operator to perform release detection for that period".

In §334.50(e), TASTP comments that the phrase "for as long as the release detection system is used" be removed from this subsection as "excessive" and "cumbersome" in favor of a definite time period (the comment is made concerning existing, not proposed, rule language).

The commenter's reference appears to be to §334.50(e)(A), (B), and (E) which specify that installation records, written performance claims, and manufacturer provided schedules of required calibration and maintenance applicable to release detection systems be maintained for as long as the release detection system is used. The commission believes that requiring these types of records to be maintained as long as a release detection system is still in use is reasonable and is necessary to allow commission verification of proper installation, application, operation and maintenance of a given release detection system. The commission therefore declines to make the change recommended.

In §334.71, 7-Eleven, Inc. suggests that the phrase "executive director" be replaced with "agency."

In response to these comments, the commission agrees that the language (given above) suggested by 7-Eleven, Inc. is appropriate as a clarification and has changed the rule accordingly.

In §334.72, I.C.E. and 7-Eleven, Inc. argue that while this section requires owners/operators to provide reports to either the TNRCC Central Office or the appropriate regional office, recent commission guidance says that all release reporting must be sent to the Central Office. I.C.E. also urges that the 24-hour reporting requirement be relaxed.

In response to the first comments, the commission agrees that there is a discrepancy between the proposed rule and current commission guidance. The commission believes that, in this instance, details such as which office within the commission should receive specific reports are more

appropriately contained in guidance documents. For that reason, the adopted rule merely requires reporting to "the agency," so that commission guidance can provide details concerning the implementation of the rule requirement.

Concerning the comments on the 24-hour reporting requirement, due to the diverse nature of releases in combination with diverse physical characteristics of release locations and variability of sensitive receptors and exposure pathways, the reporting of suspected releases must be completed in an expedited manner. The commission believes that the standing language in this section requiring 24 hour reporting is appropriate. Language has been inserted, however, as a cross-reference to Subchapter C so that users of SIR as a release detection methodology will know how suspected release reporting applies to them.

In §334.72(2), I.C.E. believes that the parenthetical example given in this paragraph is ambiguous and could be interpreted in an overly-broad manner, and therefore suggests that "This language should be revised to clarify that a report of a suspected release is required only where the 'unusual operating condition(s)' observed by the O/O is consistent with or indicates a leak." 7-Eleven, Inc. makes a similar comment, and suggests specific language.

Concerning the comments on the possibility that the parenthetical example in the rule language could be read too broadly, the commission responds that a clarification is appropriate and has adopted language that makes it clear that the example speaks to "erratic behavior of product dispensing equipment that is consistent with or could indicate a release." The commission believes

that this added phrase is more illustrative of the rule's intent than the recommended language, and also believes that it is inappropriate to delete the word "erratic" as suggested because the word accurately describes the possible inconsistent operations of dispensing equipment.

An individual commenter suggests a new §334.72(3)(C).

See FFP and TPCA comments in §334.50(d)(9)(A)(iv), and the commission response.

TPCA commented on §334.74(1).

See TPCA comments in §334.50(d)(9)(A)(iv), and the commission response.

In response to these comments, the commission recognizes that the volume of inconclusive reports received by commission staff from SIR users make it more difficult for those tank owners and operators to discuss the details of every case with commission staff within the time period stated in the rule such that unnecessary tank tightness tests can be avoided. To address this issue, the commission hereby directs staff to develop commission guidance documents that create a procedure whereby these tank owners and operators utilizing SIR may follow a series of steps following the report of the suspected release to the commission. The steps will be designed to specify what constitutes the proper procedure and schedule to be followed for investigation and confirmation of suspected releases indicated by various allowable methods of release detection. Included in the guidance will be recordkeeping requirements for those seeking, through the

guidance procedures, to claim that a tank tightness test was not necessary following their reported release. Upon request, the tank owner or operator would produce these documents to commission staff in support of the claim that the tank tightness test was not needed in the particular situation at issue. The commission declines to include the language recommended by the commenter in this section because the discretion allowed under the rule already provides for this situation to be addressed through commission guidance. Also, such revisions would constitute a major change to the rule which would need to be proposed for full comment from all effected parties. (also, see preamble in §334.50(d)(9)(A)(iv)).

In §334.105(b), TXU Business Services commented that the UST and Registration and Self-Certification form be integrated with the financial assurance submission in order to streamline the compliance certification process.

Under the adopted rules, financial assurance compliance certification will be accomplished under the authority of Chapter 334, §334.8(c) using a portion of the UST Registration and Self-Certification form. The old certification required in §334.105(b) was not incorporated into the movement of UST financial assurance rules into Chapter 37, Subchapter I. Therefore, the commenter's request for "integration" is achieved in the adopted rules and no further change is required.

In §334.303(a), as to the proposed insertion of the specific dates in this subsection, TASTP suggests "a similar specific date for review of those claims which were previously filed (and withheld or denied) for corrective work after September 1, 1993 performed without prior approval."

In response to this comment, the commission declines to adopt a date as suggested by the commenter. Such a revision would constitute a major change to the rule which could be said to impact other stakeholders than those impacted by the proposed rules, and could be said to increase impacts on those affected by the proposed rules, which is a type of change that cannot legally be made at this stage of the rulemaking process.

In §334.315, TPCA supports the proposed changes to this section, and the commission adopts those changes as proposed.

In §334.422(5), Chambers Pump Service, Inc. ("Chambers") objects to this proposed language because of the negative effect it could have on the licensees regulated under it, including reducing their ability to pay the defaulted amount.

The commission understands that there could be negative consequences on licensees in the situations covered by this rule, but the commission is bound by the requirements of Texas Education Code, Chapter 57. In an effort to ensure that commission rules do not go beyond the requirements of that statute, the commission is adopting language that is limited to referencing the specific requirements of that chapter of the Texas Education Code.

In §334.422(6), Chambers objects to this proposed language because of the negative effect it could have on the licensees regulated under it, including reducing their ability to pay the delinquent amount.

The commission understands that there could be negative consequences on licensees in the situations covered by this rule, but the commission is bound by the requirements of Texas Family Code, Chapter 232. In an effort to ensure that commission rules do not go beyond the requirements of that statute, the commission is adopting language that is limited to referencing the specific requirements of that chapter of the Texas Family Code.

In §334.426(d), as part of its effort to clarify how Texas Family Code, §232 binds the commission, subsection (d) has been added at adoption (see discussion in preamble for §334.422(6) concerning commission's intent that its rules not go beyond the requirements of that chapter of the Texas Family Code).

In §334.461(6), Chambers objects to this proposed language because of the negative effect it could have on the licensees regulated under it, including reducing their ability to pay the defaulted amount.

The commission understands that there could be negative consequences on licensees in the situations covered by this rule, but the commission is bound by the requirements of Texas Education Code, Chapter 57. In an effort to ensure that commission rules do not go beyond the requirements of that statute, the commission is adopting language that is limited to referencing the specific requirements of that chapter of the Texas Education Code.

In §334.461(7), Chambers objects to this proposed language because of the negative effect it could have on the licensees regulated under it, including reducing their ability to pay the delinquent amount.

The commission understands that there could be negative consequences on licensees in the situations covered by this rule, but the commission is bound by the requirements of Texas Family Code, Chapter 232. In an effort to ensure that commission rules do not go beyond the requirements of that statute, the commission is adopting language that is limited to referencing the specific requirements of that chapter of the Texas Family Code.

In §334.465(e), as part of its effort to clarify how Texas Family Code, §232 binds the commission, subsection (e) has been added at adoption (see discussion in preamble for §334.461(7) concerning commission's intent that its rules not go beyond the requirements of that chapter of the Texas Family Code).

In §334.497, BPAmoco objects to the phrase "immediately available in this section (although this was existing rule language), and wants the word "immediately" removed.

In response, the commission states that the word "immediately" is meant to be interpreted using its common meaning. When an investigator goes on an inspection and requests to see the records in question, the generator has an obligation to produce them for the inspector at that time. Commission staff will of course be reasonable in the enforcement of this rule, but the intent is clear--the generator should be able to produce these records with minimal delay. The commission

declines to make the change urged by the commenter to this rule language, and will initiate no rulemaking in response to this comment.

STATUTORY AUTHORITY

The amended and new sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended and new sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding USTs, §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an UST or AST, and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors, and continuing education requirements for installers and on-site supervisors.

SUBCHAPTER A: GENERAL PROVISIONS

§§334.1 - 334.10, 334.12, 334.15, 334.17, 334.18

§334.1. Purpose and Applicability.

(a) Purpose. The purposes of this chapter are to:

(1) provide a comprehensive regulatory program for hazardous substance and petroleum substance underground storage tank (UST) systems, and a limited regulatory program for petroleum product aboveground storage tanks (ASTs), as prescribed by the Texas Water Code, Chapter 26, Subchapter I and Subchapter K;

(2) establish minimum standards and procedures to reasonably protect and maintain the quality of the state's groundwater and surface water resources from environmental contamination that could result from any releases of harmful substances stored in such tanks;

(3) provide for the use of risk-based corrective action; and

(4) generally provide for the protection of human health and safety, as well as the protection of the overall environment of the state.

(b) Applicability to USTs.

(1) An UST system is subject to all or part of the applicable regulations in this chapter only when such system:

(A) meets the definition of UST system under §334.2 of this title (relating to Definitions);

(B) contains, has contained, or will contain a regulated substance as defined under §334.2 of this title;

(C) is not completely exempted from regulation under §334.3(a) of this title (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems); and

(D) is not completely excluded from regulation under §334.4(a) of this title (relating to Exclusions for Underground Storage Tanks (USTs) and UST Systems).

(2) The requirements and provisions in this chapter are applicable to regulated UST systems (as described in paragraph (1) of this subsection), and to the registration, self-certification, design, construction, installation, operation, testing, maintenance, upgrading, recordkeeping, reporting, removal from service, release monitoring, release reporting and corrective action (including risk-based corrective action), fee assessment, financial assurance in accordance with Chapter 37, Subchapter I of

this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems), and other applicable requirements associated with such systems, as more fully described in this chapter.

(3) The requirements and provisions in this chapter apply equally to all owners and operators of regulated UST systems (as described in paragraph (1) of this subsection), including individuals, trusts, firms, joint-stock companies, corporations, governmental corporations, partnerships, associations (including non-profit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and noncommercial entities, and the United States Government (including all of its departments), except as otherwise provided in this chapter.

(4) The following types of underground tank systems are subject to all or parts of the applicable regulations in this chapter if they meet the general qualifications for an UST system in paragraph (1) of this subsection:

(A) compartmental tanks, when at least one of the compartments is used to store regulated substances; and

(B) dual-use or multiple-use tanks which alternately store two or more substances, when at least one of the stored substances is a regulated substance.

(c) Applicability to ASTs.

(1) An AST is subject to the applicable regulations in this chapter only when such tank;

(A) meets the definition of “aboveground storage tank” in §334.2 of this title;

(B) contains, has contained, or will contain a “petroleum product” as defined in §334.2 of this title;

(C) is not exempted from regulation under §334.123 of this title (relating to Exemptions for Aboveground Storage Tanks (ASTs)); and

(D) is not excluded from regulation under §334.124 of this title (relating to Exclusions for Aboveground Storage Tanks (ASTs)).

(2) The requirements and provisions in this chapter apply to regulated ASTs, and to the registration, installation notification, reporting, recordkeeping, release reporting and corrective action (including risk-based corrective action), fee assessment, and other applicable requirements associated with such tanks, as more fully described in this chapter.

(3) The applicable requirements and provisions in this chapter shall apply equally to all owners and operators of regulated ASTs, including individuals, trusts, firms, joint-stock companies,

corporations, governmental corporations, partnerships, associations (including nonprofit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and noncommercial entities, and the United States government (including all of its departments), except as otherwise provided in this chapter.

(4) The following types of ASTs are subject to the applicable regulations in this chapter if they meet the general qualifications for an AST in paragraph (1) of this subsection:

(A) compartmental tanks, when at least one of the compartments is used to store petroleum products; and

(B) dual-use or multiple-use tanks which alternately store two or more substances when at least one of the stored substances is a petroleum product;

(5) If a storage tank containing a petroleum product technically meets the definitions of both an AST and an UST under this chapter, then the tank will be considered an UST, and must conform with all applicable requirements for USTs in this chapter.

(6) Consistent with the exemption for heating oil tanks in §334.123(a)(2) of this title, an AST storing a petroleum product (such as kerosene or diesel) which is primarily used as a heating oil substitute for heating purposes on the premises where stored, and which is secondarily used as a motor fuel for the operation of internal combustion engines, is exempt from the regulations of this chapter.

(d) Applicability of specific sections to USTs and ASTs.

(1) USTs are subject to all the applicable provisions of this chapter, except Subchapter F of this chapter (relating to Aboveground Storage Tanks). Underground petroleum storage tanks are also subject to all applicable provisions of Chapter 37, Subchapter I of this title.

(2) ASTs are subject to all the applicable provisions of this chapter, except:

(A) §334.3 of this title (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems), §334.4 of this title (relating to Exclusions for Underground Storage Tanks (USTs) and UST Systems), §334.5 of this title (relating to General Prohibitions for Underground Storage Tanks (USTs) and UST Systems), §334.6 of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems), §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems), §334.8 of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems), and §334.9 of this title (relating to Seller's Disclosure), and §334.10 of this title (relating to Reporting and Recordkeeping);

(B) Subchapter B of this chapter (relating to Underground Storage Tank Fees);

(C) Subchapter C of this chapter (relating to UST Technical Standards); and

(D) Subchapter I of this chapter (relating to Underground Storage Tank Contractor Registration and Installer Licensing).

§334.2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) **Common carrier** - With respect to delivery prohibitions, a person (as defined in this section) who physically delivers a regulated substance into an UST directly from a cargo tank

which is affixed or mounted to a self-propelled, towable, or pushable vehicle (e.g., wagon, truck, trailer, railcar, aircraft, boat, or barge).

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

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

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

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

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

hydrogeological conditions, and the required degree of remediation. The remedial method selection should take into consideration such factors as cost, time, and state compliance requirements with each method. The title of any report which contains a corrective action plan must include the designation "remedial action plan."

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

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

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

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

of inspection and testing for corrosion protection and control on such systems, including the inspection and testing of all common types of cathodic protection systems; and who either:

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

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

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

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

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

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

(31) **Emergency generator** - A standby electrical generating system powered by an internal combustion engine (including a turbine), where such system is designed to supply temporary electrical service only when service from the normal or primary electrical source is disrupted. Such systems include, but are not necessarily limited to, those providing emergency electrical service for hospitals, life support systems, and other medical service facilities; telephone and electrical utilities; heating, lighting, ventilation, security, elevator, fire control, and other essential building operations systems; uninterruptible power systems; essential air conditioning and refrigeration; and motors, machinery, and controls used for other essential or critical purposes.

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

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

(34) **External release detection** - A method of release detection which includes equipment or procedures designed to effectively monitor or measure for the presence of regulated substances in the excavation zone, soil, or other media outside of a single-wall or double-wall UST system.

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

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

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

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

(39) **Flow-through process tank** - A tank through which regulated substances flow in a steady, variable, recurring, or intermittent manner during, and as an integral part of, a production process (such as petroleum refining, chemical production, and industrial manufacturing), but specifically excluding any tank used for the static storage of regulated substances prior to their introduction into the production process and any tank used for the static storage of regulated substances which are products or by-products of the production process.

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

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

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

(43) **Hazardous substance UST system** - An UST system that contains an accumulation of either a hazardous substance, a mixture of two or more hazardous substances, or a

mixture of one or more petroleum substances with one or more hazardous substances, and which does not meet the definition of a petroleum UST system in this section.

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

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

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

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

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

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

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

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

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

(53) **Lender** - A state or national bank; a state or federal savings bank; a credit union; a state or federal savings and loan association; a state or federal government agency that customarily provides financing; or an entity that is registered with the Office of Consumer Credit Commissioner pursuant to Chapter 7, Title 79, Revised Statutes (Texas Civil Statutes, Article. 5069-7.01, et seq.) if the entity is regularly engaged in the business of extending credit and if extending credit represents the majority of the entity's total business activity.

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

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

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

(57) **Monitoring well** - An artificial excavation constructed to measure or monitor the quantity or movement of substances, elements, chemicals, or fluids below the surface of the ground.

The term does not include any monitoring well which is used in conjunction with the production of oil, gas, or any other minerals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(72) **Owner** - Any person who currently holds legal possession or ownership of a total or partial interest in an UST system or an AST. For the purposes of this chapter, where the actual ownership of an UST system or an AST is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the UST system or the AST is located shall be considered the UST system or AST owner, unless the owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally-acceptable means that the UST system or AST is owned by others. Except as otherwise provided by the Texas Water Code, §§26.3514 - 26.3516, owner does not include a person who holds an interest in an UST system or AST

solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the UST system or AST.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) lubricants - automotive and industrial lubricants;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) septic tank;

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

(5) stormwater or wastewater collection systems;

(6) flow-through process tanks;

(7) tanks, liquid traps, gathering lines, or other facilities used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal

resources, or any other activity regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101;

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

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

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

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

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

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

(A) the Natural Resources Code, Chapter 111;

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

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

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

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

§334.4. Exclusions for Underground Storage Tanks (USTs) and UST Systems.

(a) Complete exclusions. In addition to the tanks exempted from regulation under §334.3 of this title (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems), the following USTs are completely excluded from regulation under this chapter:

(1) any UST system containing a hazardous listed waste or identified under the federal Solid Waste Disposal Act, Subtitle C, (42 United States Code §6921, et seq.), or containing a mixture of such hazardous waste and other regulated substances, where such system is already subject to regulation under the federal Solid Waste Disposal Act, Subtitle C;

(2) any wastewater treatment tank (including an oil-water separator and any pretreatment facility), which is an integral part of a wastewater treatment facility which is either:

(A) permitted under the federal Clean Water Act, either §402 or §307(b), (33 United States Code §1251, et seq.); or

(B) permitted pursuant to the Texas Water Code, Chapter 26;

(3) sumps which have a capacity of less than 110 gallons;

(4) emergency spill protection or emergency overflow containment tanks, including certain sumps and secondary containment systems, which are used solely for the temporary storage or containment of regulated substances resulting from a leak, spill, overfill, or other unplanned release, and where the regulated substances are routinely removed within 48 hours of the discovery of the release; provided that such tanks must be inspected for a release no less than once every month;

(5) UST systems which during their entire operational life have exclusively contained only regulated substances at such dilute concentrations that any release would not pose any significant threat to human health and safety or the environment.

(b) Partial exclusions. The following USTs are subject to all provisions of this chapter, except for Subchapter C of this chapter (relating to Technical Standards), Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems), and the certification requirements of §334.8 of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems):

(1) any wastewater treatment tank (including oil-water separators), where such tank is not an integral part of a wastewater treatment facility which is either:

(A) permitted under the federal Clean Water Act, either §402 or §307(b), (33 United States Code §1151, et seq.); or

(B) permitted pursuant to the Texas Water Code, Chapter 26;

(2) any UST system that contains radioactive substances, where such system is regulated by the federal Nuclear Regulatory Commission (or its successor) under the provisions of the Atomic Energy Act of 1954 (42 United States Code §2011, et seq.);

(3) any UST system that contains fuel used solely to power an emergency electrical generator system at a nuclear power generation system facility regulated by the federal Nuclear Regulation Commission (or its successor) under the provisions of the Title 10 Code of Federal Regulations, Part 50, Appendix A.

(c) Other exclusion. In addition to the partial exemption for hydraulic lifts covered under §334.3(b) of this title, all other in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and which hold 100 gallons or more of hydraulic oil are similarly excluded from regulation under this chapter, except that such lifts remain subject to the release reporting and corrective action requirements under Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

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

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

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

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

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

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

(b) Delivery prohibitions.

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

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

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

(C) The requirement to observe a delivery certificate before delivering to an UST system regulated under §334.8(c)(2) of this title will phase-in according to the same schedule found in that section.

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

(2) Concerning UST systems which are not required to be self-certified compliant at a given time under §334.8(c) of this title, but which are required to be registered under §334.7 of this title (e.g. tanks which have not yet "phased-in" to the compliance self-certification program under the schedule in §334.8(c)(2) of this title):

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

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

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

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

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

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

(a) General requirements.

(1) Beginning September 1, 1987, any person who intends either to install a new or replacement underground storage tank (UST), to remove an UST from the ground, or to conduct a

permanent abandonment in-place of an UST must comply with the notification requirements of this section prior to initiating such activity.

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

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

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

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

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

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

(b) Notification for major construction activities.

(1) Applicable activities.

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

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

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

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

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

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

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

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

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

(I) cathodic protection systems;

(II) release detection systems;

(III) spill and overfill prevention equipment; or

(IV) monitoring well.

(B) The requirements of this section are not applicable to routine and minor maintenance activities related to the tank and piping systems, such as tightening loose fittings and joints, adjusting and calibrating equipment, conducting routine inspections and tests, and the substitution or in-kind replacement of any obsolete or malfunctioning UST system component for any purpose other than required upgrading.

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

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

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

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

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

(iii) quality assurance plans;

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

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

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

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

(viii) disposal procedures for removed tanks;

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

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

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

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

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

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

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

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

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

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

(6) Notification form.

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

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

(c) Alternative notification procedures.

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

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

(B) After providing the construction notification prescribed under subparagraph (A) of this paragraph, the owner or operator may proceed with the construction activity, as directed by the regional director (or the regional director's designated representative). The owner or operator must maintain detailed records of the construction. No later than 30 days after completion of the construction, the owner or operator must submit to the agency a detailed report describing the activity. If the agency determines that the information in such report is insufficient to assure compliance with the applicable requirements of this chapter, then the owner or operator may be required to submit additional information to demonstrate such compliance.

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

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

(B) when an out-of-operation UST system is discovered during unrelated construction activities (e.g., the construction of building excavations, streets, highways, utilities, etc.), when the property owner can reasonably demonstrate no prior knowledge of the existence of the tank, when the expeditious removal or abandonment in-place of the tank is considered necessary or advisable

for the completion of the unrelated construction activity, and where any delays in completion of the tank removal or abandonment in-place would cause unreasonable financial hardship due to contract schedules and completion times;

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

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

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

§334.7. Registration for Underground Storage Tanks (USTs) and UST Systems.

(a) General provisions.

(1) All underground storage tanks (USTs) in existence on or after September 1, 1987, must be registered with the agency on authorized agency forms in accordance with subsection (e) of this section, except for those tanks which:

(A) are completely exempted or partially exempted from regulation under §334.3(a) or (b) of this title (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems);

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

(C) were properly registered with the agency prior to the effective date of this subchapter under the provisions of the federal Solid Waste Disposal Act, §9002 (42 United States Code §6921, et seq.), provided that the owner or operator must submit notice of all changes and additional information in accordance with the provisions of subsection (d) of this section;

(D) have been permanently removed from usage by either:

(i) were permanently removed from the ground before May 8, 1986; or

(ii) remain in the ground, but were emptied, cleaned, and filled with solid inert materials on or before January 1, 1974, in accordance with accepted industry practices in effect at the time the UST was taken out of operation;

(E) were out of operation and empty of regulated substances at the time of their discovery, provided that:

(i) the facility owner and operator can reasonably demonstrate no prior knowledge of the existence of the USTs; and

(ii) the USTs are permanently removed from service in accordance with §334.55 of this title (relating to Permanent Removal from Service) no later than September 29, 1990, or within 60 days of their discovery, whichever is later.

(2) The owner and operator of an UST are responsible for compliance with the tank registration requirements of this section. An owner or operator may designate an authorized representative to complete and submit the required registration information. However, the owner and operator remain responsible for compliance with the provisions of this section by such representatives.

(3) All USTs subject to the registration requirements of this section are also subject to the fee provisions of Subchapter B of this chapter (relating to Underground Storage Tank Fees), except

where specifically exempted in this chapter. The failure by a tank owner or operator to properly or timely register any tanks does not exempt the owner from such fee assessment and payment provisions.

(4) Proper completion of the tank registration portions of the UST registration and self-certification form will result in the agency's issuance of a UST registration certificate for the tanks at the facility covered by that registration. This certificate is tied to the delivery prohibitions detailed at §334.5(b)(2) of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems.

(b) Existing tanks. Any person who owns an UST that was in existence on September 1, 1987, must register such tank with the agency not later than September 1, 1987, on an authorized agency form, except for those tanks exempted and excluded under subsection (a)(1)(A) - (D) of this section. Upon the effective date of this subsection, the obligation becomes joint and several with the tank operator as well.

(c) New or replacement tanks. Any person who owns a new or replacement UST that is placed into service on or after September 1, 1987, must register the tank with the agency on an authorized agency form within 30 days after the date any regulated substance is placed into the tank, except for those tanks exempted or excluded under subsection (a)(1)(A) - (D) of this section. Upon the effective date of this subsection, the obligation becomes joint and several with the tank operator as well.

(d) Changes or additional information.

(1) The owner or operator of an UST system must provide written notice to the agency of any changes or additional information concerning such system. Types of changes or additional information subject to this requirement must include, but are not limited to, the following:

(A) change in owner or operator, or change in owner or operator information (e.g., authorized representative, mailing address, and/or telephone number), provided that:

(B) change in the operational status of any tank system (e.g., in service, temporarily out of service, removed from the ground, permanently abandoned in-place, change-in-service to provide for the storage of a substance other than a regulated substance, or change to exempt or excluded status);

(C) change in the type of stored regulated substance;

(D) installation of additional tanks and/or ancillary equipment at an existing facility;

(E) change in the type of piping for an existing tank;

(F) the addition of, or a change in the type of, internal or external corrosion protection for the tanks, piping, and/or ancillary equipment;

(G) the addition of, or a change in the type of, spill and overfill prevention equipment for the tanks;

(H) the addition of, or a change in the type of, release detection equipment or methods for the tanks and/or piping;

(I) change in the location of documents and records for the facility; and

(J) change in financial assurance information related to the facility as specified in Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems).

(2) Notice of any change or additional information must be submitted on an authorized agency form which has been completed in accordance with subsection (e) of this section. The agency's UST facility number for the facility must be included in the appropriate space on the form.

(3) Notice of any change or additional information must be filed with the agency within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.

(4) However, for the initial filing of the UST registration and self-certification form (which is described in §334.8(c)(4) of this title (relating to Certification for Underground Storage Tanks

(USTs) and UST Systems)) for all regulated UST systems at a facility, all UST owners and operators must complete the "Tank Identification/Description" section of the UST registration portion of the form by the same deadline given in §334.8(c)(4)(A)(vi) of this title. This requirement does not relieve an owner or operator from any other registration requirements under this section.

(e) Required form for providing UST registration information.

(1) Any UST owner or operator required to submit UST registration information under subsections (a) - (d) of this section must provide all the information indicated on the agency's authorized form for each regulated UST. The UST registration information must be provided on the appropriate agency form, as specified in paragraph (6) of this subsection.

(2) The UST registration portion of the form must be filled out completely and accurately. Upon completion, the form must be dated and signed by the owner, or the operator, or an authorized representative of the owner or operator, and must be filed with the agency within the specified time frames.

(3) All UST owners or operators required to submit UST registration information under subsections (a) - (d) of this section must provide the registration information for all USTs located at a particular facility on the same form.

(4) UST owners or operators who own or operate USTs located at more than one facility must complete and file a separate form for each facility where regulated USTs are located.

(5) If additional information, drawings, or other documents are submitted with new or revised registration data, specific facility identification information (including the facility identification number, if known) must be conspicuously indicated on each document and all such documents must be attached to and filed with the form.

(6) For any UST registration information filed with the agency on or after the effective date of this paragraph, UST owners and operators must provide the required information on an authorized agency UST registration and self-certification form, as prescribed by §334.8(c)(3) of this title.

(7) Owners and operators of petroleum UST systems should also see the financial assurance requirements in Chapter 37, Subchapter I, §37.870(b) of this title.

(f) Inadequate information. When any of the required UST registration information submitted to the agency is determined to be inaccurate, unclear, illegible, incomplete, or otherwise inadequate, the agency may require the owner and/or operator to submit additional information. An owner or operator must submit any such required additional information within 30 days of receipt of such request.

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

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

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

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

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

(c) UST compliance self-certification requirements.

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

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

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

(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).

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

(2) Phase-in schedule for all regulated substance UST systems except motor fuel (as defined in §334.2 of this title) UST systems.

(A) For these UST systems, the self-certification requirements of this subsection will become effective two years after the effective date of this subsection.

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

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

(C) The agency's issuance of a delivery certificate for an UST(s) does not constitute agency certification or affirmation of the compliance status of the tank(s) in question with

agency UST technical and/or administrative requirements, and this issuance does not preclude the agency from investigating these tanks and pursuing enforcement actions under the Texas Water Code when apparent violations are discovered.

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

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

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

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

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

includes a certification as to recordkeeping and reporting duties required under those regulations for only the 60 days prior to and including the date of certification).

(4) UST registration and self-certification form.

(A) Requirements for completion of the form.

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

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

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

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

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

(vi) To ensure timely initial issuance by the agency of the UST delivery certificate, an owner or operator must submit the required UST registration and self-certification form (including any additional or supplemental information required under clause (v) of this subparagraph) to the agency no later than the following dates:

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

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

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

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

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

(5) UST delivery certificate.

(A) Certificate availability.

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

(ii) The owner and operator of USTs regulated under this section must make immediately available, upon request by agency staff, a valid, current TNRCC delivery certificate

(or TNRCC temporary delivery authorization under subparagraph (D) of this paragraph, as applicable) for the USTs at a facility.

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

(B) Annual delivery certificate renewal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

numeric UST identification number must be the same for each fill tube serving that single UST, however, to allow differentiation between compartments on the UST registration and self-certification form and at the facility, that common UST identification number must also be followed by a single additional alphabetic identifier for each compartment, beginning with the letter "A" and proceeding sequentially without skipping letters (i.e.: 1A, 1B, 1C…).

(D) Temporary delivery authorization.

(i) Upon receipt of a TNRCC construction notification form indicating the pending installation of a new or replacement UST system(s), 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 new or replacement UST system.

(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 a new or replacement UST(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 any new or replacement UST at the facility must be attached to the temporary delivery authorization for that facility.

(6) Revocation of Delivery Certificate.

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

(i) when the executive director determines that any of the information contained or referenced in the compliance self-certification portions of the UST registration and self-certification form was inaccurate at the time the self-certification was made;

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

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

(B) Procedures for revocation of delivery certificate.

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

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

(II) the commission on its own motion.

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

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

(I) revoke a certificate; and

(II) issue any other orders permitted by law.

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

§334.9. Seller's Disclosure.

Effective on and after the effective date of this subchapter, any person who sells or otherwise legally conveys a tank (or tank system) which is designed or intended to be installed as an underground storage tank (UST) must provide the purchaser (or grantee) with written notification of a tank owner's obligations relative to the agency’s tank registration, compliance self-certification, and construction

notification provisions under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems); §334.8 of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems); and §334.6 of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems).

(1) The written notification must include the names and addresses of the seller (or grantor) and the purchaser (or grantee), the number of tanks involved, a description of each tank (capacity, tank material, and product stored, if applicable), and the agency's designated facility identification number (if the entire facility is being conveyed).

(2) This notification requirement applies to any transfers or conveyances of a new or used tank from one person to another person, and also applies to the sales of real property where USTs are located.

(3) The written notification must be provided by the seller (or grantor) to the purchaser (or grantee) prior to the conveyance of the tanks, or prior to the time of the real property closing, as applicable.

(4) For the purpose of fulfilling the disclosure requirements of this section, the following language (together with the information in paragraph (1) of this section) is deemed sufficient: "The underground storage tank(s) which are included in this conveyance are presumed to be regulated by the Texas Natural Resource Conservation Commission and may be subject to certain registration,

compliance self-certification, and construction notification requirements found in Title 30 Texas Administrative Code, Chapter 334."

§334.10. Reporting and Recordkeeping.

(a) Reporting. Owners and operators of underground storage tank (UST) systems must assure that all reporting and filing requirements in this chapter are met, including the following (as applicable):

(1) construction notification, in accordance with §334.6 of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems);

(2) application for approval of any proposed UST system in the Edwards Aquifer recharge or transition zones, in accordance with §334.6(a)(2) of this title and Chapter 213 of this title (relating to Edwards Aquifer);

(3) registration of UST systems and changes in information, in accordance with §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems);

(4) certification of construction activities, financial assurance, and compliance self-certification in accordance with §334.8 of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems);

(5) request for approval of any variance or alternative procedure, in accordance with §334.43 of this title (relating to Variances and Alternative Procedures);

(6) request for extension of time for an UST system that is temporarily out of service, in accordance with §334.54 of this title (relating to Temporary Removal from Service);

(7) documentation of release determination or site assessment conducted when a UST system is permanently removed from service, in accordance with §334.55(a)(6) of this title (relating to Permanent Removal from Service);

(8) payment of underground storage tank fees, in accordance with Subchapter B of this chapter (relating to Underground Storage Tank Fees);

(9) reports, plans, and certifications related to suspected and confirmed releases of regulated substances, including:

(A) release reports and notifications, in accordance with §334.72 of this title (relating to Reporting of Suspected Releases), §334.75 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills), and §334.76 of this title (relating to Initial Response to Releases);

(B) report and certification of site check methods, in accordance with §334.74(c) of this title (relating to Release Investigation and Confirmation Steps);

(C) initial abatement report, in accordance with §334.77(b) of this title (relating to Initial Abatement Measures and Site Check);

(D) initial site assessment report, in accordance with §334.78(b) of this title (relating to Site Assessment);

(E) non-aqueous phase liquid removal report, in accordance with §334.79(d) of this title (relating to Removal of Non-Aqueous Phase Liquids);

(F) soil and groundwater contamination information, in accordance with §334.80(b) of this title (relating to Investigation for Soil and Groundwater Cleanup);

(G) corrective action plan, in accordance with §334.81 of this title (relating to Corrective Action Plan);

(H) notification of cleanup initiation, in accordance with §334.81(e) of this title;

(I) certification of compliance with corrective action plan, in accordance with §334.81(g) of this title; and

(J) public notices related to corrective action plans, in accordance with §334.82(b) of this title (relating to Public Participation);

(10) notifications and reports relating to financial assurance requirements, in accordance with Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems; and

(11) any other reports, filings, notifications, or other submittals required by this chapter, or otherwise required by the agency to demonstrate compliance with the provisions of this chapter.

(b) Recordkeeping.

(1) General recordkeeping requirements.

(A) Owners and operators of UST systems are responsible for developing and maintaining all records required by the provisions of this chapter.

(B) Except as provided in subparagraphs (C) and (D) of this paragraph, legible copies of all required records pertaining to an UST system must be maintained in a secure location on the premises of the UST facility, must be immediately accessible for reference and use by the UST system operator, and must be immediately available for inspection upon request by agency personnel.

(C) Except as provided in clause (v) of this subparagraph, in the event that copies of the required records cannot reasonably be maintained on the premises of the UST facility, then such records may be maintained at a readily accessible alternate site, provided that the following conditions are met.

(i) If the UST system is in operation, the records must be readily accessible for reference and use by the UST system operator.

(ii) The records must be readily accessible and available for inspection upon request by agency personnel.

(iii) The owner or operator must provide the following information (in writing) to the agency's central office and to the agency's appropriate regional office:

(I) the specific location where the required records are maintained; and

(II) the name, address, and telephone number of the authorized custodian of such records.

(iv) The filing of the written information required in clause (iii) of this subparagraph must be accomplished no later than October 29, 1989, 30 days after an UST installation

or replacement has been completed, or 30 days after the UST records are moved to an alternate site, whichever is later or applicable, as provided in §334.7(d) of this title.

(v) The conditional authorization otherwise allowed under this subparagraph for records maintenance at an alternative, off-premises location is not applicable to the UST delivery certificate (or temporary delivery authorization, if applicable) issued by the agency under §334.8(c) of this title. This UST delivery certificate must be maintained on the premises of all facilities with regulated USTs, must be posted by the UST system operator and visible to the person(s) performing deliveries to the UST system.

(D) For UST systems which have been permanently removed from service in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal from Service), the facility owner may submit the appropriate records required by this chapter to the agency in lieu of maintaining the records on the premises or at an alternative site, provided that the following conditions are met:

(i) the facility is no longer operated in a manner that requires the underground storage of regulated substances, and all UST systems at the facility have been permanently removed from service;

(ii) the facility owner must provide written justification adequate to explain why such records cannot be maintained on the premises of the UST facility or at a readily accessible alternative site; and

(iii) the records must be submitted at one time in one package for each UST facility, and the records must be appropriately labeled with the UST facility location information and the UST facility identification number.

(2) Required records and documents. Owners and operators of UST systems must assure that all recordkeeping requirements in this chapter are met, including the following records and documentation (as applicable).

(A) Legible copies of the following general records must be maintained for the operational life of the UST system:

(i) original and amended registration documents, in accordance with §334.7 of this title;

(ii) original and amended certifications for UST installations and financial assurance, in accordance with §334.8 of this title;

(iii) notification to UST purchaser, in accordance with §334.9 of this title (relating to Seller's Disclosure).

(B) Legible copies of applicable records and documents related to technical standards for UST systems must be maintained in accordance with the following provisions:

(i) application documents and the agency's approval letter for any variances or alternative procedures, in accordance with §334.43 of this title;

(ii) records demonstrating compliance with technical standards and installation standards for new UST systems, in accordance with §334.45(f) of this title (relating to Technical Standards for New UST Systems) and §334.46(i) of this title (relating to Installation Standards for New UST Systems);

(iii) records demonstrating compliance with the minimum upgrading requirements for existing UST systems, in accordance with §334.47(d) of this title (relating to Technical Standards for Existing UST Systems);

(iv) operation and maintenance records, in accordance with §334.48(g) of this title (relating to General Operating and Management Requirements);

(v) corrosion protection records, in accordance with §334.49(e) of this title (relating to Corrosion Protection);

(vi) release detection records, in accordance with §334.50(e) of this title (relating to Release Detection);

(vii) spill and overfill control records, in accordance with §334.51(c) of this title (relating to Spill and Overfill Prevention and Control);

(viii) records for repairs and relining of a UST system, in accordance with §334.52(d) of this title (relating to UST System Repairs and Relining);

(ix) records for reuse of used tanks, in accordance with §334.53(c) of this title (relating to Reuse of Used Tanks);

(x) records for temporary removal of UST systems from service, in accordance with §334.54(f)(4) of this title;

(xi) records for permanent removal of UST systems from service, in accordance with §334.55(f) of this title.

(C) Legible copies of all required financial assurance records must be maintained in accordance with the applicable provisions of Chapter 37, Subchapter I of this title.

(D) Legible copies of previous and current registration and self-certification forms required to be filed annually with the agency under §334.8(c) of this title, as well as UST delivery certificates, must be maintained for at least five years from the original date of submittal.

§334.12. Other General Provisions.

(a) Other regulations.

(1) Except as provided in paragraph (2) of this subsection, compliance with the provisions of this chapter by an owner or operator of an underground storage tank (UST) system or aboveground storage tank (AST) system does not relieve such owner or operator from the responsibility of compliance with any other regulations directly and/or indirectly affecting such tanks and the stored regulated substances, including, but not necessarily limited to, all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, United States Nuclear Regulatory Commission, United States Department of Energy, Texas Department of Health, State Board of Insurance, Texas Commission on Fire Protection, Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural

Resource Conservation Commission, and any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(2) As provided in the Texas Water Code (TWC), §26.359, this chapter establishes a unified statewide program for underground and surface water protection, and any local regulation or ordinance is effective only to the extent the regulation or ordinance does not conflict with the standards adopted for the design, construction, installation, or operation of USTs under this chapter.

(b) Owner and operator responsibility.

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

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

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

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

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

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

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

(c) Inspections, monitoring, and testing.

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

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

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

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

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

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

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

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

§334.15. Limits on Liability of Lender.

(a) A lender, as defined in §334.2 of this title (relating to Definitions), is not liable as an owner or operator under this chapter solely because the lender holds indicia of ownership to protect a security or lienhold interest in property. A lender is not liable under this subsection if:

(1) such lender has a security interest in a personal property or in a fixture that is not attached to the real estate or a lienhold interest on the real estate or fixture that is attached to the real estate as security for a loan to finance the acquisition or development of property, to finance the removal, repair, replacement, or upgrading of a regulated tank, or to finance the performance of corrective action in response to a release of a regulated substance from a tank, and the security or lienhold interest is in:

(A) an underground storage tank (UST) or aboveground storage tank (AST);

(B) real property on which an UST or AST is located; or

(C) in any other personal property attached to or located on property on which an UST or AST is located; or

(2) the real or personal property described in paragraph (1)(A) - (C) of this subsection constitutes collateral for a commercial loan.

(b) A lender that exercises control over property described under subsection (a) of this section before foreclosure to preserve the collateral or to retain revenues from the property for the payment of debt, or that otherwise exercises the control of a mortgagee in possession, is not liable as an owner or operator under this chapter unless that control leads to action that the executive director finds is causing or exacerbating contamination associated with the release of a regulated substance from a tank located on the property.

(c) A lender that has a bona fide security or lienhold interest in any real or personal property as described under subsection (a) of this section and that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of that real or personal property is not liable as an owner or operator under this chapter if the lender:

(1) permanently removes from service any USTs or ASTs on the property. A tank is permanently removed from service when the actions defined in §334.55(b) of this title (relating to Permanent Removal from Service) have been properly completed;

(2) undertakes, and with due diligence in a timely and persistent manner completes, corrective action in response to any release from those tanks. A lender acts with due diligence when the lender executes the corrective action in conformance with Subchapter D of this title (relating to Release Reporting and Corrective Action), or as otherwise directed by the executive director; and

(3) performs the removal and corrective action in accordance with all applicable commission rules.

(d) A lender acting under subsection (c) of this section must begin removal of the tank from service or corrective action within 90 days after the date on which the lender becomes the owner of the property.

(e) A lender described by subsection (a) of this section which forecloses on or receives an assignment or deed in lieu of foreclosure on real or personal property described in subsection (a) of this section is not liable as an owner or operator under this chapter because the lender sells, releases, liquidates, or winds up operations and takes measures to preserve, protect, or prepare a secured AST or UST before sale or other disposition of the storage tank or the property if the lender:

(1) did not participate in the management of an AST or UST or real or personal property described by subsection (a) of this section before foreclosure or its equivalent on the storage tank or the property; and

(2) establishes, as provided by subsection (f) of this section, that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest.

(f) A lender may establish that the ownership indicia maintained after foreclosure continues to be held primarily to protect a security interest if, within 12 months after foreclosure, the lender:

(1) lists the AST or UST, or the facility or property on which the tank is located, with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the AST or UST for sale or other disposition, at least monthly, in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the AST or UST being advertised; or

(C) a newspaper of general circulation in the area in which the AST or UST is located.

(g) For purposes of subsections (f) and (h) of this section the 12-month period begins:

(1) when the lender acquires good and indefeasible title, if the lender, after the expiration of any redemption period or other waiting period required by law, was acting diligently to acquire such title; or

(2) on the date of foreclosure or its equivalent, if the lender does not act diligently to acquire good and indefeasible title.

(h) A lender that meets the conditions of subsection (f) nonetheless becomes liable as owner and/or operator at the end of the 12-month period, or when the lender no longer holds ownership indicia primarily to protect its security interest, whichever occurs first. If a lender outbids, rejects, or does not act on an offer of fair consideration for the AST or UST or the facility or property on which the storage tank is located, it is presumed that the lender is not holding the ownership indicia primarily to protect the security interest unless the lender is required, in order to avoid liability under federal or state law, to make the higher bid, obtain the higher offer, or seek or obtain an offer in a different manner.

§334.17. Privatization of Storage Tank Program.

The commission may retain agents for the performance of services related to the duties and administrative tasks of this chapter. The agent(s) will act under the direction of the executive director.

§334.18. Limits on Liability of Taxing Unit.

(a) Authorization and applicability. The provisions of this section are authorized by Texas Water Code, §26.3516 (relating to Limits on Liability of Taxing Units), and apply only to taxing units as defined in the Property Tax Code, §1.04(12) that:

(1) This section applies to a taxing unit that has foreclosed an ad valorem tax lien on real property on which an underground storage tank (UST) or aboveground storage tank (AST) is

located, or on any other personal property attached to or located on property on which a UST or AST is located, as security for payment of ad valorem taxes.

(2) A taxing unit is not liable as an owner or operator under this chapter solely because the taxing unit holds indicia of ownership because of a tax foreclosure sale under the Tax Code.

(b) Removal from service and corrective action requirements. If after foreclosure of an ad valorem tax lien on real property on which an AST or an UST is located, a taxing unit performs or causes to be performed any UST or AST removal from service or corrective action activities, then the taxing unit must perform corrective action in accordance with the standards and procedures outlined in Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(c) Limits on liability of a taxing unit.

(1) A taxing unit is not liable as an owner or operator under this chapter solely because the taxing unit sells, releases, liquidates, or winds up operations and takes measures to preserve, protect, or prepare the secured AST or the secured UST before the sale or other disposition of either the storage tank, the real property on which the storage tank is located, or any other personal property attached to or located on the real property on which the storage tank is located, provided that the taxing unit:

(A) did not participate in the management of either the AST or UST, the real property on which this storage tank is located, or any other personal property attached to or located on the real property on which the storage tank is located, before the foreclosure of, or an equivalent action on, either the storage tank or the real or personal property; and

(B) establishes, as provided by paragraph (2) of this subsection, that the ownership indicia maintained after foreclosure continue to be held primarily to protect a payment of ad valorem taxes.

(2) A taxing unit may establish that the ownership indicia maintained after foreclosure continue to be held primarily to protect the payment of ad valorem taxes if the taxing unit either:

(A) lists the AST, UST, or the facility or real property on which the storage tank is located, with broker, dealer, or agent who deals in that type of property; or

(B) advertises the AST or UST for sale or other disposition in either:

(i) a real estate publication;

(ii) a trade or other publication appropriate for the AST or UST being advertised; or

(iii) a newspaper of general circulation in the area in which the AST or UST is located.

SUBCHAPTER A: GENERAL PROVISIONS

§334.11

STATUTORY AUTHORITY

This repeal is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. This repeal is also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank.

§334.11. Enforcement.

SUBCHAPTER B: UNDERGROUND STORAGE TANK FEES

§§334.21 - 334.23

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank.

§334.21. Fee Assessment.

(a) Except as provided in subsection (e) of this section, an annual facility fee of $50 is assessed for each underground storage tank (UST) subject to the registration provisions of §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems). The fees shall be billed to and paid by the owner of the tank.

(b) Payment of annual facility fees is due within 30 days of the date the agency sends a statement of the assessment to the tank owner. Annual facility fees must be paid by check, certified check, or money order made payable to the "Texas Natural Resource Conservation Commission." Payments must be mailed to the address specified in the billing statement.

(c) The agency shall establish a schedule for billing of annual facility fees. The amount of the fee to be paid, regardless of the actual billing date, shall be based on the number of regulated USTs in place on or after the first day of each fiscal year (September 1).

(d) An agency of the federal government is not subject to an assessment under this section for any revenue used to match federal funds for the remediation of leaking USTs. In any fiscal year in which fee revenues are used to match federal funds for remediation of a leaking UST, the agency shall determine the prorated contribution of each federal UST facility to the leaking UST trust fund in that year. The assessment of annual UST facility tank fees in the following year shall be adjusted by crediting the account of each federal facility for the excess amount paid in the previous year.

(e) An annual facility fee shall not be assessed for an UST which is owned, operated, or maintained by a common carrier railroad, as provided in the Texas Water Code, §26.344(g).

§334.22. Failure To Make Payment.

(a) Annual facility fees must be paid at the time and in the manner and amount provided by this subchapter.

(b) The agency shall impose interest and penalties on owners who fail to make payment of the annual facility fees imposed under this subchapter when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

§334.23. Disposition of Fees, Interest, and Penalties.

The agency shall deposit any annual facility fees collected, together with all interest and penalties collected for late payment, in the state treasury to the credit of the storage tank fund.

SUBCHAPTER C: TECHNICAL STANDARDS

§§334.41 - 334.52, 334.54 - 334.56

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank.

§334.41. Applicability.

(a) Except as provided under subsection (b) of this section, an underground storage tank (UST) shall be subject to all provisions of this subchapter if such tank meets the general applicability requirements of §334.1(b) of this title (relating to Purpose and Applicability).

(b) The provisions of this subchapter shall not apply to any of the following types of UST systems:

(1) in-ground hydraulic lifts which use a compressed air/hydraulic fluid system (regardless of size); and

(2) Any UST system which is covered under the partial exclusion provisions of §334.4(b) of this title (relating to Exclusions for Underground Storage Tanks (USTs) and UST Systems).

(c) Any UST which is specifically excluded or exempted from the provisions of this subchapter under §334.41(b) of this title (relating to Applicability), but which is otherwise subject to any of the remaining provisions of this chapter, shall conform with the minimum design and operation requirements of §334.5(a) of this title (relating to General Prohibitions for Underground Storage Tanks (USTs) and UST systems).

(d) For the purposes of this subchapter only, a new UST system (or new UST system) shall refer to any system for which installation has commenced on or after September 29,1989.

§334.42. General Standards.

(a) All components of any new or existing underground storage tank (UST) system subject to the provisions of this subchapter shall be designed, installed, and operated in a manner that will prevent releases of regulated substances due to structural failure or corrosion.

(b) For all components of any new or existing UST system subject to the provisions of this subchapter which contain, have contained, or will contain a regulated substance, the surfaces of such components which are in direct contact with the regulated substance shall be constructed of or lined with materials that are compatible with the substance stored in such components. Any compatibility determination or analysis shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(c) The owners and operators of UST systems subject to the provisions of this subchapter and those persons and/or business entities who engage in, perform, or supervise the installation, repair, or removal of UST systems shall be responsible for ensuring that those UST systems are designed, installed, repaired, removed, and operated in accordance with the provisions of this subchapter, as provided under §334.12(b) of this title (relating to Other General Provisions) and under the provisions of Chapter 70 of this title (relating to Enforcement).

(d) When provisions of this subchapter require compliance with a specific code or standard of practice developed by a nationally recognized association or independent testing laboratory, the most recent version of the referenced code in effect at the time of the regulated UST activity shall be applicable.

(e) Compliance with the provisions of this subchapter shall not relieve an owner or operator of an UST system from compliance with other applicable regulations legally developed by other governmental entities. This requirement is more fully discussed in §334.12(a) of this title.

(f) Unless otherwise stated in a variance approved by the agency in accordance with §334.43 of this title (relating to Variances and Alternative Procedures), the requirements of this subchapter shall take precedence if and when such requirements are determined to be in conflict with any provisions contained in the following:

(1) any code or standard of practice developed by a nationally recognized association or independent testing laboratory; and

(2) the manufacturers' specifications and instructions for installation and operation of UST equipment.

(g) Any underground component of an UST system installed on or after September 29, 1989, shall be properly protected from corrosion by one or more of the allowable methods in §334.49(b) of this title (relating to Corrosion Protection).

§334.43. Variances and Alternative Procedures.

(a) Prior to proceeding in any manner that differs from the requirements of this subchapter, the owner or operator of an underground storage tank (UST) system shall secure written agency approval in the form of a variance in accordance with this section.

(b) The agency shall have authority to review and approve requests for variances from the requirements in this subchapter. The agency will approve such requests only if the owner or operator can demonstrate to appropriate agency staff that the proposed alternative procedure and/or equipment will result in an UST system that is no less protective of human health and safety and the environment than the requirement(s) for which the variance is sought.

(c) An owner or operator may submit a request for a variance when one or more of the following situations is applicable:

(1) when conformance with a requirement in this subchapter is considered not practicable due to the type, design, capacity, material stored, or use of the UST system; or

(2) when new or alternative products, equipment, methods, and/or procedures appropriate for use with UST systems are not specifically authorized by the provisions of this subchapter.

(d) Any request to the agency for approval of a variance shall be made in writing, shall be signed and dated by the owner or operator, and shall be accompanied by the following additional documentation:

(1) written concurrence by the site or facility owner, if different from the tank owner;

(2) complete project identification, including:

(A) facility name, location, and UST facility identification number (if known);

(B) owner's name, address, and telephone number;

(C) name, address, and telephone number of owner’s/operator’s authorized representative; and

(D) proposed date for implementation of the alternative procedure and/or equipment;

(3) sufficient documentation to describe or illustrate the alternative procedure and/or equipment, such as:

(A) plans, drawings, and detail sheets (drawn to scale);

(B) design and construction specifications; and

(C) equipment manufacturers' specifications, operating instructions, and warranty information;

(4) documentation and supporting data which demonstrates, to the satisfaction of agency staff, the reliability and appropriateness of the proposed procedure and/or equipment, such as:

(A) results of tests or studies conducted by an equipment manufacturer, independent consultant, or nationally recognized association or independent testing laboratory; and

(B) results of previous experience involving use of the alternative procedure and/or equipment;

(5) complete explanation of the reasons why the requested proposed procedure and/or equipment are considered preferable to the requirement for which the variance is sought, or why that requirement is considered impracticable; and

(6) documentation that demonstrates, to the satisfaction of agency staff, that use of the proposed alternative procedure and/or equipment will be no less protective of human health and safety and the environment than adhering to the requirement(s) for which the variance is sought.

(e) If a variance is granted by the agency, the owner or operator shall maintain complete copies of the variance and supporting documentation (including the request for approval), in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

(f) When a variance is sought, the owner and operator must adhere to the requirement in question until such time as the owner or operator receives a written variance which allows an alternative procedure and/or equipment for that requirement.

(g) Once a person has received a written variance from the agency under this section, that person must adhere to the terms of that variance as written, or to the terms of the requirement for which the variance was sought.

§334.44. Implementation Schedules.

(a) New underground storage tank (UST) systems.

(1) Requirements for all new UST systems. All new UST systems installed on or after the effective date of this subchapter, which contain, have contained, or will contain any regulated substances shall be in compliance with the following requirements from the time of installation through the operational life of the system.

(A) Such systems shall be designed, constructed, and installed in accordance with the provisions of §334.45 of this title (relating to Technical Standards for New UST Systems) and §334.46 of this title (relating to Installation Standards for New UST Systems).

(B) Such systems shall be properly protected from corrosion or equipped with appropriate corrosion protection equipment, as provided in §334.49 of this title (relating to Corrosion Protection).

(C) Such systems shall be monitored for releases as provided in §334.50 of this title (relating to Release Detection).

(D) The tanks in such systems shall be protected from spills and overfills, as provided in §334.51 of this title (relating to Spill and Overfill Prevention and Control).

(2) Additional requirements for new hazardous substance UST systems. In addition to the requirements applicable to all new UST systems in paragraph (1) of this subsection, all new hazardous substance UST systems installed on or after the effective date of this subchapter shall also be in compliance with the following requirements from the time of installation through the entire operational life of the system.

(A) Such systems shall be properly constructed or equipped with a secondary containment system which shall be designed, constructed, and installed in accordance with the provisions of §334.45(d) of this title and §334.46(f) of this title.

(B) Such systems shall be properly constructed or equipped with a release detection system capable of monitoring either the interstitial spaces between the primary and secondary walls of any double-wall UST components, or the spaces between the primary UST component walls

and all secondary containment barriers, as applicable, in accordance with the provisions in §334.50(c) of this title.

(b) Existing UST systems.

(1) Requirements for all existing UST systems. All existing UST systems (i.e., UST systems for which installation has commenced or has been completed on or prior to December 22, 1988) which contain or have contained any regulated substances shall meet the applicable requirements of §334.47 of this title (relating to Technical Standards for Existing UST Systems) in accordance with the following schedule.

(A) Tank integrity assessment and cathodic protection. No later than December 22, 1998, all existing UST systems shall be brought into compliance with the applicable tank integrity assessment and cathodic protection requirements of §334.47(b)(1) of this title.

(B) Spill and overfill prevention. No later than December 22, 1994, all tanks in an existing UST system shall be brought into compliance with the applicable spill and overfill prevention equipment requirements of §334.51(b) of this title.

(C) Release detection for existing UST system piping.

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

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

(D) Release detection for existing tanks.

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

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

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

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

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

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

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

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

(ii) For emergency generator tanks only, the compliance dates prescribed in clause (i)(I) - (V) of this subparagraph shall be extended by one year; however, no compliance date shall be extended later than December 22, 1993.

(2) Additional requirements for existing hazardous substance UST systems. In addition to the requirements applicable to all existing UST systems in paragraph (1) of this subsection, all existing hazardous substance UST systems shall also be brought into compliance with additional secondary containment and release detection standards in accordance with the following schedule.

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

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

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

(a) General requirements.

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

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

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

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

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

(b) Technical standards for new tanks.

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

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

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

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

(ii) Part I of UL Standard 1746, "Standard for Safety for External Corrosion Protection Systems for Steel Underground Storage Tanks", or STI Standard, "Specification for sti-P_3 System of External Corrosion Protection of Underground Steel Storage Tanks."

(C) The tank may be constructed of coated steel and equipped with a field-installed cathodic corrosion protection system. Any tank constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be equipped with a field-installed cathodic

protection system meeting the appropriate design and operational requirements in §334.49(c)(2) of this title, and shall meet the following standards:

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

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

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

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

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

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

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

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

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

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

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

(i) The tank shall be equipped with a factory-applied external polyurethane coating which has a minimum dry film thickness of 70 mils;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Other new tank components.

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

(i) isolated from the backfill material and groundwater;

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

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

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

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

(c) Technical standards for new piping.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The piping may be designed, constructed, and protected from corrosion by an alternate method which has been reviewed and determined by the agency to prevent the release of any stored regulated substance in a manner that is no less protective of human health and the environment than the methods described in subparagraphs (A) and (B) of this paragraph. Any

alternative methods must be submitted and approved in accordance with the procedures in §334.43 of this title.

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

(3) Other new piping components.

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

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

practice developed by a nationally recognized association or independent testing laboratory. The use of metal swing joints in a pressurized UST piping system is specifically prohibited.

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

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

(d) Secondary containment for UST systems.

(1) Applicability.

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

(B) A double-wall tank and piping system (or approved alternative) meeting the applicable requirements of this subchapter shall be installed for any UST system situated in the Edwards

Aquifer recharge or transition zones, in accordance with Chapter 213 of this title (relating to Edwards Aquifer).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(III) any other code or standard of practice developed by a nationally recognized association or independent testing laboratory that has been reviewed and determined by the agency to be no less protective of human health and safety, and the environment than the standards described in subclauses (I) and (II) of this clause, in accordance with procedures in §334.43 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Monitoring wells and observation wells.

(A) All monitoring wells and observation wells installed on or after the effective date of this subchapter shall be designed, constructed, and installed in accordance with the requirements in §334.46(g) of this title.

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

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

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

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

§334.46. Installation Standards for New Underground Storage Tank Systems.

(a) General installation procedures. Any new underground storage tank (UST) system installed on or after the effective date of this subchapter shall be installed in compliance with the provisions of this section.

(1) Standards. All tanks, piping, and associated equipment shall be installed in accordance with at least one of the following standards, as applicable:

(A) PEI Publication RP-100, "Recommended Practices for Installation of Underground Liquid Storage Systems";

(B) API Publication 1615, "Installation of Underground Petroleum Storage Systems";

(C) ANSI Standard B31.3, "Petroleum Refinery Piping" and ANSI Standard B31.4, "Liquid Petroleum Transportation Systems"; or

(D) any other code or standard of practice developed by a nationally-recognized association or independent testing laboratory that has been reviewed and determined by the agency to be no less protective of human health and safety and the environment than the standards described in subparagraphs (A)-(C) of this paragraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(2) Installation personnel. All tanks, piping, and associated equipment shall be installed by personnel possessing the appropriate skills, experience, competence, and, if applicable, any required certification or license to complete the installation in accordance with recognized industry

practices and this chapter, and in a manner designed to minimize the possibility of UST system failures and the releases of regulated substances.

(3) Damages.

(A) All reasonable precautions shall be taken to prevent improper handling and damaging of the tanks and piping during the unloading and installation processes.

(B) Tanks and piping shall be physically inspected by the installer prior to installation.

(C) Any damage shall be repaired in accordance with the manufacturer's specifications; otherwise, damaged tanks and/or piping shall be replaced.

(4) Excavation.

(A) The tank excavation zone and piping trenches shall provide adequate vertical and horizontal space for the tanks, piping, and associated equipment, for the proper placement and compaction of bedding and backfill materials (particularly under the lower quadrant of the tank's circumference), and for adequate cover and paving to accommodate anticipated traffic loads.

(B) Tank excavation shall be performed in a manner that will avoid the undermining of foundations and other existing structures, and shall be constructed not less than three feet from the base of adjacent structures (unless specifically approved by a registered professional engineer) and not less than three feet from any underground utility easements and property lines.

(5) Bedding and backfill.

(A) The bedding and backfill shall consist of clean, washed, suitably graded, and noncorrosive sand, crushed rock, or pea gravel.

(B) The bedding and backfill material shall be selected and placed in accordance with the tank and piping manufacturers' specifications, and shall be placed and compacted in uniform lifts, as appropriate, to assure proper support and protection of the tank and piping after installation.

(C) Minimum bedding and backfill requirements shall be in accordance with the applicable industry standard for the construction, as prescribed in this subsection.

(D) The placement of tanks or piping directly on native soils, concrete pads or saddles, or any other underlayment except the bedding materials listed in this paragraph is specifically prohibited.

(b) Anchoring systems. Unless otherwise approved by the agency in accordance with §334.43 of this title, all USTs located in areas subject to high water tables or flooding shall be protected from any flotation or movement which could jeopardize the integrity of the UST system.

(1) Methods to prevent tank flotation shall be in accordance with the tank manufacturer's specifications and shall be one (or a combination) of the following methods:

(A) the provision of ample backfill and/or paving on top of the tank to offset the buoyancy forces;

(B) the installation of a properly designed deadman anchoring system, where the concrete beams shall be placed outside the vertical extension of the tank diameter and where the length of the beams shall extend at least one foot beyond the ends of the tank; or

(C) the installation of a properly designed concrete hold-down pad anchoring system beneath the tank, where the pad's width and length shall extend at least one foot beyond the tank sides and ends in all directions.

(2) The installation of anchoring straps or cables shall be in accordance with the tank manufacturer's specifications. All parts of the straps, cables, and hardware shall be of corrosion-resistant material or, if metallic, shall be thoroughly coated or wrapped with a suitable dielectric material.

(c) Piping system installation.

(1) The piping layout shall be designed in a manner that will minimize the crossing of other lines and conduits, and the crossing of tanks and other UST system components. Where such crossing is unavoidable, adequate clearance shall be provided to prevent contact.

(2) Traps, sumps, or sags in the lines shall be avoided, and all piping shall slope at least 1/8 inch per foot in the direction of the tank.

(3) All piping joints shall be accurately cut, deburred, cleaned, and sealed with appropriate piping sealant, bonding agent, or adhesive in accordance with the piping manufacturer's specifications so as to provide liquid-tight connections.

(d) Installation testing for new tanks and piping.

(1) Air testing of new tanks shall be conducted in accordance with the tank manufacturer's specifications. New tanks shall be air tested before they are installed.

(A) Air testing for single-wall tanks shall include the soaping of all surfaces, seams, and fittings, pressurizing and gauging with three to five psig air pressure for at least one hour, monitoring the gauge for pressure drops, and inspecting for bubbles.

(B) Air testing for double-wall tanks shall be in accordance with subsection (f)(2)(B) of this section.

(C) Gauges used in air testing procedures shall have a maximum range not exceeding 15 psig. All tanks undergoing air pressure testing shall be equipped with a pressure relief device capable of relieving the total output of the compressed air source at a pressure of not more than six psig.

(2) Air testing of new piping, fittings, and valves shall be conducted in accordance with the manufacturer's specifications. New piping shall be tested before being covered and placed into use. Air testing of piping shall include the soaping of all joints, pressurizing with compressed air to 150% of the maximum piping operating pressure, or a minimum of 50 psig, for at least one hour, and inspecting for bubbles. Air testing for secondary containment piping shall be in accordance with subsection (f)(3)(B) of this section.

(3) In addition to the air tests, a tank tightness test and a piping tightness test meeting the requirements of §334.50(d)(1)(A) and (b)(2)(A)(ii)(I), respectively, of this title (relating to Release Detection) shall be performed after the backfill has been placed but prior to bringing the new UST system into operation.

(4) Additional tests required. In addition to the air tests and tightness tests required in this subsection, the following additional installation tests shall be required, as applicable.

(A) For fiberglass-reinforced plastic tanks, the tank diameter shall be accurately measured prior to and after installation to ascertain the amount of vertical deflection, as specified in the tank manufacturer's installation procedures. Except when specifically authorized in writing by an authorized representative of the tank manufacturer, tanks shall not be placed into operation if the measured vertical deflection exceeds the manufacturer's maximum allowable deflection ratings.

(B) For steel tanks and other underground UST system components which are equipped with factory-installed or field-installed cathodic corrosion protection systems, the cathodic protection systems shall be tested for operability and adequacy of protection by a qualified corrosion technician or qualified corrosion specialist after the UST system installation is completed but prior to placing the system into operation.

(i) If the test indicates that the cathodic protection system is inoperable or inadequate, a qualified corrosion specialist shall review the test results and thoroughly inspect the UST system to ascertain the extent of corrosion protection.

(ii) If the qualified corrosion specialist determines that the UST system component is no longer adequately protected from corrosion, then the owner or operator shall assure that one or more of the following procedures are completed before the UST system is placed into operation.

(I) Appropriate repairs or modifications shall be made to restore the cathodic corrosion protection to the applicable UST system components.

(II) The cathodic protection system shall be replaced with another operable cathodic protection system which will provide adequate corrosion protection to the applicable UST system components, in accordance with the requirements in §334.49(c)(2) of this title.

(e) Installation of cathodic protection systems. The installation of any field-installed cathodic protection system in a new or existing UST system shall be in accordance with the applicable requirements of §334.49(c)(2) of this title.

(f) Installation of secondary containment systems.

(1) Secondary containment. Any secondary containment system shall meet the technical standards of §334.45(d) of this title (relating to Technical Standards for New Underground Storage Tank Systems).

(2) Installation of double-wall tanks.

(A) The installation of double-wall tanks shall be in compliance with the manufacturer's specifications and the applicable tank installation procedures in this section.

(B) Air testing for double-wall tanks shall be in accordance with the manufacturer's specifications and the following procedures.

(i) The primary tank shall be pressurized and gauged with three to five psig of air pressure. The primary tank shall be pressurized for at least one hour, and the gauge pressure shall be periodically monitored for any pressure drops.

(ii) After disconnecting the outside air pressure source, the interstitial area between the tank walls shall be pressurized with air pressure from the primary tank. A second gauge shall be used to measure the pressure in the interstitial space.

(iii) The exterior of the tank shall be soaped, and the integrity of the system shall be inspected by monitoring the gauges and inspecting for air bubbles for at least one hour prior to releasing the pressure.

(iv) Gauges used in air testing procedures shall have a maximum range not exceeding 15 psig. All tanks undergoing air testing shall be equipped with a pressure relief device capable of relieving the total output of the compressed air source at a pressure of not more than six psig.

(3) Installation of double-wall piping.

(A) The installation of double-wall piping shall be in compliance with the manufacturer's specifications and the applicable piping installation procedures in this section.

(B) After successful air testing of the completed primary piping system (in accordance with subsection (d)(2) of this section), the secondary containment piping shall be air tested in accordance with the manufacturer's specifications and the following procedures.

(i) The secondary containment piping shall be pressurized and gauged with three to five psig of air pressure.

(ii) The exterior of the secondary containment piping shall be soaped and the integrity of the system shall be inspected by monitoring for air bubbles for at least one hour.

(iii) The secondary containment piping system shall remain pressurized, and the gauges shall be periodically monitored for pressure losses, until the entire UST system installation is complete in order to monitor for damages during the remaining construction activities.

(4) Installation of external liners.

(A) External liners shall be installed in accordance with the manufacturer's specifications, and in accordance with the requirements in this paragraph.

(B) The installation, field-seaming, and field-repair of any liners shall be performed only by qualified personnel who have been properly trained and certified by the liner manufacturer.

(C) The liner shall be protected from puncture, abrasion, or any other damage during placement and during installation of other UST system components. A protective layer of puncture-resistant filter fabric shall be required when the liner is placed in an excavation area where the presence of sharp paving, rocks, or other debris presents a threat to the liner integrity.

(D) The liner shall be installed in a manner that will allow sufficient enclosure of the secondarily protected component to prevent lateral and vertical migration of any collected regulated substances.

(E) For UST systems which are equipped with cathodic protection equipment, the liner shall be installed so as not to jeopardize or inhibit the proper operation of such cathodic protection equipment.

(F) The liner installation shall include the provision of an appropriate number of recessed collection/detection points, and all portions of the liner shall be sloped toward such points to permit the detection of any releases from the primary storage component.

(G) The installation of the liner shall be performed in a manner that will ensure that groundwater, soil moisture, and stormwater runoff will not adversely affect the liner's ability to collect and contain regulated substances or the ability of the selected release detection methods to operate effectively.

(H) The liner shall be designed and installed to ensure that it will always be situated above the highest groundwater level and outside the 25-year flood plain, unless the liner and the release detection system are properly designed for use under such conditions. The owner or operator may be required to provide documentation of the methods used to determine groundwater and floodplain information.

(I) After completion of the liner installation, but prior to placing the UST system into service, the liner shall be properly tested in accordance with the manufacturer's specifications.

(g) Installation of monitoring wells and observation wells. All monitoring wells and observation wells installed in conjunction with an UST system on or after the effective date of this subchapter shall be constructed and installed in accordance with the requirements of this paragraph.

(1) General requirements for both monitoring wells and observation wells.

(A) All monitoring wells and observation wells shall be constructed or installed by personnel possessing the appropriate skills, experience, competence, and, if applicable, any required license or certification to complete the construction or installation in accordance with recognized industry standards and the requirements of this subsection.

(B) Except for observation wells installed pursuant to §334.45(e)(4)(B) of this title, the determination of the appropriate number and the appropriate diameters of monitoring wells or observation wells shall be based on the planned purpose of such well and on the specific procedures, methods, and equipment to be utilized in achieving such purpose.

(C) The slotted or screened portion of the monitoring well or observation well casing shall be designed and sized so as to prevent the migration of natural soils, backfill material, or filter pack material into the well, and to allow the unrestricted entry of any released regulated substances (liquid-phase or vapor-phase, as applicable) into the well at all times, regardless of the groundwater levels.

(D) The well casing material shall be sufficiently compatible with the stored regulated substance such that prolonged exposure to such substances will not cause failure or excessive deterioration of the casing.

(E) When installed or constructed for the purposes of compliance with one or more of the release detection methods in §334.50(d) of this title, the specific number and positioning of

the monitoring wells and/or observation wells shall be based on the results of an assessment of the underground areas within and immediately surrounding the UST system excavation zone to assure compliance with the specific criteria and requirements for the applicable release detection method. Such assessment shall be performed by qualified personnel who are familiar with the characteristics of the stored regulated substance and the groundwater, soil, and geologic conditions at the site.

(F) All monitoring wells and observation wells shall be equipped with a properly designed and properly installed bottom cap.

(G) All monitoring well and observation well installations shall include an appropriate access vault or manhole, which shall be equipped with a liquid-tight cover and be designed to divert surface runoff away from the well.

(H) All monitoring wells and observation wells shall be properly capped, labeled, and secured (or locked) to prevent unauthorized access, tampering, and any deliberate or accidental depositing of unauthorized substances.

(2) Additional requirements for monitoring wells. In addition to the general requirements of paragraph (1) of this subsection, all monitoring wells installed in conjunction with an UST system shall be constructed or installed in accordance with the applicable requirements of 16 TAC, Chapter 76 (relating to Water Well Drillers), and Texas Water Code (TWC), Chapter 32

(relating to Water Well Drillers). Any person constructing or installing a monitoring well shall be appropriately licensed as required therein.

(3) Additional requirements for observation wells. In addition to the general requirements of paragraph (1) of this subsection, the following requirements shall be applicable to all observation wells installed in conjunction with an UST system.

(A) All observation wells that are regulated as monitoring wells by the Water Well Drillers Board shall be constructed or installed in accordance with the applicable requirements in 16 TAC, Chapter 76, and TWC, Chapter 32 (relating to Water Well Drillers). Any person constructing or installing such well shall be appropriately licensed as required therein.

(B) All observation wells that are not regulated as monitoring wells by the Water Well Drillers Board shall be constructed or installed in accordance with the following minimum requirements.

(i) All observation wells shall be designed and installed in general accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(ii) All observation wells shall be constructed or installed within the UST system excavation zone, and shall be completed to a depth of at least two feet below the lowest

part of any monitored tank, or at least one foot below the lowest part of any monitored piping, as applicable.

(iii) For observation wells installed or constructed on or after the effective date of this subchapter in a new or existing UST system where the backfill consists of specialized or select materials (i.e., sand, pea gravel, or crushed rock), the following minimum requirements shall be applicable.

(I) The access vault or manhole shall be properly installed in a concrete encasement which shall extend from the top of the vault to at least one foot below the base of the vault to provide adequate structural support and to prevent surface runoff and pollutants from entering the well.

(II) Beginning at the bottom of the concrete encasement beneath the access vault, the well casing shall be properly sealed with impervious bentonite or a similar impervious material for a minimum distance of either one foot below the bottom of the concrete encasement or to the top of the specialized or select backfill material, whichever is the greater depth.

(iv) For observation wells installed or constructed on or after the effective date of this subchapter in an existing UST system where the backfill consists of materials other than specialized or select materials (e.g., native soils), the well shall be constructed or installed in accordance with the applicable standards in 16 TAC, Chapter 76. If the observation well is not

regulated as a monitoring well by the Water Well Drillers Board, the licensing requirements for persons constructing or installing such well shall not be applicable.

(h) Certification of installation.

(1) All owners and operators of new UST systems installed on or after the effective date of this subchapter shall ensure that the installation was completed in accordance with the provisions of this section, and that the following certification criteria applicable to the installation are met.

(A) For all UST system installations commencing on or after the effective date of this subchapter but before February 1, 1990, the owner or operator shall assure that at least one of the following criteria is met:

(i) the installer of the UST system has been properly certified by the tank, piping, and equipment manufacturers;

(ii) the installation has been inspected and certified by a registered professional engineer with appropriate training and experience in UST system installation procedures;

(iii) all construction and installation activities listed in the equipment manufacturers' checklists have been properly completed; or

(iv) the installation activities have been reviewed and determined by the agency to prevent releases in a manner that is no less protective of human health and the environment than the methods described in clauses (i) - (iii) of this subparagraph. Any alternative methods must be submitted and approved in accordance with the procedures in §334.43 of this title.

(B) For all UST system installations commencing on or after February 1, 1990, the owner or operator shall assure that the UST system installation is conducted by an installer licensed by the agency.

(2) The installer of the UST system shall complete the installation certification section of the agency's authorized form, and shall certify by signature that the installation methods are in compliance with the provisions of this section, as required by §334.8(a) of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems).

(i) Installation records.

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

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

(A) general information relating to the installation activity, including:

(i) date of installation activity;

(ii) names, addresses, and telephone numbers of the persons conducting the installation and performing any associated inspections or testing; and

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

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

(II) installation certification information, as required by §334.8(a) of this title;

(B) as-built drawings (or plans), which have been drawn to scale and in sufficient detail to accurately depict and describe the sizes, dimensions, and locations of the following:

(i) all pertinent site features, including property boundaries, street and road rights-of-way, easements, and utility lines, buildings and other structures, driveways, slabs, and any natural features;

(ii) all pertinent UST system components, including tanks, piping, vent piping, pumps, dispensers, excavation zone (including tank hole and piping trench), monitoring wells, spill and overfill prevention equipment, release detection system components (including monitoring and testing locations), cathodic protection system components (including test stations), secondary containment systems, anchoring systems, and any other pertinent UST system components; and

(iii) any site features or UST system components which have been added, revised, changed, modified, or removed subsequent to the preparation of the original drawings or plans;

(C) equipment information for all UST system components including:

(i) manufacturers' specifications, installation instructions, operating instruction, warranty information, recommended test procedures, and inspection and maintenance schedules; and

(ii) names, addresses, and telephone numbers of the manufacturers' representatives and local authorized service technicians.

(3) Owners and operators shall maintain the results of all equipment tests, including the air tests and the tightness tests conducted on the tanks and piping at the time of installation, for at least five years after the date of installation.

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

(a) General requirements.

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

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

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

(2) If any applicable component of an existing UST system is not brought into timely compliance with the requirements of paragraph (1) of this subsection, the UST system shall be permanently removed from service no later than 60 days after the prescribed implementation date. The

permanent removal from service shall be conducted in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal From Service).

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

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

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

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

(ii) The tank may be tested by conducting at least two tank tightness tests meeting the requirements of §334.50(d)(1)(A) of this title. The first tightness test shall be conducted prior to installing the cathodic protection system, and the second test shall be conducted

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

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

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

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

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

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

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

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

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

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

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

(C) Field-installed cathodic protection system. After confirmation or restoration of the structural integrity of the tank, all underground metal components of the UST system, which are not isolated from the surrounding soil, backfill, and groundwater, and which either do or could convey, contain, or store regulated substances, shall be equipped with a field-installed cathodic protection system meeting the requirements of §334.49(c)(2) of this title (relating to Corrosion Protection).

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

(3) Adding release detection for UST system piping.

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

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

(4) Adding release detection for tanks.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Records for upgrading of existing UST systems.

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

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

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

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

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

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

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

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

(B) as-built drawings (or plans), which have been drawn to scale and in sufficient detail so as to accurately depict and describe the sizes, dimensions, and locations of any UST system components or equipment added or installed on or after the effective date of this subchapter which are installed pursuant to one of the construction activities included in §334.6(b)(1)(A) of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems); and

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

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

§334.48. General Operating and Management Requirements.

(a) Prevention of releases. All owners and operators of underground storage tank (UST) systems shall ensure that the systems are operated, maintained, and managed in a manner that will prevent releases of regulated substances from such systems.

(b) UST system management. UST systems shall be operated, maintained, and managed in accordance with accepted industry practices.

(c) Inventory control. On or after the effective date of this subchapter, regardless of which method of release detection is used for compliance with §334.50 of this title (relating to Release Detection), effective manual or automatic inventory control procedures shall be conducted for all UST systems at retail service stations as defined in §334.2 of this title (relating to Definitions). Such inventory control procedures shall be in accordance with §334.50(d)(1)(B) of this title. Complete and accurate inventory records shall be maintained in accordance with §334.10 of this title (relating to Reporting and Recordkeeping).

(d) Spill and overfill control. All owners and operators shall ensure that spills and overfills of regulated substances do not occur and that all spill and overfill prevention equipment is properly operated and maintained in accordance with §334.51 of this title (relating to Spill and Overfill Prevention and Control).

(e) Operational requirements for release detection equipment. Owners and operators of all new and existing UST systems shall ensure that all release detection equipment installed as part of a UST system pursuant to §334.50 of this title is maintained in good operating condition. The owner or operator shall also assure that such equipment is routinely inspected and serviced in accordance with the manufacturer's specifications and in a manner that will assure the proper performance, operability, and running condition of the equipment. Where periodic testing and/or monitoring activities are required as

part of a specific release detection method under §334.50 of this title, such tests and/or monitoring activities shall be performed at the prescribed times and/or frequencies.

(f) Operation requirements for corrosion protection systems. All owners and operators of UST systems shall assure that all required UST system components are continuously protected from corrosion, and that all corrosion protection systems are inspected and tested, in accordance with the applicable provisions of §334.49 of this title (relating to Corrosion Protection).

(g) Operation and maintenance records. Owners and operators shall maintain records relating to the operation and maintenance of a UST system (including records related to inspection, servicing, testing, and inventory control) as prescribed in this section for at least five years, and such records shall be maintained in accordance with §334.10(b) of this title.

§334.49. Corrosion Protection.

(a) General requirements.

(1) Owners and operators of underground storage tank (UST) systems (or underground metal UST system components) which are required to be protected from corrosion shall comply with the requirements in this section to ensure that releases due to corrosion are prevented.

(2) All corrosion protection systems shall be designed, installed, operated, and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system.

(3) Any alternative methods for corrosion protection or variances from the requirements of this section are prohibited, except when reviewed and approved by the agency pursuant to procedures for variances found in §334.43 of this title (relating to Variances and Alternative Procedures).

(4) Corrosion protection in accordance with the provisions of this section shall be provided to all underground metal components of an UST system which are designed or used to convey, contain, or store regulated substances, including, but not limited to, the tanks, piping (including valves, fittings, flexible connectors, swing joints, and impact/shear valves), and also to other underground metal components associated with an UST system, including but not limited to, secondary containment devices, manways, manholes, fill pipes, vent lines, submersible pump housings, spill containers, and riser pipes.

(5) For internal corrosion protection, the interior bottom surface of new metal tanks installed on or after September 29, 1989, shall be fitted with a striker plate under all fill, gauge, and monitoring openings.

(6) When provisions of this subsection require compliance with a specific code or standard of practice developed by a nationally recognized association or independent testing laboratory, the most recent version of the referenced code in effect at the time of the regulated UST activity shall be applicable.

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

(b) Allowable corrosion protection methods. All components of an UST system which are designed to convey, contain, or store regulated substances shall be protected from corrosion by one or more of the following methods.

(1) The component may be constructed of a noncorrodible material which is compatible with the stored regulated substance(s).

(2) The component may be electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater, and other metallic components by installing the component in an open area (e.g., manway, sump, vault, pit, etc.) where periodic visual inspection of all parts of the component for the presence of corrosion or released substances is practicable.

(3) The component may be electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater, and other metallic components by completely enclosing the component in a secondary containment device (e.g., wall, jacket, or liner), provided that:

(A) the secondary containment device is designed and installed in accordance with the applicable technical and installation standards in §334.45(d) of this title (relating to Technical Standards for New Underground Storage Tank Systems) and §334.46(f) of this title (relating to Installation Standards for New Underground Storage Tank Systems), and in accordance with an applicable code or standard of practice developed by a nationally recognized association or independent testing laboratory, and is either:

(i) constructed of a noncorrodible material which is compatible with the stored regulated substance;

(ii) electrically isolated from the protected component and other metallic components; or

(iii) cathodically protected by either a factory-installed or field-installed cathodic protection system meeting the applicable requirements of subsection (c) of this section; and

(B) the interstitial space between the protected component and the secondary containment device shall be free of any soil, backfill material, groundwater, or other substances, and

the protected component shall be regularly inspected and tested for electrical isolation in accordance with the provisions in subsection (d)(1) of this section.

(4) Tanks (only) may be factory-constructed either as a steel/fiberglass-reinforced plastic composite tank, or as a steel tank with a bonded fiberglass-reinforced plastic external cladding or laminate, or as a steel tank with a bonded fiberglass reinforced polyurethane coating, as a steel tank with a bonded polyurethane external coating, or as a steel tank completely contained within a nonmetallic external tank jacket in accordance with the requirements in §334.45(b)(1)(D), (E), or (F) of this title, as applicable.

(5) The component may be coated with a suitable dielectric material, equipped with appropriate dielectric fittings for electrical isolation, and equipped with either:

(A) a factory-installed cathodic protection system meeting the requirements of subsection (c)(1) of this section; or

(B) a field-installed cathodic protection system meeting the requirements of subsection (c)(2) of this section.

(6) Except for the tanks and the piping system components, other underground components of a UST system (including vent lines, fill risers, submersible pump risers and housings, spill containment vessels, and tank fittings (e.g., bunghole plugs)) which do not routinely contain

regulated substances may be protected from corrosion by thorough coating or wrapping with a suitable dielectric material which is compatible with the stored regulated substance without the need for the use of other corrosion protection methods.

(7) Corrosion protection in accordance with the requirements of this subchapter is not required if it is determined by a corrosion specialist that corrosion protection of an underground metal UST system or UST system component is unnecessary because the site is not corrosive enough to cause a release due to corrosion for the operational life of the UST system. The upgrade or repair of an existing corrosion protection system for an underground metal UST system or UST system component is not required if it is determined by a corrosion specialist that said upgrading or repair is unnecessary and that the protection provided by the existing corrosion protection system is sufficient to prevent a release due to corrosion for the operational life of the UST system. In either case, the determination of the corrosion specialist must be made in writing, must be signed by the corrosion specialist (corrosion specialist must also seal the written determination if he or she is a qualified duly licensed professional engineer in Texas), and must be maintained by the owner and operator as part of the records for the facility in keeping with the requirements of subsection (e) of this section and §334.10(b) of this title (relating to Reporting and Recordkeeping).

(c) Cathodic protection systems.

(1) Factory-installed cathodic protection systems.

(A) A factory-installed cathodic protection system on any UST component shall be designed, fabricated, installed, operated, and maintained in accordance with applicable codes or standards of practice developed for such cathodic protection method by a nationally recognized association or independent testing laboratory.

(B) At a minimum, the factory-installed cathodic protection system shall include the following components:

(i) a suitable dielectric external coating or laminate, which shall thoroughly cover all exterior surfaces exposed to the soil, backfill, or groundwater, and which shall consist of materials which are compatible with the stored regulated substances;

(ii) dielectric isolation bushings, connections, or fittings, which shall be installed at all locations where the protected component connects to other metallic system components, and which shall be constructed of materials which are compatible with the stored regulated substances; and

(iii) sacrificial anodes which are firmly attached and electrically connected to the protected components and which are positioned and sized to provide complete cathodic protection for all parts of the protected component.

(2) Field-installed cathodic protection systems.

(A) A field-installed cathodic protection system on any UST system component shall be designed by a qualified corrosion specialist, and shall be designed, installed, operated, and maintained in accordance with applicable codes or standards of practice developed for such cathodic protection systems by a nationally recognized association or independent testing laboratory.

(B) Impressed current cathodic protection systems shall be designed and equipped with appropriate equipment or devices capable of indicating the operational status of the system at all times.

(C) In addition to the standard inspection and testing requirements for all cathodic protection systems required in paragraph (4) of this subsection, all impressed current cathodic protection systems shall be regularly inspected by the owner or operator (or the owner's designated representative) to ensure that the rectifier and other system components are operating properly. Such inspections shall be performed at least once every 60 days.

(3) Test stations and connections. To allow for the periodic testing required in paragraph (4) of this subsection, any factory-installed or field-installed cathodic protection system shall include appropriate connections, insulated lead wires, and accessible test stations. All lead wires connected to the tanks, anodes, reference electrodes, and other components associated with the cathodic protection system shall terminate at one or more test stations. The termination of each lead wire at a test station shall be clearly labeled or coded to properly identify the specific component to which it is connected.

(4) Inspection and testing requirements for all cathodic protection systems.

(A) Except as provided in subsection (d)(2) of this section, all cathodic protection systems which are used to provide corrosion protection for any component of a UST system shall be inspected and tested to determine the adequacy of the cathodic protection by a qualified corrosion specialist or corrosion technician in accordance with the requirements in this paragraph.

(B) The inspection and testing criteria used to determine the adequacy of the cathodic protection shall be in accordance with a code or standard of practice developed by a nationally recognized corrosion association or independent testing laboratory.

(C) All cathodic protection systems shall be inspected and tested for operability and adequacy of protection within three to six months after installation and at a subsequent frequency of at least once every three years.

(d) Requirements for other corrosion protection methods.

(1) Electrically isolated components.

(A) Except for jacketed tanks meeting the requirements of §334.45(b)(1)(F) of this title, any metal component of an UST system which is protected from corrosion by one of the electrical isolation methods described in subsection (b)(2) and (3) of this section, and which is not

equipped with a cathodic protection system, shall be periodically inspected and tested to ensure that the metal component remains electrically isolated from the surrounding soil, backfill, groundwater, and other metal components in accordance with one or more of the following procedures.

(i) When visual inspection is possible, the entire exterior surface of such component may be thoroughly inspected visually by qualified personnel for the presence of corrosion or released regulated substances.

(ii) If visual inspection is not possible, the component may be inspected and tested by a qualified corrosion technician or by a qualified corrosion specialist by taking structure to soil voltage readings in accordance with procedures established by a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(iii) The component may be inspected and/or tested by an alternative method which has been reviewed and determined by the agency to ascertain electrical isolation and to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and safety and the environment than the methods described in clauses (i) and (ii) of this subparagraph, in accordance with the procedures in §334.43 of this title.

(B) The inspections and tests required in subparagraph (A) of this paragraph shall be conducted within three to six months after installation of the metal component, and then once every three years thereafter for the remaining operational life of the UST system.

(C) If the tests required in subparagraph (A) of this paragraph indicate that the metal component is no longer electrically isolated from the surrounding soil, backfill, groundwater, or other metal components, a qualified corrosion specialist shall review the test results and thoroughly inspect the area of the metal component to ascertain the extent of electrical isolation and corrosion protection for the component.

(D) If the qualified corrosion specialist determines that the metal component is no longer adequately protected from corrosion, the owner or operator shall assure that one or more of the following procedures are completed within 60 days of the date of such determination:

(i) appropriate repairs or modifications shall be made to restore the electrical isolation of the protected component; or

(ii) a field-installed cathodic protection system meeting the requirements of subsection (c)(2) of this section shall be installed.

(2) Dual-protected tanks. If a steel/fiberglass-reinforced plastic composite tank, a steel tank with a bonded fiberglass-reinforced plastic external cladding or laminate, a steel tank with a bonded fiberglass reinforced polyurethane coating, or a steel tank with a bonded polyurethane coating is also equipped with a factory-installed cathodic protection system, then the normal inspection and testing requirements for cathodic protection systems in subsection (c)(4) of this section may be waived. This paragraph shall be applicable only to tanks meeting the design and construction requirements in

§334.45(b)(1)(D) or §334.45(b)(1)(E) of this title, as applicable, and when such tanks are fitted with factory-installed cathodic protection systems meeting the requirements of subsection (c)(1) of this section.

(e) Corrosion protection records.

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

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

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

(i) the name, address, telephone number, and corrosion protection credentials of either the company which designed the factory-installed cathodic protection system or the corrosion specialist who designed the field-installed cathodic protection system, as applicable;

(ii) drawings or plans depicting the locations of all cathodic protection system components, including the locations of all test stations; and

(iii) operating instructions and warranty information, maintenance schedules, and testing procedures for all operational components of the cathodic protection systems.

(B) The following corrosion protection records shall be maintained for at least five years after the applicable test or inspection is conducted:

(i) results of all tests and inspections of any impressed current cathodic protection system conducted in accordance with subsection (c)(2)(C) of this section;

(ii) results of all tests and inspections of the adequacy of any cathodic protection system conducted in accordance with subsection (c)(4) of this section;

(iii) results of all tests and inspections to assure corrosion protection for electrically isolated components in accordance with subsection (d)(1) of this section.

§334.50. Release Detection.

(a) General requirements.

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

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

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

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

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

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

(I) tank tightness testing, as prescribed in subsection (d)(1)(A) of this section;

(II) automatic tank gauging, as prescribed in subsection (d)(4) of this section;

(III) automatic line leak detectors for piping, as prescribed in subsection (b)(2)(A)(i) of this section;

(IV) piping tightness testing, as prescribed in subsection (b)(2)(A)(ii)(I) of this section;

(V) electronic leak monitoring systems for piping, as prescribed in subsections (b)(2)(A)(ii)(III) and (B)(i)(III) of this section; and

(VI) statistical inventory reconciliation (SIR), as prescribed in subsection (d)(9) of this section.

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

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

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

(5) Any owner or operator who plans to install a release detection method for an UST system shall comply with the applicable construction notification requirements in §334.6 of this title

(relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems), and upon completion of the installation of such method shall also comply with the applicable registration and certification requirements of §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems) and §334.8 of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems).

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

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

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

(1) Release detection requirements for tanks.

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

(B) A combination of tank tightness testing and inventory control in accordance with subsection (d)(1) of this section may be used as an acceptable release detection method for tanks only until December 22, 1998, and the required frequency of the tank tightness test shall be based on the following criteria.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Secondary containment and monitoring.

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

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

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

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

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

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

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

qualified to perform the test. The tank tightness test shall be conducted in strict accordance with the testing procedures developed by the system manufacturer or developer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Automatic tank gauging and inventory control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The natural groundwater level shall never be more than 20 feet (vertically) from the ground surface, and the hydraulic conductivity of the soils or backfill between all parts of the

UST system and the monitoring points shall not be less than 0.01 centimeters per second (i.e., the soils or backfill shall consist of gravels, course to medium sands, or other similarly permeable material).

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

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

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

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

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

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

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

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

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

(C) The sampling, testing, or monitoring method shall be capable of detecting a breach or failure in the primary wall and the entrance of groundwater into the interstitial space due to

a breach in the secondary wall of the double-wall tank or piping system within one month (not to exceed 35 days) of such breach or failure (whether or not a stored regulated substance has been released into the environment).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) At least once per calendar quarter, the SIR provider/vendor must select at random, at least one of the individual UST system analyses performed by each of its authorized franchisees or licensees or representatives during that period and audit that analysis to assure that provider/vendor standards are being maintained with regard to the acceptability of inventory control record data, the acceptability of analysis procedures, and the accuracy of analysis results. The written

result of that audit must be provided to the authorized franchisee or licensee or representative and to the owner and/or operator of the audited UST system(s) by the SIR provider/vendor during that calendar quarter. In addition, within 30 days following each calendar quarter, the SIR provider/vendor must provide to the agency a list containing the name and address of each of its authorized franchisees or licensees or representatives which specifies for each one, the name and address of each facility at which one or more UST system audits were performed during the previous calendar quarter.

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

(e) Release detection records.

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

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

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

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

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

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

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

§334.51. Spill and Overfill Prevention and Control.

(a) General spill and overfill control requirements.

(1) Owners and operators of all new and existing underground storage tank (UST) systems shall ensure that releases of regulated substances due to spills and overfills do not occur.

(2) Prior to regulated substances being transferred and deposited into a UST system, the owner or operator shall ensure that the available volume in the tank is greater than the volume of regulated substances to be transferred into the tank.

(3) During the entire time that regulated substances are being transferred into a UST system, the owner or operator shall ensure that the entire transfer operation is continuously monitored by the person conducting the transfer. Except as provided in paragraph (4) of this subsection, such monitoring may be accomplished by either of the following methods.

(A) The person conducting the transfer shall be physically present at or near the transfer point at all times during the transfer operation, and shall have an unobstructed view of the transfer point to observe the transfer and to abate any spill or overfill.

(B) The person conducting the transfer shall be physically present at the facility at all times during the transfer operation, and shall monitor the transfer operation using a central

monitoring station which is electronically connected to remote sensing equipment at each transfer point, where such equipment is designed to detect and prevent any spills or overfills.

(4) When USTs are equipped with ball float valves in the vent openings (or with other similar flow restrictors) for the purposes of compliance with the overfill prevention equipment requirements of subsection (b)(2)(C) of this section, and when regulated substances are transferred into such tanks under pressure (other than routine gravity unloading from normal transport vehicles), the following requirements shall be met during the time that regulated substances are being transferred into the tank.

(A) The person conducting the transfer shall be physically present at or near the transfer point at all times during the transfer operation, and shall have an unobstructed view of the transfer point to observe the transfer and to abate any spill or overfill.

(B) The transfer hose connection shall be equipped with an appropriate back-pressure sensor that will automatically shut off flow into the tank when the pressure in the tank reaches the tank's allowable design pressure (typically five psig).

(5) The owners or operators shall assure that the installation and maintenance of all required spill and overfill prevention equipment, as well as the procedures used for the transfers of regulated substances to or from an UST system, are in accordance with codes or standards of practice

developed by a nationally recognized association or independent testing laboratory as specified in §334.42(d) of this title (relating to General Standards).

(6) The owner or operator shall assure that all spill and overfill prevention devices installed pursuant to subsection (b) of this section are maintained in good operating condition, and that such devices are inspected and serviced in accordance with the manufacturers' specifications.

(7) In the event a release of regulated substance(s) occurs due to a spill or overfill, the owner or operator shall comply with the release reporting, investigation, and corrective action requirements in Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(b) Spill and overfill prevention equipment. Except as provided in paragraph (4) of this subsection, all UST systems shall be equipped with spill and overfill prevention equipment which shall be designed, installed, and maintained in a manner that will prevent any spilling or overfilling of regulated substances resulting from transfers to such systems, as provided in this subsection.

(1) Compliance schedule.

(A) New UST systems installed on or after the effective date of this subchapter shall be in compliance with the equipment provisions of this subsection from the time of installation through the entire operational life of the system.

(B) Existing UST systems (i.e., UST systems for which installation has commenced or has been completed on or prior to December 22, 1988) shall be in compliance with the equipment provisions of this subsection beginning no later than December 22, 1994, and continuing for the remainder of the operational life of the system.

(2) Equipment required. UST systems shall be equipped with each of the following spill and overfill prevention equipment or devices.

(A) Tight-fill fitting. The fill pipe of the tank shall be equipped with a tight-fill fitting, adapter, or similar device which shall provide a liquid-tight seal during the transfer of regulated substances into the tank.

(B) Spill containment equipment. The fill tube of the tank either shall be equipped with an attached spill container or catchment basin, or shall be enclosed in a liquid-tight manway, riser, or sump, and such equipment shall meet the following requirements.

(i) The spill containment device shall be designed to prevent the release of regulated substances to the environment when the transfer hose or line is detached from the fill pipe.

(ii) The spill containment device shall be equipped with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container.

(C) Overfill prevention equipment. Each tank shall be equipped with a valve or other appropriate device that shall be designed to either:

(i) automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level which shall be no higher than the 95% capacity level for the tank; or

(ii) automatically restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level which shall be no higher than the 90% capacity level for the tank, provided that such flow restricting device shall also alert the person responsible for the delivery when such preset level is reached; or

(iii) emit an audible and visible alarm capable of alerting the person responsible for the delivery when the liquid level in the tank reaches a preset level which shall be no higher than the 90% capacity level for the tank, provided that the tank is also equipped with a valve or other device which is designed to automatically shut-off or automatically restrict the flow of regulated substances into the tank when the liquid level reaches a preset level which shall be no higher than the 98% capacity level for the tank.

(3) Design and installation requirements.

(A) All spill and overfill prevention equipment shall be installed in accordance with the manufacturer's instructions and a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(B) All underground components of the spill and overfill prevention equipment which are designed to contain regulated substances shall be properly protected from corrosion in accordance with the applicable provisions in §334.49 of this title (relating to Corrosion Protection).

(C) The surfaces of all spill and overfill prevention equipment which are in direct contact with regulated substances shall be constructed of or lined with materials that are compatible with such regulated substances.

(D) When installing the overfill prevention equipment specified in paragraph (2)(C) of this subsection, appropriate extension devices shall be utilized as necessary to assure that the shut-off or restriction of flow into the tank is achieved at the specified preset levels, which shall be based on the manufacturer's capacity charts for the size, dimensions, and shape of the tank.

(4) Exceptions.

(A) UST systems are not required to be equipped with the spill and overfill prevention equipment prescribed in this subsection if one or more of the following conditions are applicable to such system:

(i) the transfers of regulated substances into the UST system do not exceed 25 gallons per occurrence;

(ii) the UST system is equipped with alternative equipment which has been reviewed and determined by the agency to prevent spills and overfills of regulated substances in a manner that is no less protective of human health and the environment than the equipment prescribed in this subsection, pursuant to procedures for variances found in §334.43 of this title (relating to Variances and Alternative Procedures); or

(iii) the installation of the spill and overfill prevention equipment prescribed in this subchapter has been reviewed and determined by the agency to be impracticable due to the type, design, or use of the UST system, pursuant to procedures for variances found in §334.43 of this title.

(B) For existing UST systems which are properly equipped on or before December 22, 1994, with both a tight-fill fitting as prescribed in paragraph (2)(A) of this subsection, and an automatic overfill shut-off device as prescribed in paragraph (2)(C)(i) of this subsection, the implementation date for the installation of spill containment equipment, as prescribed in paragraph (2)(B) of this subsection, shall be deferred until December 22, 1998.

(c) Spill and overfill control records.

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

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

(A) All appropriate installation records related to the installation of any spill and overfill prevention equipment, as listed in §334.46(i) of this title (relating to Installation Standards for New Underground Storage Tank Systems), shall be maintained for as long as the spill and overfill prevention equipment is used.

(B) Records of any servicing, calibration, maintenance, and repair of any spill and overfill prevention equipment shall be maintained for at least five years after such work is completed.

(3) If an owner or operator claims an exemption from the spill and overfill equipment requirements under the provisions of subsection (b)(4)(A) of this section (i.e., transfers of 25 gallons or less), such owner or operator shall maintain appropriate transfer or inventory records for at least five years to document the basis for such exemption.

§334.52. Underground Storage Tank System Repairs and Relining.

(a) General requirements.

(1) Owners and operators shall ensure that any repair or relining of an underground storage tank (UST) system will prevent releases due to structural failure or corrosion for the remaining operational life of the system.

(2) Owners and operators shall ensure that any repair or relining is conducted by qualified personnel possessing the appropriate skills, experience, competence, and, if applicable, any required license or certification to complete the work in accordance with the provisions of this subsection.

(3) Any repairs or relining shall be properly conducted in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(4) After completion of any repairs or relining of an UST system, the owner or operator shall obtain detailed written records of the repairs or relining from the person who performed the work.

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

joints, adjusting and calibrating equipment, and conducting routine inspections and tests. Tank and piping systems may be placed back into operation immediately after the satisfactory completion of such minor maintenance activities.

(6) If any release of regulated substances is discovered or suspected during the UST system repair or relining activity, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements in Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(7) The performance of any repairs or relining of an existing UST shall not relieve the owner or operator from timely compliance with the technical standards for such tanks, as required in §334.47 of this title (relating to Technical Standards for Existing UST Systems).

(b) Tank repairs and relining.

(1) The provisions of this subsection shall be applicable to the in-place repairs or relining of existing tanks. Tanks that are removed from the ground prior to repair or relining shall be considered used tanks and shall be brought into compliance with all provisions of §334.53 of this title (relating to Reuse of Used Tanks) prior to being placed back in operation.

(2) A previously used tank may be repaired or relined and placed back in operation, provided that the repair or relining is conducted in accordance with the provisions of this subsection and

in a manner that will prevent releases of regulated substances due to structural failure or corrosion for the remaining operational life of the tank.

(3) Repairs or relining of fiberglass-reinforced plastic tanks shall be made only by either:

(A) an authorized representative of the tank manufacturer; or

(B) any other person possessing the requisite experience and qualifications to perform the repairs, provided that such repairs shall be performed in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(4) Additional requirements for relining.

(A) Interior lining material(s) used in the repair or reconditioning of a UST shall be compatible with the stored regulated substance, and shall be applied to a minimum thickness of 100 mils.

(B) The entire lining process, including the tank preparation, lining application, inspection, and testing shall be in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(5) Prior to placing the tank back into operation, any repaired or relined tank shall be either:

(A) tested by means of a tank tightness test meeting the requirements in §334.50(d)(1)(A) of this title (relating to Release Detection);

(B) internally inspected and assessed in accordance with the requirements in §334.47(b)(1)(A)(iv) of this title; or

(C) tested or assessed by any other method that has been reviewed and determined by the agency to be no less protective of human health and safety and the environment than the standards described in subparagraphs (A) and (B) of this paragraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(6) Not later than December 22, 1998, the entire UST system shall be equipped with a cathodic protection system. Such system shall be designed by a qualified corrosion specialist and shall be operated and maintained in accordance with the applicable cathodic protection requirements of §334.49(c) of this title (relating to Corrosion Protection).

(c) Piping repairs and maintenance.

(1) When a release of a regulated substance has occurred as a result of holes, damage, or corrosion in the piping, valves, or fittings, the repair of the affected piping, valves, or fittings shall not be allowed. Any damaged, corroded, or defective piping sections, valves, or fittings shall be replaced with materials or components meeting the applicable requirements for new piping systems in §334.45(c) of this title (relating to Technical Standards for New Underground Storage Tank Systems).

(2) The installation or reinstallation of previously used piping, valves, or fittings in any UST system is specifically prohibited, regardless of the source or previous use of such previously used components.

(3) Prior to placing the piping system back into operation, any repaired piping system shall be tested by means of a piping tightness test meeting the requirements of §334.50(b)(2)(A)(ii)(I) of this title.

(4) If a repaired metal piping system has not already been equipped with an acceptable cathodic protection system, then the following minimum requirements shall be met prior to placing the piping system back in operation.

(A) The repaired piping sections and fittings shall be thoroughly coated with a suitable dielectric coating and shall be electrically isolated from the remaining piping system by dielectric fittings.

(B) The repaired piping sections and fittings shall be retrofitted with a field-installed cathodic protection system. Such cathodic protection system shall be designed by a qualified corrosion specialist and shall be operated and maintained in accordance with the applicable cathodic protection requirements in §334.49(c) of this title. The remaining portion of the piping system shall be brought into compliance with the minimum upgrading requirements for existing UST systems in accordance with the procedures and schedules in §334.47 of this title.

(d) Records for repairs and relining.

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

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

(A) General information related to the repairs or relining shall be maintained for the remaining operational life of the UST system, including:

(i) date and description of the repairs or relining;

(ii) names, addresses, and telephone numbers of the persons who conducted the repairs or relining; and

(iii) copies of all related construction notification, registration, and certification documents filed with the agency.

(B) Results of all inspections, tests, and maintenance activities required in this section shall be maintained for at least five years.

(C) Materials specifications, warranty information, recommended test procedures, and inspection and maintenance schedules applicable to the relining of any tank shall be maintained for the remaining operational life of the UST system.

§334.54. Temporary Removal from Service.

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

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

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

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

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

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

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

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

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

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

(3) Returning UST system to service.

(A) When a protected and empty UST system that has been temporarily out of service for longer than six months is placed back into service, the owner or operator shall ensure the integrity of the system by the performance of tank tightness and piping tightness tests that meet the requirements of §334.50(d)(1)(A), and as applicable, (b)(2)(A)(ii)(I), or (B)(i)(I), of this title, prior to bringing the system back into operation; and

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

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

(1) Time limitation. If due to the phase-in of upgrades and improvements as allowed under §334.47 of this title (relating to Technical Standards for Existing Underground Storage Tank Systems), any existing UST system is not yet adequately protected from corrosion (as provided under subsection (c)(1) of this section) and any existing nonempty UST system is not yet adequately monitored for releases (as provided under subsection (c)(2) of this section), such UST systems cannot remain out of service indefinitely and must meet the following requirements.

(A) The UST system shall be operated and maintained in accordance with the provisions of subsection (b) of this section during the time the system is temporarily out of service, which shall not exceed 12 months.

(B) Beginning no later than the date on which the UST system has been out of service for a continuous period of 10 months, regardless of whether or not regulated substances remain in the system, the owner or operator shall initiate appropriate activities or procedures to assure that no later than the date on which the system has been out of service for a continuous period of 12 months, the UST system is either:

(i) permanently removed from service (by disposal in-place or removal from the ground), in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal from Service);

(ii) brought back into service in conformance with the requirements in paragraph (3) of this subsection; or

(iii) appropriately upgraded such that the UST system is adequately protected from corrosion and adequately monitored for releases of regulated substances in a manner that will allow the system to remain temporarily out of service under the provisions of subsection (c) of this section.

(2) Extension of time. For UST systems which are temporarily out of service, and for which the owner or operator determines that conformance with the schedule under paragraph (1)(B) of this subsection would be impractical or unreasonable, the owner or operator must secure prior approval from the executive director for an extension of time subject to the following conditions.

(A) Any request for extension of time shall be in conformance with §334.43 of this title (relating to Variances and Alternative Procedures).

(B) Any request for extension of time shall be accompanied by written documentation adequate to justify the requested extension and the results of a site assessment conducted in accordance with of §334.55(e) of this title (relating to Permanent Removal from Service).

(3) Returning UST system to service. When an unprotected and unmonitored UST system that has been temporarily out of service for longer than six months is placed back into service, the owner or operator shall:

(A) ensure the integrity of the system by the performance of a tank tightness test and piping tightness test that meet the requirements of §334.50(d)(1)(A) and (b)(2)(A)(ii)(I), respectively, of this title (relating to Release Detection) prior to bringing the system back into operation; and

(B) ensure that the UST system is brought into compliance with all applicable corrosion protection, release detection, and spill and overfill prevention requirements of §334.49 of this title (relating to Corrosion Protection), §334.50 of this title (relating to Release Detection), and §334.51 of this title (relating to Spill and Overfill Prevention and Control) in accordance with the applicable schedules in §334.44 of this title (relating to Implementation Schedules).

(e) Other requirements.

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

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

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

(4) Recordkeeping for temporary removal from service.

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

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

(i) date that the UST system was temporarily removed from service;

(ii) name, address, and telephone number of the person who prepared the UST system for the period of non-use;

(iii) documentation of the procedures used to prepare and empty the UST system;

(iv) copies of all documentation relative to any requests and approvals of extensions of time;

(v) name, address, and telephone number of the person who conducted the tank and piping tightness tests, prior to returning the UST system to service;

(vi) results of any tank and piping tightness tests; and

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

§334.55. Permanent Removal from Service.

(a) General provisions.

(1) Any owner or operator who intends to permanently remove an underground storage tank (UST) from service (by either removing the tank from the ground, abandoning the tank in-place, or conducting a permanent change-in-service) shall provide prior notice of this activity to the agency in accordance with §334.6 of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems).

(2) The procedures used in permanently removing the UST from service shall conform with accepted industry practices, and shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(3) The permanent removal from service shall be conducted by qualified personnel possessing the appropriate skills, experience, competence, and, if applicable, any required license or certification to complete the activity in accordance with the provisions of this section and in a manner designed to minimize the possibility of any threats to human health and safety or the environment.

(4) All USTs that are intended for permanent removal from service shall be emptied of all regulated substances and accumulated sludges or residues, and shall be purged of all residual vapors in accordance with accepted industry procedures commonly employed for the stored regulated substance.

(5) The handling, transportation, and disposal of any regulated substances removed from an UST system, and any contaminated soils, backfill material, groundwater, wash water, or other

similar materials removed from the system or facility, shall be conducted in a safe and environmentally sound manner, and shall be in accordance with all applicable federal, state, and local regulations in effect for the type, volume, contaminant concentration, and classification of the removed material.

(6) As part of the required procedure for the permanent removal of any UST system from service, the owner or operator shall determine whether or not any prior release of a stored regulated substance has occurred from the system.

(A) This determination shall be performed subsequent to the submittal of notification to the agency as prescribed in §334.6 of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems), but prior to completion of the permanent removal from service.

(B) This determination shall be made by visual inspection of the area in and immediately surrounding the excavation zone for any above-ground releases and for any exposed below-ground releases, and by using one or both of the following methods or procedures:

(i) the continual operation (through the time that the stored regulated substances are removed from the UST system) of one or more of the external release monitoring and detection methods operated in accordance with §334.50(d)(5) - (10) of this title (relating to Release Detection); or

(ii) the performance of a comprehensive site assessment in accordance with the requirements of subsection (e) of this section.

(C) Any methods or procedures used to make this determination shall be capable of detecting any prior release of stored regulated substances from any portion of the UST system.

(D) Upon completion of this determination, the owner or operator shall:

(i) report any confirmed or suspected releases to the agency and comply with all applicable release investigation and corrective action requirements, as prescribed in Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(ii) prepare or assemble the detailed written records of this determination, which shall include the methods, procedures, results, and names, addresses, and telephone numbers of the persons involved in conducting such determination. Such records shall be maintained in accordance with the applicable provisions in subsection (f) of this section, and a copy of such records shall be filed with the agency in conjunction with the applicable tank registration requirements of §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems).

(7) For an UST to be considered permanently out of service, the owner or operator shall either remove the tank from the ground in accordance with subsection (b) of this section, abandon in-place and fill the tank with an acceptable solid inert material in accordance with subsection (c) of this section, or conduct a permanent change-in-service in accordance with subsection (d) of this section. Unused tanks (i.e., tanks at facilities which are closed or out of business) shall be considered temporarily out of service, and shall be subject to the provisions of §334.54 of this title (relating to Temporary Removal from Service), unless they have been permanently removed from service in accordance with this section.

(8) The requirements in this section are applicable to all UST which are permanently removed from service on or after the effective date of this subchapter.

(9) For an UST permanently removed from service prior to the effective date of this subchapter, where the methods previously used for the release determination or the removal from service are unknown or are determined to have been inadequate, the agency may require the owner or operator to conduct any or all of the following additional activities as appropriate:

(A) proper removal of the UST system from service, in accordance with the applicable provisions of this section;

(B) completion of a comprehensive site assessment, in accordance with the requirements of subsection (e) of this section;

(C) release reporting, investigation, and corrective action if a release of a regulated substance has occurred, in accordance with Subchapter D of this chapter; and/or

(D) any other activities necessary to prevent any adverse impacts on human health and safety and the environment.

(b) Removal from the ground. In addition to the requirements of subsection (a) of this section, the following requirements shall be applicable for the removal of USTs from the ground.

(1) Except as provided under paragraph (2) of this subsection, tanks shall be properly emptied, cleaned, and purged of vapors prior to removal from the ground, in accordance with accepted industry procedures commonly employed for the stored regulated substance.

(2) When an owner or operator can demonstrate good cause for removal of a tank from the ground prior to emptying, cleaning, or purging the vapors, the owner or operator shall obtain approval from the manager of the appropriate district office (or the manager's designated representative) prior to proceeding with the removal. In this situation, the tank removal shall be accomplished only under the direct supervision of agency personnel and/or local fire officials, and all conditions and requirements imposed by such supervisory officials shall be strictly followed.

(3) Prior to removing the tank from the ground, all connected piping and other ancillary equipment shall be emptied, disconnected, and properly plugged, capped, or removed.

(4) Storage of removed tanks.

(A) After removal, a tank shall be transported from the site within 24 hours of removal, unless prior approval of a longer on-site storage period is obtained from the manager of the appropriate district office (or the manager's designated representative).

(B) The on-site storage of tanks for a period of 24 hours or less shall be in a designated temporary storage area which shall be an adequate distance from known ignition sources and which shall be clearly identified with appropriate barriers and warning signs to restrict access by unauthorized persons.

(C) On-site storage of removed tanks for more than 24 hours (when approved by the district manager), and off-site storage for any period, shall only be allowed in locked, securely fenced, or similarly restricted areas where unauthorized persons will not have access.

(D) No later than 24 hours after removal, all removed tanks (regardless of condition) shall be legibly and permanently labeled (in letters at least two inches high) with the name of the former contents, a flammability warning (if applicable), and a warning that the tank is unsuitable for the storage of drinking water or the storage of human or animal food products.

(E) The residual vapor levels in any removed tank which is stored at the UST facility shall be maintained at nonexplosive and nonignitable levels for the entire time that the tank remains at the facility.

(F) Regardless of where the tank is stored, not later than ten days after the tank has been removed from the ground, any residual liquids or vapors shall be permanently removed to render the tank nonignitable and nonexplosive.

(5) Transportation and disposal of removed tanks.

(A) The methods and procedures used for the handling, transporting, and disposing of any removed USTs (and parts of such tanks) shall be protective of human health and safety and the environment, and shall be in accordance with all applicable federal, state, and local regulations.

(B) Removed tanks (and any parts of such tanks) which have been emptied, thoroughly cleaned of all remaining substances and any remaining residues, and permanently purged of vapors may be appropriately disposed by scrapping, junking, or reusing for purposes unrelated to the underground storage of regulated substances.

(C) Prior to transporting any removed tank from the UST facility, the following minimum preparation procedures shall be followed.

(i) The remaining regulated substances shall be removed, and visible residues or sediments shall be cleaned from the tank as completely as possible, in accordance with commonly used and accepted industry practices.

(ii) Residual vapor levels in the tank shall be reduced to nonexplosive and nonignitable levels, and shall be maintained at such levels during the entire period of transportation.

(iii) All holes and openings shall be properly plugged or capped, except for one 1/8-inch diameter vent hole positioned at the top of the tank during transportation.

(D) The subsequent reuse of any removed tanks for the underground storage of regulated substances (whether on-site or off-site) shall only be allowed under the provisions of §334.53 of this title (relating to Reuse of Used Tanks).

(6) The tank owner shall develop and maintain a permanent record of the prior location of the removed tank, the date of removal, the substance previously stored, the method of conditioning the tank for removal, the methods of handling, transportation, storing, and disposing of the tank, the names, addresses, and telephone numbers of the person conducting the activities, and any information regarding any known releases from such tank. If the facility owner is not the same person as the tank owner, the tank owner shall provide a copy of such information to the site or facility owner within 30 days after the date of removal.

(c) Abandonment in-place. An UST may be permanently removed from service by abandonment in-place in lieu of actual removal from the ground. In addition to the requirements of subsection (a) of this section, the following requirements shall be applicable to the abandonment in-place of USTs.

(1) When the UST owner is not the owner of the site or facility where such tank is located, the tank owner is prohibited from abandoning such tank in-place unless the following conditions are met.

(A) The tank owner shall provide written notice to the owner of the site or facility for the abandonment in-place prior to initiating the activity.

(B) After completion of the abandonment in-place, the tank owner shall provide to the site or facility owner a legible copy of the permanent record of the abandonment, as described in paragraph (3) of this subsection.

(2) Any tank that is abandoned in-place shall be filled with a solid inert material as prescribed in this paragraph.

(A) Only solid inert materials which are free of any harmful contaminants or pollutants shall be used to fill the tank. Acceptable materials include sand, fine gravel, sand and gravel mixtures, and cement/concrete-based slurries. Other materials such as native soils, drilling muds, and

commercially marketed fill materials shall not be used for filling the tank unless the material and filling procedures have been reviewed and approved by the agency in accordance with §334.43 of this title (relating to Variances and Alternative Procedures).

(B) Adequate access openings shall be made in the top of the tank, and the tank shall be filled as completely as possible. Voids and air pockets shall be eliminated.

(C) The fill material and filling procedures shall be adequate to assure that:

(i) the filled tank will not surface after completion of the filling operation;

(ii) any settling or instability of the ground surface subsequent to the abandonment in-place is minimized or eliminated;

(iii) the fill materials will form a permanent solid inert filler that can be expected to remain structurally stable in the ground to prevent cave-ins, even after the subsequent deterioration of the tank walls; and

(iv) the filled tank and associated piping are disconnected and capped or sealed so as to preclude their future use for any storage or disposal purposes.

(3) The tank owner shall develop and maintain a permanent record of the name and address of the tank owner (and site or facility owner, if different), the abandoned tank location, the date of abandonment, the substance previously stored, the method of conditioning the tank for abandonment, release assessment results, the names, addresses, and telephone numbers of the persons conducting the activities, and information regarding the extent of any confirmed releases and any resulting remediation activities.

(A) When the tank owner is not the owner of the facility where the tank is located, the tank owner shall provide to the current facility owner a legible copy of the permanent record of the abandonment in-place. Such information shall be provided no later than 30 days after completion of the abandonment in-place.

(B) The facility owner shall maintain a permanent record of the tank abandonment in-place in accordance with subsection (f) of this section.

(C) Prior to the sale or conveyance of the facility where an abandoned UST is located, the facility owner shall provide written documentation of the tank abandonment information to the succeeding property owner.

(d) Change-in-service. In addition to the requirements of subsection (a) of this section, the following requirements shall be applicable for any change-in-service where an UST system storing regulated substances is converted to a system storing materials other than regulated substances.

(1) Prior to refilling with materials other than regulated substances, the UST shall be properly emptied, cleaned, and purged of vapors in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory for the stored regulated substance. The procedures for emptying, cleaning, and purging the UST shall be designed to remove as much as possible of the previously stored regulated substances, including all liquids, vapors, sludges, and residues, in a manner that is protective of human health and safety or the environment.

(2) A change-in-service where an UST storing regulated substances is to be converted for the storage of either drinking water or food products intended for human consumption is specifically prohibited.

(3) Any change-in-service shall be in accordance with all applicable federal, state, and local regulations.

(4) The owner shall develop and maintain a permanent record of the location of the UST, the date of the change-in-service, the regulated substance previously stored, the method of conditioning the tank for the change-in-service, the names, addresses, and telephone numbers of the persons conducting the activities, and any information regarding any known releases of regulated substances from such tank. If the facility owner is not the same person as the UST owner, the UST owner shall provide a copy of such information to the facility owner within 30 days after the date of the change-in-service.

(5) For the purposes of this section, an UST which has been converted to the storage of materials other than regulated substances (i.e., water) shall be subject to the procedures for temporary removal from service in §334.54 of this title (relating to Temporary Removal from Service), except when the stored materials are utilized on a regular basis for beneficial purposes.

(e) Site assessment.

(1) A site assessment meeting the requirements of this subsection shall be performed by the owner or operator of an UST system in the following situations to determine whether or not a release has occurred:

(A) when the site assessment is selected as the method to achieve compliance with the release determination requirements of subsection (a)(6) of this section for an UST which is permanently removed from service on or after the effective date of this subchapter;

(B) when the agency determines that a site assessment is necessary at a site or facility where an UST was permanently removed from service prior to the effective date of this subchapter, and where the site assessment or release determination at the time of removal from service was determined to be either nonexistent or inadequate; or

(C) when the agency determines that a site assessment is necessary at any site or facility where a release or suspected release may pose a current or potential threat to human health or safety or the environment.

(2) The site assessment shall be conducted by qualified personnel possessing the appropriate skills, experience, and competence to perform the assessment in accordance with recognized industry practices and the provisions of this section and shall be supervised by a person who is currently licensed by the Texas Natural Resource Conservation Commission (TNRCC) as an UST installer or on-site supervisor or currently registered with the TNRCC as a corrective action project manager.

(3) Any procedures used for the site assessment must be capable of measuring for the presence of a release from any part of the UST system and, at a minimum, must include measurements for releases at locations where contamination is most likely to be present at the site.

(4) The owner or operator shall assure that in selecting the sampling or measurement methods, the sample types, and the sampling or measurement locations, the persons conducting the assessment shall take into consideration the following factors to ensure that the presence of any released regulated substances is detected and quantified:

(A) the specific method of removing the UST system from service;

(B) the nature and composition of the stored regulated substance;

(C) the type and characteristics of the backfill material and surrounding soils;

(D) the presence of groundwater, and its depth with relation to the UST system and the surface of the ground; and

(E) any other factors that may affect the reliability or effectiveness of the site assessment procedures or techniques.

(5) One or more of the following methods may be used for conducting the site assessment and release determination required under this section, provided that such methods are in compliance with the performance standards in paragraphs (2) - (4) of this subsection:

(A) collection and analysis of soil samples secured from unsaturated sections of the UST system excavation zone and surrounding soils, where such samples shall be analyzed for major constituents and/or indicator parameters of the stored regulated substance(s);

(B) collection and analysis of groundwater samples secured from the UST system excavation zone and surrounding area, where such samples shall be analyzed for all major constituents or indicator parameters of the stored regulated substance(s); and/or

(C) any other site assessment or release determination method or procedure which has been reviewed and determined by the agency to detect prior releases of the stored regulated substance(s) in a manner that is no less protective of human health and the environment than the methods described in subparagraphs (A) and (B) of this paragraph, as provided under §334.43 of this title.

(D) The owner or operator must report any suspected or confirmed releases indicated by the site assessment to the agency and comply with all applicable release investigation and corrective action requirements, as prescribed in Subchapter D of this chapter.

(f) Records for permanent removal from service.

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

(2) At a minimum, the following records shall be maintained for as long as any UST remains in service at the facility, or for five years after the UST system is permanently removed from service, whichever is longer:

(A) records of the release determination or site assessment, in accordance with the requirements in subsection (a)(6)(D)(ii) of this section;

(B) records related to the tank removal procedures (as applicable), in accordance with the requirements in subsection (b)(6) of this section;

(C) records related to the abandonment in-place of an UST system (as applicable), in accordance with the requirements in subsection (c)(4) of this section; and

(D) records related to the change-in-service of an UST system (as applicable), in accordance with the requirement in subsection (d)(4) of this section.

§334.56. Change to Exempt or Excluded Status.

(a) Any owner or operator who intends to change the status of an underground storage tank (UST) system from regulated to exempt or excluded status must determine whether the tank(s) size (if applicable) and the current and anticipated use of the UST system will allow reclassification to either exempt status as specified in §334.3 of this chapter (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems), or to excluded status as specified in §334.4 of this title (relating to Exclusions for Underground Storage Tanks (USTs) and UST Systems).

(b) As part of the required procedure for the change in status of any UST system from regulated to exempt or excluded status, the owner or operator shall determine whether or not any prior release of a stored regulated substance has occurred from the system.

(1) This determination shall be made by visual inspection of the area in and immediately surrounding the excavation zone for any above-ground releases and for any exposed below-ground releases, and by using one or both of the following methods or procedures:

(A) the continual operation (through the time that the stored regulated substances are removed from the UST system) of one or more of the external release monitoring and detection methods operated in accordance with §334.50(d)(5) - (10) of this title (relating to Release Detection); or

(B) the performance of a comprehensive site assessment in accordance with the requirements of subsection (c) of this section.

(2) Any methods or procedures used to make this determination shall be capable of detecting any prior release of stored regulated substances from any portion of the UST system.

(A) Upon completion of this determination, the owner or operator shall:

(i) report any confirmed or suspected releases to the agency and comply with all applicable release investigation and corrective action requirements, as prescribed in Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(ii) prepare or assemble the detailed written records of this determination, which shall include the methods, procedures, results, names, addresses, and telephone numbers of the persons involved in conducting this determination. These records shall be maintained in accordance with the applicable provisions in subsection (d) of this section, and a copy of these records shall be filed with the agency in conjunction with the applicable tank registration requirements of §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems).

(c) Site assessment.

(1) A comprehensive site assessment meeting the requirements of this subsection shall be performed by the owner or operator of a UST system in the following situations to determine whether or not a release has occurred:

(A) when the site assessment is selected as the method to achieve compliance with the release determination requirements of subsection (b) of this section for an UST which is changed from regulated to exempt or excluded status on or after the effective date of this subchapter;

(B) when the agency determines that a comprehensive site assessment is necessary at any site or facility where a release or suspected release may pose a current or potential threat to human health or safety or the environment.

(2) The site assessment shall be conducted by qualified personnel possessing the appropriate skills, experience, and competence to perform the assessment in accordance with recognized industry practices and the provisions of this section and shall be supervised by a person who is currently licensed by the Texas Natural Resource Conservation Commission (TNRCC) as a UST installer or on-site supervisor or currently registered with the TNRCC as a corrective action project manager.

(3) Any procedures used for the site assessment must be capable of measuring for the presence of a release from any part of the UST system and, at a minimum, must include measurements for releases at locations where contamination is most likely to be present at the site.

(4) The owner or operator shall assure that in selecting the sampling or measurement methods, the sample types, and the sampling or measurement locations, the persons conducting the assessment shall take into consideration the following factors to ensure that the presence of any released regulated substances is detected and quantified:

(A) the nature and composition of the stored regulated substance;

(B) the type and characteristics of the backfill material and surrounding soils;

(C) the presence of groundwater, and its depth with relation to the UST system and the surface of the ground; and

(D) any other factors that may affect the reliability or effectiveness of the site assessment procedures or techniques.

(5) One or more of the following methods may be used for conducting the site assessment and release determination required under this section, provided that such methods are in compliance with the performance standards in paragraphs (2) - (4) of this subsection:

(A) collection and analysis of soil samples secured from unsaturated sections of the UST system excavation zone and surrounding soils, where such samples shall be analyzed for major constituents and/or indicator parameters of the stored regulated substance(s);

(B) collection and analysis of groundwater samples secured from the UST system excavation zone and surrounding area, where such samples shall be analyzed for all major constituents or indicator parameters of the stored regulated substance(s); and/or

(C) any other site assessment or release determination method or procedure which has been reviewed and determined by the agency to detect prior releases of the stored regulated substance(s) in a manner that is no less protective of human health and the environment than the methods described in subparagraphs (A) and (B) of this paragraph, as provided under §334.43 of this title (relating to Variances and Alternative Procedures).

(D) The owner or operator must report any suspected or confirmed releases indicated by the site assessment to the agency and comply with all applicable release investigation and corrective action requirements, as prescribed in Subchapter D of this chapter.

(d) Records for change to exempt or excluded status.

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

(2) At minimum, records of the release determination or site assessment, in accordance with the requirements in subsection (b)(2)(A)(ii) of this section shall be maintained for as long as any UST remains in service at the facility, or for five years after the UST system is changed from regulated to exempt or excluded status, whichever is longer.

SUBCHAPTER D: RELEASE REPORTING AND CORRECTIVE ACTION

§§334.71 - 334.85

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs), and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an UST or aboveground storage tank.

§334.71. Applicability.

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

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

§334.72. Reporting of Suspected Releases.

Owners and operators of aboveground storage tank (AST) and underground storage tank (UST) systems must report to the agency within 24 hours (see §334.50(d)(9)(A)(v) of this title (relating to Release Detection) for reporting requirements associated with statistical inventory reconciliation inconclusive results), and follow the procedures in §334.74 of this title (relating to Release Investigation and Confirmation Steps) for any of the following conditions:

(1) The discovery by owners and operators, or written notification by others to the owner or operator, of released regulated substances at the AST or UST site or in the surrounding area (such as the presence of non-aqueous phase liquids (NAPL) or vapors in soils, basements, sewer and utility lines, and nearby surface water);

(2) Unusual operating conditions observed by owners or operators (such as the erratic behavior of product dispensing equipment that is consistent with or indicates a release, the sudden loss of product from the AST or UST system, or an unexplained presence of water in the tank), unless the system equipment is found to be defective but not leaking;

(3) Monitoring results from a release detection method required under §334.50 of this title (relating to Release Detection) or other method that indicates a release may have occurred unless:

(A) the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, or the monitoring procedure is found to be ineffective, and is modified, and additional monitoring does not confirm the initial result; or

(B) in the case of inventory control, a second month of data does not confirm the initial result; or

(4) For UST systems which are required to be of double-wall construction or secondarily contained and for UST systems in which interstitial monitoring is being employed for compliance with the requirements of §334.50 of this title, whenever monitoring or observation indicates a breach in either the primary wall or secondary barrier (whether or not a release of regulated substance into the environment has occurred), unless the primary or secondary barrier is determined to be intact, and the monitoring equipment is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

§334.73. Investigation Due to Off-Site Impacts.

When required by the agency, owners and operators of aboveground storage tank (AST) or underground storage tank (UST) systems must follow the procedures in §334.74 of this title (relating to

Release Investigation and Confirmation Steps) to determine if the AST or UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of Non-Aqueous Phase Liquids (NAPLs) or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by agency staff or brought to the agency's attention by another party.

§334.74. Release Investigation and Confirmation Steps.

Unless corrective action is initiated in accordance with §§334.76 - 334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Site Assessment; Removal of Non-Aqueous Phase Liquids; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan), owners or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under §334.72 of this title (relating to Reporting of Suspected Releases) within 30 days, using either the following steps or another procedure and schedule approved or required by the agency.

(1) System test. Owners or operators must conduct tests (according to the requirements for tightness testing in §334.50 of this title (relating to Release Detection)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(A) Owners and operators must repair, or replace the aboveground storage tank (AST) or underground storage tank (UST) system, and begin corrective action in accordance with §§334.76 - 334.81 of this title if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(C) Owners and operators must conduct a site check as described in paragraph (2) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(2) Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the AST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence and source of the release.

(A) If the test results from an excavated area, or other area(s) of the AST or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with §§334.76 - 334.81 of this title;

(B) If the test results from an excavated area, or other area(s) of the AST or UST site do not indicate that a release has occurred, further investigation is not required.

(3) In the event there is no evidence of a release after performing the tests required in paragraphs (1) and (2) of this section, the owner or operator must file a report which contains a detailed description of the investigative procedures followed in addressing the requirements of this section and which includes the results of all tests or monitoring performed. This report must be filed with the agency not later than 45 days after the first observation of the suspected release or another schedule approved or required by the agency. The owner or operator shall include with this report a statement which has been signed by the owner or operator certifying that the requirements of this section have been met.

§334.75. Reporting and Cleanup of Surface Spills and Overfills.

(a) Owners and operators of aboveground storage tanks (AST) and underground storage tank (UST) systems must contain and immediately clean up a spill or overfill, report the spill or overfill to the agency within 24 hours, and begin corrective action in accordance with §§334.76 - 334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Site Assessment; Removal of Non-Aqueous Phase Liquids; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan) in the following cases:

(1) any spill or overfill of petroleum substance from an UST or any spill or overfill of petroleum product from an AST that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water; and

(2) any spill or overfill of a hazardous substance that results in a release from an UST to the environment that equals or exceeds its reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (40 Code of Federal Regulations (CFR) Part 302).

(b) Owners and operators must contain and immediately clean up a spill or overfill of any petroleum substance from an UST or any petroleum product from an AST that is less than 25 gallons. Owners or operators of USTs must contain and immediately clean up a spill or overfill of a hazardous substance that is less than the reportable quantity under CERCLA (40 CFR Part 302). If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the agency.

§334.76. Initial Response to Releases.

Upon confirmation of a release in accordance with §334.74 of this title (relating to Release Investigation and Confirmation Steps) or after a release from the aboveground storage tank (AST) or underground storage tank (UST) system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release:

(1) report the release to the agency (e.g., by completed telephone call, facsimile transmission, or electronic mail);

(2) take immediate action to prevent any further release of the regulated substance into the environment, including shutting down the leaking AST or UST system as determined necessary; and

(3) identify and mitigate fire, explosion, and vapor hazards.

§334.77. Initial Abatement Measures and Site Check.

(a) Unless directed to do otherwise by the agency, owners and operators must perform the following abatement measures:

(1) remove as much of the regulated substance from the aboveground storage tank (AST) or underground storage tank (UST) system as is necessary to prevent further release to the environment;

(2) visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

(3) continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the AST or UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;

(5) measure for the presence of a release where contamination is most likely to be present at the AST or UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by §334.74 of this title (relating to Release Investigation and Confirmation Steps) or the closure site assessment of §334.55(e) of this title (relating to Permanent Removal from Service). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater, and other factors as appropriate for identifying the presence and source of the release; and

(6) investigate to determine the possible presence of Non-Aqueous Phase Liquids (NAPLs) and begin NAPL removal as soon as practicable and in accordance with §334.79 of this title (relating to Removal of Non-Aqueous Phase Liquids).

(b) Within 20 days after release confirmation, owners and operators must submit a report to the agency summarizing the initial abatement steps taken under subsection (a) of this section and any resulting information or data unless another reporting period is specified by the agency.

§334.78. Site Assessment.

(a) Unless directed to do otherwise by the agency, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measure in §334.75 and §334.76 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills; and Initial Response to Releases). This information must include, but is not necessarily limited to the following:

(1) data on the nature, cause, and estimated quantity of release;

(2) data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) results of the site check required under §334.77 of this title (relating to Initial Abatement Measures and Site Check);

(4) results of the Non-Aqueous Phase Liquids (NAPLs) investigations required under §334.77 of this title, to be used by owners and operators to determine whether free product must be recovered under §334.79 of this title (relating to Removal of Non-Aqueous Phase Liquids (NAPLs));

(5) at a minimum, a determination of the degree and lateral and vertical extent of the on-site contaminated area (soil and groundwater) as required by the agency;

(6) identification of all potential exposure pathways as required by the agency;

(7) a determination of the site classification, in accordance with subsection (b) of this section;

(8) an evaluation of the site pursuant to §334.203(1) of this title (relating to Risk-Based Criteria For Establishing Target Concentrations); and

(9) any other related information requested by the agency.

(b) Site classification. Owners and operators must conduct site assessment actions to collect critical information in a manner approved by, or directed by, the agency to determine the degree and nature of the release and identify potential receptors. Subsequently, the owner and operator of an aboveground storage tank (AST) or underground storage tank (UST) must establish the classification of the release(s) according to the classification system established by the agency. The classification system

shall be used to qualitatively assess the degree of threat the release poses to public health and safety, and the environment relative to all other leaking storage tank sites. The classification system will be utilized by the agency as the primary method to coordinate leaking storage tanks sites.

(1) Owners and operators shall utilize the site classification scheme established by the agency.

(2) Classification will be based upon the results of completed assessment actions and the best professional judgment of the registered corrective action specialist and the agency.

(3) The classification system shall be used to regulate the timing of corrective action at individual sites when necessary to protect the viability of the Petroleum Storage Tank Remediation Fund.

(4) The classification of any one site may be adjusted upward or downward by the agency as further site information is obtained or as exposure conditions change.

(5) Additional exposure scenarios may be added to the classification system by the agency as situations are encountered that are not currently addressed in the system.

(6) The agency may direct corrective actions out-of-classification order as necessary to ensure efficient use of available agency resources, including staff, time, and the funds from the Petroleum Storage Tank Remediation Fund.

(c) Within 45 days of release confirmation, owners and operators must submit the information collected in compliance with subsection (a) of this section to the agency in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the agency.

(d) Any documents submitted as a site assessment which do not contain all of the information required by this section shall not be accepted by the executive director, may be returned by the agency, and shall not qualify as a submitted site assessment for the purposes of this chapter. Return of such documents by the agency does not prevent the owner or operator from filing subsequent site assessment documentation.

§334.79. Removal of Non-Aqueous Phase Liquids (NAPLs).

At sites where investigations under §334.77 of this title (relating to Initial Abatement Measures and Site Check), or by other means, indicate the presence of Non-Aqueous Phase Liquids (NAPLs), owners and operators must remove NAPLs to the maximum extent practicable as determined by the agency while continuing, as necessary, any actions required under §334.80 and §334.81 of this title

(relating to Investigations for Soil and Groundwater Cleanup; and Corrective Action Plan). In meeting the requirements of this section, owners and operators must:

(1) conduct NAPL removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery by-products in compliance with applicable local, state, and federal regulations;

(2) abate the migration of NAPLs as a minimum objective for the design of the NAPL recovery system;

(3) handle any regulated substances in a safe and competent manner to prevent fires, explosions, or other health hazards; and

(4) unless directed to do otherwise, prepare and submit to the agency, within 45 days after confirming a release, a product recovery report that provides at least the following information:

(A) the name of the person(s) responsible for implementing the NAPL removal measures;

(B) the estimated quantity, type, and thickness of NAPL observed or measured in wells, boreholes, and excavations;

(C) detailed information pertaining to the type of NAPL recovery system used;

(D) whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(E) the type of treatment applied to, and the effluent quality expected from any discharge;

(F) the steps that have been, or are being taken to obtain necessary permits or other authorizations for any discharge;

(G) the disposition of the recovered NAPL; and

(H) any other related information requested by the agency.

§334.80. Investigation for Soil and Groundwater Cleanup.

(a) To determine the full extent and location of soils contaminated by the release, the presence and concentrations of dissolved regulated substance contamination in the groundwater, and the risk associated with the release, owners and operators must conduct investigations of the release, the release site, and the surrounding area (including adjacent areas not under ownership by the owner or operator) as necessary to determine the extent of the release if any of the following conditions exist:

(1) there is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(2) Non-Aqueous Phase Liquid is found to need recovery in compliance with §334.79 of this title (relating to Removal of Non-Aqueous Phase Liquids (NAPLs));

(3) there is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under §§334.75-334.79 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills; Initial Response to Releases; Initial Abatement Measures and Site Check; Site Assessment; and Removal of Non-Aqueous Phase Liquids(NAPLs)); or

(4) the agency requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water or groundwater resources.

(b) Owners and operators must submit the information collected under subsection (a) of this section as soon as practicable, or in accordance with a schedule established by the agency.

§334.81. Corrective Action Plan.

(a) At any point after reviewing the information submitted in compliance with §§334.76 - 334.78 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check;

and Site Assessment), the agency may require owners or operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the agency. Alternatively, owners and operators may, after fulfilling the requirements of §§334.76 - 334.78 of this title, choose to submit a corrective action plan for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health, safety, and the environment as determined by the agency, and must modify their plan as necessary to meet this standard.

(b) The agency will approve the corrective action plan after ensuring that implementation of the plan will adequately protect human health, safety, and the environment as determined in §334.203 of this title (relating to Risk Based Criteria for Establishing Target Concentrations) and to achieve case closure criteria. In making this determination, the agency will consider the following factors as deemed appropriate:

(1) the physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(2) the hydrogeologic characteristics of the facility and the surrounding area;

(3) the proximity, quality, and current and future uses of nearby surface water and groundwater;

(4) the potential effects of residual contamination on nearby surface water and groundwater;

(5) an exposure assessment;

(6) a determination of the most effective and feasible method of remediation;

(7) an estimate of the time to achieve cleanup;

(8) operation, monitoring, and performance plan; and

(9) any information assembled in compliance with this subchapter.

(c) Owners and operators shall submit information pertaining to the items in subsection (b) of this section upon request of the agency.

(d) Any documents submitted as a corrective action plan which do not contain all of the information required by this section shall not be accepted or approved by the agency, may be returned by the agency, and shall not qualify as a submitted corrective action plan for the purposes of this chapter. Return of such documents by the agency does not prevent the owner or operator from filing subsequent corrective action plan documentation.

(e) Upon approval of the corrective action plan or as directed by the agency, owners and operators must implement the plan, including any revisions to the plan as requested by the agency. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the agency.

(f) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action is approved provided that they:

(1) notify the agency of their intention to begin cleanup;

(2) comply with any conditions imposed by the agency, including halting cleanup or mitigating adverse consequences from cleanup activities;

(3) incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the agency for approval; and

(4) prior to discharge of any waste, obtain necessary authorization from the agency.

(g) To verify the effectiveness of corrective action taken by the owner or operator, the agency may require continued monitoring of soil, vapors, groundwater, and/or surface water.

(h) Upon completion of corrective action taken in response to the requirements of this section, the owner or operator must submit a statement signed by the owner or operator which certifies that the requirements of this section and the procedures in the approved corrective action plan have been accomplished.

(i) The agency will issue a closure letter in response to the certification of completion of corrective action requirements submitted by the owner or operator as required in subsection (h) of this section.

§334.82. Public Participation.

(a) For each confirmed release that requires corrective action, the agency shall provide notice to the public by means designated to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The executive director may require the owner or operator to perform or implement the public notices in this section and to verify that such activity has been satisfactorily completed.

(c) The executive director shall give public notice to affected parties if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the executive director.

§334.83. Emergency Orders.

Notwithstanding any other provision of this subchapter, the commission or the executive director may issue emergency orders under Texas Water Code, §5.510 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) to the owner or operator of an aboveground storage tank or underground storage tank.

§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; or

(4) 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.

§334.85. Management of Wastes.

The management and disposition of waste generated as a result of a release of regulated substances associated with an aboveground or underground storage tank must be in accordance with all applicable federal and state requirements and in a manner that will not result in adverse impacts to human health and safety and the environment.

SUBCHAPTER E: FINANCIAL RESPONSIBILITY

§§334.91 - 334.110

STATUTORY AUTHORITY

These repeals are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The repeals are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground and aboveground storage tanks, and §26.352, which requires the commission to adopt by rule requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

§334.91. Applicability.

§334.92. Compliance Dates.

§334.93. Amount and Scope of Required Financial Responsibility.

§334.94. Allowable Mechanisms and Combinations of Mechanisms.

§334.95. Financial Test of Self-Insurance.

§334.96. Guarantee.

§334.97. Insurance and Risk Retention Group Coverage.

§334.98. Surety Bond.

§334.99. Letter of Credit.

§334.100. Trust Fund.

§334.101. Standby Trust Fund.

§334.102. Substitution of Financial Assurance Mechanisms by Owner or Operator.

§334.103. Cancellation or Nonrenewal by a Provider of Financial Assurance.

§334.104. Reporting by Owner or Operator.

§334.105. Financial Assurance Recordkeeping.

§334.106. Drawing on Financial Assurance Mechanisms.

§334.107. Release from the Requirements.

§334.108. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance.

§334.109. Replenishment of Guarantees, Letters of Credit, or Surety Bonds.

§334.110. Corrective Action Deductibles.

SUBCHAPTER F: ABOVEGROUND STORAGE TANKS

§§334.121 - 334.130, 334.132

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank.

§334.121. Purpose and Applicability for Aboveground Storage Tanks (ASTs).

(a) Purpose. The purpose of this subchapter is to provide a regulatory program for aboveground storage tanks (ASTs) storing petroleum products, as prescribed by the Texas Water Code, Chapter 26, Subchapter I, to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in ASTs that may pollute such groundwater and surface water resources, and to provide for the protection of human health and safety, as well as the protection of the overall environment of the state.

(b) Applicability.

(1) An AST shall be subject to the regulations in this subchapter only when such tank:

(A) meets the definition of "aboveground storage tank" in §334.122 of this title (relating to Definitions for Aboveground Storage Tanks (ASTs));

(B) contains, has contained, or will contain a "petroleum product" as defined in §334.2 of this title (relating to Definitions);

(C) is not exempted from regulation in §334.123 of this title (relating to Exemptions for Aboveground Storage Tanks (ASTs)); and

(D) is not excluded from regulation in §334.124 of this title (relating to Exclusions for Aboveground Storage Tanks (ASTs)).

(2) The requirements and provisions in this subchapter are applicable to regulated ASTs, and to the registration, installation notification, reporting, recordkeeping, release reporting and corrective action, fee assessment, and other requirements associated with such tanks, as more fully described in this subchapter.

(3) The requirements and provisions in this subchapter apply equally to all owners and operators of regulated ASTs, including individuals, trusts, firms, joint-stock companies, corporations, governmental corporations, partnerships, associations (including nonprofit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and noncommercial entities, and the United States government (including all of its departments), except as otherwise provided in this subchapter.

(4) The following types of aboveground tanks are subject to the regulations in this subchapter if they meet the general qualifications for an AST in paragraph (1) of this subsection:

(A) compartmental tanks, when at least one of the compartments is used to store petroleum products; and

(B) dual-use or multiple-use tanks which alternately store two or more substances, when at least one of the stored substances is a petroleum product.

(5) If a storage tank containing a petroleum product technically meets the definitions of both an AST and an underground storage tank (UST) under this chapter, then the tank will be considered an UST, and must conform with all applicable requirements for UST in this chapter.

(6) Consistent with the exemption for heating oil tanks in §334.123(a)(2) of this title, an AST storing a petroleum product (such as kerosene or diesel) which is primarily used as a heating oil

substitute for heating purposes on the premises where stored, and which is secondarily used as a motor fuel for the operation of internal combustion engines, is exempt from the regulations of this subchapter.

§334.122. Definitions for Aboveground Storage Tanks (ASTs).

(a) Except as provided in subsection (b) of this section, the words and terms used in this subchapter have the meanings prescribed in §334.2 of this title (relating to Definitions), unless the context clearly indicates otherwise.

(b) The following words and terms, as used in this subchapter only, shall have the following meanings, unless the context clearly indicates otherwise.

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

(2) **Associated piping** - All underground pipes or aboveground pipes (including related valves, elbows, joints, flanges, connectors, and other fittings) which are directly associated with an AST storing petroleum products, which are located at the AST facility, and through which petroleum products flow or in which petroleum products are contained or stored.

(3) **Bulk facility** - A facility, including pipeline terminals, refinery terminals, rail and barge terminals, and associated underground and ASTs, connected or separate, from which petroleum products are withdrawn from bulk and delivered into a cargo tank or barge used to transport those products.

(4) **Electric generating facility** - A plant or facility where on-site equipment is used to generate electrical power on a continuous or regular basis. This term does not include emergency generators, as defined in §334.2 of this title.

(5) **Nonearthen materials** - Man-made materials designed to provide structural support and containment, such as concrete, steel, or plastic.

(6) **Nonvehicular device** - A fixed, stationary, or moveable storage vessel which is not affixed or mounted to any self-propelled, towable, or pushable vehicle (e.g., wagon, truck, trailer, railcar, aircraft, boat, or barge).

§334.123. Exemptions for Aboveground Storage Tanks (ASTs).

(a) The following aboveground storage tanks (ASTs) are exempt from regulation under this subchapter:

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

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

(3) a septic tank;

(4) a surface impoundment, pit, pond, or lagoon;

(5) a stormwater or wastewater collection system;

(6) a flow-through process tank;

(7) a tank, liquid trap, gathering line, or other facility used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101;

(8) a tank located on or above the surface of the floor of an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the sole or principal substance in the tank is a hazardous substance; and

(9) a tank that is located at or is part of a petrochemical plant, a petroleum refinery, an electric generating facility, or a bulk facility.

(b) The following pipeline facilities are exempt from regulation under this subchapter, as provided in Texas Water Code, §26.344;

(1) an interstate pipeline facility, including gathering lines and any AST connected to such facility, if the pipeline facility is regulated under:

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

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

(2) an intrastate pipeline facility or any AST connected to such a facility, if the pipeline facility is regulated under one of the following state laws:

(A) the Natural Resources Code, Chapter 111;

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

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

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

§334.124. Exclusions for Aboveground Storage Tanks (ASTs).

(a) Except as provided in subsection (b) of this section, the following aboveground storage tanks (ASTs) are excluded from regulation under this subchapter:

(1) any tank with a capacity of 1,100 gallons or less;

(2) any emergency spill protection or emergency overflow containment tank, including any sump or secondary containment system, which is used solely for the temporary storage or containment of petroleum products resulting from a leak, spill, overfill, or other unplanned release of petroleum products from any source, and where the petroleum products are routinely removed within 48 hours of the discovery of the release, provided that this tank must be inspected for a release no less than once every month;

(3) any tank that contains petroleum products at such dilute concentrations that:

(A) the mixture is not capable of being used as a fuel for the propulsion of a motor vehicle or aircraft; and

(B) any release would not pose any significant threat to human health and safety or the environment;

(4) a transformer or other electrical equipment that is used in the transmission of electricity.

(b) Notwithstanding the exemptions in subsection (a) of this section, any AST containing petroleum products located at a retail service station is subject to the construction notification requirements of §334.126 of the this title (relating to Installation Notification for Aboveground Storage Tanks (ASTs)).

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

§334.125. General Prohibitions and Requirements for Aboveground Storage Tanks (ASTs).

(a) Delivery prohibition. Except as provided in paragraph (1) of this subsection, on or after the effective date of this subchapter, no common carrier (as defined in §334.2 of this title (relating to

Definitions) shall deposit any petroleum products into an aboveground storage tank (AST) unless he observes that the owner or operator has a valid, current registration certificate, issued by the agency in accordance with §334.127 of this title (relating to Registration of Aboveground Storage Tanks (ASTs)).

(1) For new or replacement AST systems, only during the initial period ending 90 days after that petroleum product is first deposited into such system(s), a common carrier may accept, as adequate to meet this requirement, documentation that the owner or operator has a "temporary delivery authorization" (as defined at §334.127(h) of this title) issued by the agency for the facility at which the new or replacement AST system(s) exists.

(2) A common carrier delivering petroleum product into an AST system may observe a valid, current, original registration certificate (or temporary delivery authorization, if applicable), or a legible copy of the same.

(b) Owner/Operator requirements. The owner and operator of ASTs regulated under this section must make available to a common carrier a valid, current Texas Natural Resource Conservation Commission (TNRCC) tank registration certificate (or TNRCC temporary delivery authorization, as applicable) before delivery of a petroleum product(s) into the AST(s) can be accepted. The bill of lading for the first delivery of petroleum product into any new or replacement AST system at the facility must be attached to the temporary delivery authorization for that facility.

§334.126. Installation Notification for Aboveground Storage Tanks (ASTs).

(a) Except as provided in subsection (b) of this section, any person who intends to install a new or replacement aboveground storage tank (AST) must comply with the notification requirements of this section prior to initiating such activity.

(1) Installation notifications shall be submitted to the agency at least 30 days prior to initiating the activity.

(A) The notification may be provided either to the agency's central office in Austin or to the agency's appropriate regional office. The official date of notification shall be the date on which the notification is first received in an agency office.

(B) Notification may be provided by the owner or operator, or an authorized representative of the owner or operator, (e.g., the contractor or consultant retained for the activity). Notifications filed by unauthorized persons shall be null and void.

(C) Notifications shall be submitted on the agency's authorized form. The form shall be filled out completely. Upon completion, the form shall be dated and signed by the owner or operator (or authorized representative) and shall be filed in accordance with this paragraph.

(D) When appropriate, installation notifications for ASTs (as required under this section) may be filed together with construction notifications for underground storage tank (UST) activities at the same facility (as required by §334.6 of this title (relating to Construction Notification for Underground Storage Tank (USTs) and UST Systems)), provided that complete and accurate explanation of the activities is included.

(E) Between 24 and 72 hours prior to the scheduled time of initiation of the installation, the owner or operator (or authorized representative) shall contact the agency's appropriate regional office to confirm the time of the initiation of the installation activities.

(F) The requirements and procedures for rescheduling, waiver requests, and expiration as related to installation notifications for ASTs shall be in conformance with the procedures for construction notifications applicable to USTs in §334.6(b)(3) - (5) of this title.

(2) When requested by the agency, any person who intends to install a new or replacement AST shall also submit additional supporting information to assure that the activity is in compliance with applicable statutes and regulations.

(3) In addition to the installation notification requirements of this section, the owner or operator of a proposed AST that is to be located in the designated recharge zone or transition zone of the Edwards Aquifer shall also secure the requisite approval from the executive director prior to

initiating any installation or replacement activities, as prescribed in Chapter 313 of this title (relating to Edwards Aquifer).

(4) When an existing UST is to be removed from the ground and is to be subsequently converted to an AST, the person must comply with the applicable technical requirements under §334.55 of this title (relating to Permanent Removal from Service) and with the notification requirements of §334.6 and §334.126 of this title (relating to Construction Notification for Aboveground Storage Tanks (ASTs) and Installation Notification for Aboveground Storage Tanks (ASTs)).

(b) The following ASTs shall not be subject to the installation notification requirements of this section:

(1) ASTs which are exempt from regulation under §334.123 of this title (relating to Exemptions for Aboveground Storage Tanks (ASTs));

(2) ASTs which are excluded from regulation under §334.124 of this title (relating to Exclusions for Aboveground Storage Tanks (ASTs));

(3) movable or mobile ASTs (e.g., skid tanks) which are moved from one location to another on a regular basis, which are not permanently part of any particular facility, and which are otherwise in compliance with the provisions of §334.127(f) of this title (relating to Registration for Aboveground Storage Tanks (ASTs)); except that any movable or mobile ASTs proposed for

installation or placement at a retail service station shall remain subject to the installation notification requirements of this section.

§334.127. Registration for Aboveground Storage Tanks (ASTs).

(a) General provisions.

(1) All aboveground storage tanks (ASTs) in existence on or after September 1, 1989, must be registered with the agency on authorized agency forms in accordance with subsection (e) of this section, except for those tanks which:

(A) are exempt from regulation under §334.123 of this title (relating to Exemptions for Aboveground Storage Tanks (ASTs)); or

(B) are excluded from regulation under §334.124 of this title (relating to Exclusions for Aboveground Storage Tanks (ASTs)).

(2) The owner and operator of an AST are responsible for compliance with the tank registration requirements of this section. An owner or operator may designate an authorized representative to complete and submit the required registration information; however, the owner and operator remain responsible for compliance with the provisions of this section.

(3) All ASTs subject to the registration requirements of this section are also subject to the fee provisions in §334.128 of this title (relating to Annual Facility Fees for Aboveground Storage Tanks (ASTs)), except where specifically exempted from such fee provisions. The failure by a tank owner or operator to properly or timely register any tanks shall not exempt the owner from such fee assessment and payment provisions.

(4) Proper completion of the specified agency tank registration form will result in the agency's issuance of a registration certificate for the tanks at the facility covered by that registration. This certificate is tied to the delivery prohibitions detailed in §334.125 of this title General Prohibitions and Requirements for Aboveground Storage Tanks (ASTs).

(b) Existing tanks. Any person who owns or operates an AST subject to the provisions of this section that was in existence on September 1, 1989, shall register such tank with the agency not later than March 1, 1990, on an authorized agency form.

(c) New or replacement tanks. Any person who owns or operates a new or replacement AST subject to the provisions of this section that is placed into service on or after September 1, 1989, must register the tank with the agency on an authorized agency form no later than March 1, 1990, or within 30 days from the date any petroleum product is first placed into the tank, whichever is later.

(d) Changes or additional information. An owner or operator of an AST subject to the provisions of this section must provide written notice to the agency of any changes or additional

information concerning the status of any regulated tanks, including, but not limited to, information regarding the operational status, condition, substance stored, ownership, location of records, and number of tanks. This notice must be submitted on an authorized agency form which has been completed in accordance with subsection (e) of this section. This form must be properly completed and signed, and shall include the Texas Natural Resource Conservation Commission (TNRCC) facility identification number in the appropriate space on the form. Notice of any change or additional information must be filed with the agency within 30 days of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.

(e) Required form for providing AST registration information.

(1) Any AST owner or operator required to submit tank registration information under subsections (a) - (d) of this section must provide all the information indicated on the agency's authorized form for each regulated AST owned.

(2) The tank registration form must be filled out completely and accurately. Upon completion, the form must be dated and signed by the owner, operator, or an authorized representative of the owner or operator, and must be filed with the agency within the time frames specified in this section.

(3) All AST owners or operators required to submit AST registration information under subsections (a) - (d) of this section must provide the registration information for all ASTs located at a particular facility on the same registration form.

(4) All AST owners or operators who own or operate ASTs located at more than one facility must complete and file a separate registration form for each facility where regulated ASTs are located, unless otherwise allowed under subsection (f) of this section.

(5) If additional documents are submitted with new or revised registration data, the specific facility identification information (including the facility identification number, if known) must be conspicuously indicated on each document, and all such documents must be securely attached to and filed with the registration form.

(f) Registration requirements for movable ASTs. Movable or mobile ASTs which are regularly used to store petroleum products (e.g., skid tanks) must also be registered by the owner or operator in accordance with the provisions of this section. When such tanks are intended to be moved from one location to another on a regular basis and are not permanently part of any particular facility, then an owner or operator may register the tanks in accordance with the following procedures:

(1) For the purposes of completing the tank registration form, the owner or operator must identify the facility location for such movable tanks as the owner's or operator’s principal business address or location;

(2) The owner or operator must continuously maintain complete and accurate records of the specific location, operational status, condition, and type of petroleum products stored at the owner's or operator's principal business address or location. At any given time, the records must include the required tank information for at least the preceding five years. Such records must be readily accessible and available for inspection upon request by agency personnel; and

(3) Any movable or mobile tank which is registered at the owner's or operator's business address or location, rather than at the actual facility location, must be permanently and legibly labeled with the agency's designated identification number for such tank by painting, decals, tags, or other permanent identification method.

(g) Inadequate information. When any of the required AST registration information submitted to the agency is determined to be inaccurate, unclear, illegible, incomplete, or otherwise inadequate, the agency may require the owner and/or operator to submit additional information. An owner and/or operator must submit any such additional information within 30 days of receipt of such request.

(h) Temporary delivery authorization.

(1) Upon receipt of a TNRCC construction notification form indicating pending installation of a new or replacement AST system(s), the agency will issue a temporary delivery authorization for that tank system(s).

(2) The temporary delivery authorization is valid for no more than 90 days after the first delivery of petroleum product into the new or replacement AST system.

(3) The AST owner and operator are responsible for maintaining complete and accurate records of the date of the first deposit of petroleum product into a new or replacement AST, as well as the date that the initial 90-day period expires. The bill of lading for the first delivery of regulated substance into any new or replacement AST at the facility must be attached to the temporary delivery authorization for that facility.

§334.128. Annual Facility Fees for Aboveground Storage Tanks (ASTs).

(a) Fee assessments.

(1) Except as provided in subsection (e) of this section, an annual facility fee of $25 will be assessed by the agency for each aboveground storage tank (AST) subject to the registration provisions of §334.127 of this title (relating to Registration for Aboveground Storage Tanks (ASTs)).

(2) All annual facility fees will be billed to, and must be payable by, the owner of the AST.

(3) Payment of annual facility fees is due no later than 30 days after the date the agency mails a statement of the assessment to the tank owner.

(4) Annual facility fees must be paid by check, certified check, or money order made payable to the "Texas Natural Resource Conservation Commission." Payments must be mailed to the address specified in the billing statement.

(b) Billing schedule.

(1) The agency will establish a schedule for the billing of annual facility fees.

(2) Regardless of the actual billing date, the total amount of annual facility fees billed to and payable by an owner will be based on the total number of regulated ASTs in place on or after the first day of each fiscal year (September 1).

(c) Failure to make payment.

(1) Annual facility fees must be paid at the time and in the manner and amount provided by this section.

(2) The agency will impose interest and penalties on owners who fail to make payment of the annual facility fees assessed under this section when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

(d) Disposition of fees, interest, and penalties. As required by the Texas Water Code (TWC), §26.358(g), the agency will deposit all annual facility fees collected, together with all interest and penalties collected for late payment, in the state treasury to the credit of the storage tank fund.

(e) Exception. An annual facility fee will not be assessed for an AST which is owned by a common carrier railroad, as provided in the TWC, §26.344(g).

§334.129. Release Reporting and Corrective Action for Aboveground Storage Tanks (ASTs).

(a) An owner or operator of an aboveground storage tank (AST) must comply with the same release reporting, investigation, and corrective action requirements and procedures applicable to underground storage tanks, as prescribed in Subchapter D of this chapter (relating to Release Reporting and Corrective Action), whenever a suspected or confirmed release of a petroleum product from an AST has occurred.

(b) An owner or operator of an AST which stores other petroleum substances or hazardous substances which are not petroleum products must comply with the release reporting, investigation, and corrective action requirements prescribed in the Texas Water Code, Chapter 26, Subchapter G.

§334.130. Reporting and Recordkeeping for Aboveground Storage Tanks (ASTs).

(a) Reporting. Owners and operators of aboveground storage tanks (ASTs) must assure that all reporting and filing requirements in this subchapter are met, including the following (as applicable):

(1) installation notification in accordance with §334.126 of this title (relating to Installation Notification for Aboveground Storage Tanks (ASTs));

(2) application for approval of any proposed AST in the Edwards Aquifer recharge or transition zones, in accordance with §334.126(3) of the this title and Chapter 313 of this title (relating to Edwards Aquifer);

(3) registration of ASTs and changes in information, in accordance with §334.127 of this title (relating to Registration for Aboveground Storage Tanks(ASTs));

(4) payment of annual facility fees for ASTs, in accordance with §334.128 of this title (relating to Annual Facility Fees for Aboveground Storage Tanks (ASTs));

(5) all reports, plans, and certifications related to actions taken in response to suspected and confirmed releases of petroleum products, in accordance with §334.129 of this title (relating to Release Reporting and Corrective Action for Aboveground Storage Tanks (ASTs)) and Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(6) any other reports, filings, notifications, or other submittals required by this subchapter, or otherwise required by the agency or the commission to demonstrate compliance with the provisions of this subchapter.

(b) Recordkeeping.

(1) General recordkeeping requirements.

(A) Except as provided in subparagraph (B) of this paragraph, owners and operators of ASTs must comply with the same general recordkeeping requirements applicable to underground storage tanks, as prescribed in §334.10(b)(1) of this title (relating to Reporting and Recordkeeping).

(B) Owners and operators of movable or mobile ASTs (e.g., skid tanks) may maintain the records for such tanks in accordance with the provisions of §334.127(f)(2) of this title.

(2) Required records and documents. Owners and operators of ASTs must assure that legible copies of all original and amended tank registration documents, as prescribed in §334.127 of this title, are maintained for the operational life of the AST.

§334.132. Other General Provisions for Aboveground Storage Tanks (ASTs).

(a) Other regulations. Compliance with the provisions of this subchapter by an owner or operator of an aboveground storage tank (AST) must not relieve such owner or operator from the responsibility of compliance with any other laws and regulations directly and/or indirectly affecting such tanks and the stored petroleum products, including, but not necessarily limited to, all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, United States Nuclear Regulatory Commission, United States Department of Energy, Texas Department of Health, State Board of Insurance (including State Fire Marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural Resource Conservation Commission and any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(b) Responsibilities of owners and operators. The owners and operators of ASTs subject to the provisions of this subchapter are responsible for ensuring compliance with all applicable provisions of this subchapter. Owners and operators are responsible for any violations or noncompliant activities resulting from the actions or inactions by any person who is employed or otherwise engaged by the owner or operator.

(c) Inspections, monitoring, and testing.

(1) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing this subchapter, an owner or operator of an AST, on the request of the agency must:

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

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

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

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

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

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

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

SUBCHAPTER F: ABOVEGROUND STORAGE TANKS

§334.131

STATUTORY AUTHORITY

This repeal is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. This repeal is also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank.

§334.131. Enforcement for ASTs.

SUBCHAPTER G: TARGET CONCENTRATION CRITERIA

§§334.201 - 334.206, 334.208

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank, and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors, and continuing education requirements for installers and on-site supervisors.

§334.201. Purpose and Applicability.

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

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

§334.202. Definitions.

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

(1) **Carcinogen** - Substances which have been classified for human carcinogenic risk based on the United States Environmental Protection Agency's Weight of Evidence System of Carcinogenicity as:

(A) Group A - Human Carcinogen;

(B) Group B - Probable Human Carcinogen; or

(C) Group C -Possible Human Carcinogen.

(2) **Carcinogen classification** - The basis by which substances are classified for human carcinogenic risk based on the United States Environmental Protection Agency's Weight of Evidence System for Carcinogenicity:

(A) Group A - Human Carcinogen;

(B) Group B - Probable Human Carcinogen;

(C) Group C - Possible Human Carcinogen;

(D) Group D - Not Classifiable as to Human Carcinogenicity; and

(E) Group E - Evidence of Non-Carcinogenicity for Humans.

(3) **Commercial/industrial land use** - Any real property or portion of a property not currently being used for human habitation or for other purposes with a similar potential for human exposure. Examples of commercial/industrial land use include manufacturing; industrial research and development; utilities; commercial warehouse operations; lumber yards; retail gas stations; auto service stations; auto dealerships; equipment repair and service stations; professional offices (lawyers, architects, engineers, real estate, insurance, etc.); medical/dental offices and clinics (not including hospitals); financial institutions; publicly owned office buildings; any retail business whose principal activity is the sale of food or merchandise; personal service establishments (health clubs, barber/beauty salons, mortuaries, photographic studios, etc.); churches (not including churches providing day care or school services other than during normal worship services), and motels/hotels (not including those which allow residence).

(4) **Compliance point** - Location(s) selected between the source area(s) and the potential exposure point(s) where concentrations of regulated substances must be at or below the determined target concentrations in media (for example, groundwater, air, soil).

(5) **Direct exposure pathway** - An exposure pathway where the point of exposure is at the source, without a release to any other medium.

(6) **Engineering control** - Modifications to a site or facility (for example, slurry walls, capping, point of use water treatment) to reduce or eliminate the potential for exposure to a regulated substance.

(7) **Exposure** - Subjection of an organism to the action, influence, or effect of a regulated substance (chemical agent) or physical agent. Exposure is quantified as the amount of the agent available at the exchange boundaries (e.g., skin, lungs, gut) and available for absorption by the human body.

(8) **Exposure assessment** - The determination or estimation (qualitative or quantitative) of the magnitude, frequency, duration and route of exposure.

(9) **Exposure factors** - Those factors used to derive an estimate of the exposure to a regulated substance.

(10) **Exposure pathways** - The course a regulated substance takes from a source to an exposed organism. An exposure pathway describes a unique mechanism by which an individual or population is exposed to chemicals at or originating from a leaking storage tank site. Each exposure pathway includes a source, an exposure point, and an exposure route. If the exposure point differs from the source, a transport mechanism must also be present.

(11) **Exposure point** - A location where human or environmental receptors can come into contact with regulated substances; also, a location which can be arbitrarily determined for purposes of estimating or measuring the concentration of regulated substances available for exposure.

(12) **Hazard index** - The sum of two or more hazard quotients for multiple regulated substances and/or multiple exposure pathways which impact the same target organ or act by the same method of toxicity.

(13) **Hazard quotient** - The ratio of a single substance exposure level over a specific time period to a reference dose for that substance derived from a similar exposure period.

(14) **Indirect exposure pathway** - An exposure pathway with at least one intermediate release to any media between the source and the point(s) of exposure (for example, chemicals of concern from soil through ground water to the point(s) of exposure).

(15) **Institutional control** - Legally binding instruments that the responsible party and the agency may use as part of a corrective action plan to control or eliminate an otherwise viable exposure pathway to ensure that exposure to remaining regulated substances is reduced to a human health and environmentally protective level. Institutional controls may include record notice, land use restrictions, land access restrictions and controls, or other legally binding and practically feasible instrument.

(16) **Maximum contaminant level or MCL** - The maximum concentration in water of a regulated substance established by the United States Environmental Protection Agency under Section 141 of the Federal Safe Drinking Water Act.

(17) **Non-carcinogen** - Substances shown either through epidemiological studies or through laboratory studies to cause adverse health effects other than cancer.

(18) **Potential beneficial use** - The potential use derived from a natural resource (for example, groundwater or surface water) to benefit a user if that resource was not affected by the released regulated substance. This will not consider uses that are unlikely to occur or otherwise extreme circumstances. Groundwater is considered to have a potential beneficial use as a drinking water source if the natural quality of the groundwater is less than 10,000 mg/l total dissolved solids content, yields of usable quantities of water are discharged to wells or springs, or there is a documented use of the groundwater.

(19) **Reasonable maximum exposure estimates** - Combination of upper-bound and mid-range exposure factors to be used in dose estimation equations to provide a result which represents an exposure scenario that is both protective and reasonable; not the worst case. Exposure factors as presented in United States Environmental Protection Agency Office of Solid Waste and Emergency Response (OSWER) Directive 9285.6-03, March 25, 1991 or a superseding OSWER directive shall be considered appropriate values for estimation of the reasonable maximum exposure.

(20) **Receptor** - Person, structure, utility, surface waters, and water supply wells that are or may be adversely affected by a release.

(21) **Residential land use** - Property used for dwellings such as single family houses and multifamily apartments, children's homes and nursing homes. Because of the similarity of exposure potential and the sensitive nature of the potentially exposed population, day care facilities, educational facilities, hospitals, parks and like facilities shall also be considered "residential."

(22) **Risk** - The probability that a regulated substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

(23) **Site** - Includes all land, regardless of ownership considerations or property boundaries, which is directly affected by the regulated substance.

(24) **Target concentrations** - Site-specific and chemical-specific concentration goals for affected media (for example, soil, air, groundwater, surface water) that are protective of human health and safety, and the environment.

(25) **Total excess cancer risk** - The upper bound on the estimated excess cancer risk associated with exposure to multiple regulated substances and multiple exposure pathways.

§334.203. Risk-Based Criteria for Establishing Target Concentrations.

Owners and operators shall apply the following risk-based criteria to evaluate sites and determine target concentrations:

(1) Plan A site evaluation criteria. The owner and operator should use Plan A established target concentrations to screen sites for closure, or use the Plan A criteria to establish target concentrations for the purposes of establishing a corrective action plan in accordance with §334.81 of this title (relating to Corrective Action Plans), or to evaluate the potential benefit of further site evaluation under paragraph (2) of this section.

(A) The owner and operator shall consider potential exposure to receptors through direct and indirect exposure pathways as required by the agency and determine whether or not such pathways are complete. A pathway is considered complete if there is a source area, a transport mechanism and an existing or potential receptor;

(B) For complete pathways, target concentrations shall be calculated using equations and models, target risk goals, and exposure factors as established by the agency;

(C) Target concentrations shall be based upon chemical property information defined by the agency when such information is provided by the agency;

(D) Target concentrations for indirect or cross-media pathways shall be based upon default media property assumptions defined by the agency when site-specific media property information is not available;

(E) Target concentrations shall be based upon residential land use unless the owner and operator satisfies the requirements of §334.204 of this title (relating to Criteria for Selection of Land Use) to demonstrate commercial/industrial land use is more appropriate.

(F) The owner and operator shall use equations and models as required by the agency to calculate target concentrations;

(G) Target air concentrations shall be evaluated when there is concern of a potential vapor hazard, or known or suspected indoor air exposure to regulated substances. Regulated substance concentrations in soils and groundwater are not to generate vapors in soil, air, utilities, or in the atmosphere which could cause an explosive atmosphere at any surface or subsurface structure. The presence of free product and associated level of vapors and the presence of conduits or pathways such as utility conduits, foundation piers, foundation cracks that may act as a transport pathway should be considered in this determination;

(H) Target surface water concentrations shall be as provided in the Texas Surface Water Quality Standards of Chapter 307 of this title (relating to Supplemental Surface Water Quality Standards) and Chapter 319 of this title (relating to General Regulations Incorporated Into

Permits). If those values are not available or appropriate, then federal maximum contaminant levels (MCLs) promulgated under the federal Safe Drinking Water Act (42 Code of Federal Regulations §300f, et seq.) shall apply. If MCLs are not available or appropriate, then the target surface water concentrations are to be based on reasonable maximum exposure expected to occur through human ingestion of the water;

(I) Target groundwater concentration criteria:

(i) the actual beneficial use or potential beneficial use of the affected groundwater shall be considered;

(ii) groundwater with a natural total dissolved solids content of less than 10,000 mg/l and which is capable of yielding useable quantities of water to a well or spring shall be considered to have a potential beneficial use. When no site-specific data is available, the affected groundwater shall be considered to be potentially useable;

(iii) residential groundwater ingestion shall be the default exposure pathway unless the owner and operator can show to the satisfaction of the agency that the documented actual beneficial use of the affected groundwater is for a use other than drinking water purposes;

(iv) the individual carcinogenic risk must not exceed a range of 1×10^{-6} to 1×10^{-4} as required by the agency for beneficial use groundwaters. For any carcinogen, if the federally promulgated MCL is a higher value (less stringent), then the MCL may be used;

(v) the hazard quotient for non-carcinogens shall not exceed unity (one) for beneficial use groundwater;

(vi) Only the removal of non-aqueous phase liquid as required pursuant to §334.79 of this title (relating to Removal of Non-Aqueous Phase Liquid) and any subsequent monitoring as required by the agency shall be necessary when the affected groundwater is of no potential beneficial use provided the owner and operator can document to the satisfaction of the agency that the dissolved regulated substance concentrations for such groundwater that is less than 15 feet deep, is protective of potential direct contact by construction workers; that any explosive vapors, adverse affects to subsurface utilities, nuisance conditions, discharge of regulated substances to surface waters at unprotective levels, and plume expansion have been abated and should not occur in the future. When any of these conditions are not met with only the removal of non-aqueous phase liquid, then target groundwater concentrations shall be established by the owner and operator so as to meet these conditions;

(vii) Target groundwater concentrations shall apply throughout the groundwater plume; and

(viii) If remaining groundwater concentrations will discharge to a surface water body or other potentially usable aquifer at an unprotective level, then an additional compliance point shall be established for the point of discharge. The target groundwater concentration to be applied at the additional compliance point(s) shall be based on the applicable target concentration for the receiving water.

(J) Target soil concentration criteria:

(i) ingestion of soils from ground surface to a depth of 15 feet for residential and commercial/industrial land uses unless the owner and operator can provide documentation to the satisfaction of the agency that an alternate depth is more appropriate. Fifteen feet in the opinion of the agency represents a reasonable depth above which soil could be excavated and brought to the ground surface during construction activities;

(ii) inhalation of volatile and particulate emissions for residential and commercial/industrial land uses, when the soil from ground surface to a depth of 15 feet is affected, but not covered with an impermeable surface. If the owner and operator can provide sufficient evidence that the impermeable surface will be maintained and will prevent inhalation exposure, then inhalation from soil contaminants may be dropped from further analysis;

(iii) cross-media affects (e.g., soil leachate to groundwater);

(iv) the target soil concentration shall be the lower concentration of clauses (i), (ii) or (iii) of this subparagraph;

(v) reasonable maximum exposure expected to occur under both current and future land use for either residential or commercial/industrial as appropriate for the site;

(vi) maximum detected concentrations of regulated substances remaining in place;

(vii) the individual carcinogenic risk shall not exceed 1×10^{-6} for Class A and B carcinogens and 1×10^{-5} for Class C carcinogens; and

(viii) the hazard quotient must not exceed unity (one) for non-carcinogens;

(K) Target concentrations for soil, air and water shall also take into account other factors such as vegetation effects, sensitive environmental receptors, and aesthetic considerations (e.g., stained surface soils) as appropriate in the final analysis;

(L) The maximum levels of regulated substances remaining in all affected media shall meet the established target concentrations throughout the entire extent of affected area

unless the owner and operator can demonstrate to the satisfaction of the agency that such action is technically infeasible and that public health and the environment are otherwise adequately protected;

(M) The owner and operator shall submit reports in accordance with a schedule and in a format established by the agency;

(N) The owner and operator or agency may recommend institutional controls in accordance with §334.205 of this title (relating to Institutional Control Requirements) to reinforce exposure assumptions; and

(O) Any necessary requirements as established by the agency to protect public health, safety, and the environment.

(2) Plan B site-evaluation criteria. The owner and operator may elect to further evaluate a site under Plan B to determine more appropriate target concentrations for affected media which may be used to justify a closure recommendation, or for the purposes of establishing a corrective action plan in accordance with §334.81 of this title.

(A) The owner and operator shall consider potential exposure to receptors through direct and indirect exposure pathways as required by the agency and determine whether or not such pathways are complete or not. A pathway determined to be incomplete in the Plan A evaluation does not need to be reevaluated under this subsection.

(B) For complete pathways, target concentrations shall be calculated using equations, target risk goals, and exposure factors as established by the agency.

(C) Target concentrations shall be based upon chemical property information defined by the agency when such information is provided by the agency.

(D) Target concentrations for indirect or cross-media pathways shall be based upon default media property assumptions and models defined by the agency when site-specific media property information is not available. Use of site-specific media property information is encouraged as part of this evaluation. If the owner and operator wish to use alternative models, prior concurrence from the agency shall be obtained.

(E) The agency may require owners and operators to collect additional site information prior to or after the evaluation of the site under this section to substantiate the conclusions of the evaluation.

(F) For known or suspected carcinogens, the individual and cumulative carcinogenic risk of 1×10^{-6} to 1×10^{-4} as required by the agency.

(G) Target concentrations are to be established at concentrations which do not exceed a hazard index of unity (one) for non-carcinogens.

(H) The owner and operator may apply target concentrations for direct exposure pathways calculated under paragraph (1) of this section at reasonable exposure points instead of the source area unless the source area is a reasonable exposure point. All exposure points assumptions are subject to approval by the agency.

(I) The agency may allow use of compliance points to serve as the basis for meeting target concentrations for indirect exposure pathways provided:

(i) the proposed compliance point locations are consistent with the results of the exposure assessment;

(ii) the proposed compliance point locations are upgradient of actual receptors;

(iii) the proposed compliance point locations will not allow unaffected receptors to become affected;

(iv) the proposed compliance point locations are accessible for monitoring/sampling;

(v) karst, fracture controlled, or otherwise highly complex hydrogeologic system is not involved;

(vi) estimates or predictions of compliance point concentrations and degree and rate of transport of regulated substances are verified with site monitoring data. Where site monitoring data and contaminant fate and transport modelling results yield conflicting information, the agency shall place more value on the monitoring data;

(vii) the agency may require the use of specific contaminant fate and transport models; and

(viii) target concentrations shall be met at all points beyond (downgradient of) the compliance point(s).

(J) When the criteria for the use of compliance points as required in subparagraph (I) of this paragraph cannot be met, then the target concentrations for indirect exposure pathways shall be met throughout the plume.

(K) Target concentrations for soil, air, and water shall also take into account other factors such as vegetation effects, sensitive environmental receptors, and aesthetic considerations (e.g., stained surface soils) as appropriate in the final analysis.

(L) The owner and operator, or the agency, may recommend the use of specific institutional controls to control or eliminate potentially viable exposure pathways, and to reinforce exposure assumptions and future land use assumptions.

(M) The owner and operator shall submit reports in accordance with a schedule and in a format established by the agency.

(N) The owner and operator shall meet all requirements imposed by the agency.

(3) Health-based target concentration established pursuant to paragraphs (1) or (2) of this section shall be based upon toxicological information current at the time the report is submitted to the agency. Toxicological information shall be from the following sources in order of listing:

(A) United States Environmental Protection Agency Integrated Risk Information System (IRIS);

(B) Health Effects Assessment Summary Table (HEAST);

(C) United States Environmental Protection Agency Criteria Documents;

(D) Agency for Toxic Substances and Disease Registry (ATSDR) Toxicological Profiles; and

(E) other scientifically valid published sources that are widely accepted.

(4) Target concentrations shall be based on the particular land use (residential or commercial/industrial) as defined in §334.202 of this title (relating to Definitions) of each affected property.

(5) The exposure assessment and determination of target concentrations conducted pursuant to paragraphs (1) or (2) of this section shall consider:

(A) the physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(B) the hydrogeologic characteristics of the facility and the surrounding area;

(C) the proximity, quality, and current and future uses of nearby surface water and groundwater;

(D) the potential effects of residual contamination on nearby surface water and groundwater;

(E) an exposure assessment considering exposure pathways as requested by the agency;

(F) any information assembled in compliance with this subchapter; and

(G) any additional considerations as established by the agency.

(6) After receipt of a written statement by the agency that all corrective action regulations have been met and that no further corrective actions are warranted, then the case shall be considered closed unless a substantial change in circumstances results in an unacceptable risk to human health or the environment. A substantial change in circumstance shall include, but is not limited to:

(A) a failure to maintain the obligations of an institutional control as set out in §334.206 of this title (relating to Criteria for Institutional Control Use);

(B) a change in land use from a less sensitive land use to a more sensitive land use, such as commercial/ industrial to residential;

(C) an actual exposure condition is determined to be occurring at levels not protective of human health and safety, or the environment. For purposes of this subchapter, changes in toxicity values or general procedures utilized to determine target concentrations shall not be considered a substantial change in circumstances, unless these changes are of such magnitude to present an unacceptable threat to human health and safety, or the environment when evaluated for future exposure conditions based on site-specific considerations; or

(D) new information indicates that the regulated substances at the facility or affected area were not sufficiently characterized such that an unacceptable threat to human health and safety, or the environment continues to exist.

§334.204. Criteria for Selection of Land Use.

The owner and operator shall address each of the following when determining the use of the affected property(ies).

(1) The past and current use of the affected property. Residential land use areas should be assumed to remain residential. Properties with past and/or current commercial/industrial land use which are surrounded by commercial/industrial facilities can be assumed to remain the same unless such is clearly not appropriate.

(2) Properties for which the future use of the property is unknown (property is vacant or for sale) shall assume residential land use unless the owner and operator can demonstrate to the satisfaction of the agency that the past use of the property and use of surrounding properties clearly suggests future use of the property for residential land use is unlikely.

(3) For property currently vacant, or not owned by the owner or operator, the property owner should be interviewed to establish the intended future use of the property. Statements explaining

planned future land use and signed by the affected property owners should be provided to the agency for each affected property to verify that the property owners have been consulted.

(4) For property located within the jurisdictional area of a zoning authority, the owner and operator may provide documentation that the property is zoned for residential, commercial, or industrial use.

(5) Current and planned surrounding land use patterns of local planning board.

(6) Other information as requested by the agency to verify the appropriate categorization of land use.

§334.205. Institutional Control Requirements.

When institutional controls are assumed in determining target concentrations, the owner and operator shall file institutional control requirements in the county deed records of the county or counties in which the property affected by the institutional control is located. Institutional controls shall be required when such action is needed to demonstrate control or elimination of exposure pathways in a manner consistent with §334.203(1) or (2) of this title (relating to Risk-Based Criteria for Establishing Target Concentrations). Institutional controls may also be required to provide notice to future land owners that residual regulated substances are present at the site when the site is considered protective so long as there is no substantial change in site conditions or use of the property which would change the

exposure conditions. All institutional control information filed in the county deed records must be written such that a layperson can easily understand it.

(1) Institutional controls may be required as part of the corrective action plan when:

(A) the residential cumulative carcinogenic risk level exceeds 1 X 10^{-5} for Class A and B carcinogens for residential use properties (child or adult);

(B) the commercial/industrial cumulative carcinogenic risk level exceeds 1 X 10^{-5} level for Class A and B carcinogens for commercial/industrial use properties;

(C) an engineering or legal control is needed to eliminate an otherwise viable exposure pathway;

(D) sites not zoned commercial/industrial that are to close under commercial/industrial land use assumption and adjoin residential property when the same site under a residential land use assumption would exceed a cumulative carcinogenic risk of 1 x 10^{-4} or a hazard index of unity (one); and

(E) when requested by the agency.

(2) The owner and operator, or the agency, may recommend the specific conditions of the institutional control. In the event the agency and the owner and operator are unable to agree upon a suitable institutional control, then the agency will require target concentrations to be established so as to eliminate a need for an institutional control.

(3) Institutional controls may only be employed on sites when the owner(s) of the affected property(ies) is/are in agreement with the placement and the conditions of the institutional control. A written statement signed by the owner, or their designated agent, of each property directly affected by the placement of the institutional control must be provided to the agency by the owner and operator which indicates that the owner of the affected property understands the requirements set forth in §334.206 of this title (relating to Criteria for Institutional Control Use) and agrees with the placement and terms of the institutional control.

§334.206. Criteria for Institutional Control Use.

(a) Within 90 days of the date the agency requests the filing of an institutional control, the owner and operator must provide a certified copy of the filed institutional control stamped by the County Clerk(s), listing the page and volume of the record notice to the agency. The filed institutional control must contain:

(1) the name and address of the owner and operator of the tract of land to which the institutional controls are applicable, and a metes and bounds description of the portion(s) of the tract of land affected by the institutional control as agreed to by the agency;

(2) a plat map clearly demarcating the portion(s) of the tract of land to which the institutional control applies. The map must contain a north arrow, a correlating map scale, and a legend identifying any used symbols or abbreviations;

(3) a certification by a registered professional land surveyor so registered by the Texas Board of Professional Land Surveying attesting to the accuracy of the descriptions provided in paragraphs (1) and (2) of this subsection;

(4) the terms of the institutional control as presented in §334.208 of this title (relating to Model Institutional Control);

(5) a statement that the agency must be notified in writing at least 120 days prior to changes in site use or site conditions which violate the terms of the institutional control, when the terms of the institutional control place use conditions on the affected area;

(6) a statement that information and documents concerning the corrective action effort and contaminant conditions are available for inspection upon request of the agency;

(7) a statement that residual levels of regulated substances are present at the site and that generation of the affected soils or water may require special handling and disposal and/or treatment in accordance with applicable state and federal regulations; and

(8) other information as requested by the agency.

(b) The current or future owner of the property affected by the institutional control shall notify the agency in writing at least 120 days prior to changing the use or altering the condition of the site such that the conditions specified in the institutional control would no longer be met. The owner and operator will then provide a re-evaluation of the site to the agency within 30 days of the date of notification such that the property owner is able to demonstrate:

(1) that levels of regulated substances have degraded such that human health and safety, and the environment are protected under the planned land use or site condition change;

(2) the site will be adequately cleaned to meet human health and environmental protective levels for the planned land use or site condition change; or

(3) application of a revised institutional control will ensure adequate protection of public health and safety and the environment. The revised institutional control shall conform with all requirements of this section relating to institutional controls.

(c) When the implementation of institutional controls by the owner and operator is a condition of site closure, and such condition was stipulated in a final concurrence letter issued by the agency, the closure status is valid only so long as the conditions set forth in the institutional control agreed to by the agency and filed in the county deed records are met. When the conditions of the institutional control are not met, then the conditions for closure are no longer met, and site closure status is nullified. The current or future owner and operator affected by the institutional control shall notify the agency within 24 hours of the discovery that the conditions of the institutional control are not met. When the conditions of the institutional control are not met and the change in site use or condition was not coordinated as defined in subsection (a)(5) of this section, then the future or current owner and operator is out of compliance pursuant to §334.81(h) of this title (relating to Corrective Action Plan) and may be subjected to formal enforcement proceedings.

(d) When appropriate analytical evidence demonstrates to the reasonable satisfaction of the agency that concentrations of residual substances at the site no longer exceed the target risk goals by process of natural degradation or other active site cleanup, then the agency shall agree by written concurrence to the placement of a statement in the county deed records by the current or future owner of the land which nullifies the need for the institutional control and indicates that residual substance concentrations meet health protective levels. Under this condition, the final concurrence letter shall remain in effect.

§334.208. Model Institutional Controls.

This is an example of the language the agency would accept for deed restrictions, etc., that address residual contamination left at a given location. In some instances an institutional control is an acceptable alternative to further remediation, but adequate notice via a deed restriction, etc., is needed for the protection of current and future property owners.

Figure: 30 TAC §334.208

Figure: 30 TAC §334.208

Model Institutional Control for Properties.

STATE OF TEXAS

_____ COUNTY

NOTICE OF (type of substance) CONTAMINATED SITE

KNOW ALL MEN BY THESE PRESENTS THAT:

Pursuant to the rules and/or requirements of the Texas Natural Resource Conservation Commission ("TNRCC"), this document is hereby filed in the Deed Records of _____ County, Texas in compliance with the said requirements of the TNRCC:

I

This notice pertains to the tract of land (hereinafter, the "Property") described within Exhibit "A" attached hereto and incorporated herein as if set forth at length. The Property is located at , in , (County), Texas. The Property is the former location of a storage tank system that leaked and released (type of substance) into the (list all affected media). Residual subsurface contamination remains at the Property. Notwithstanding such residual contamination, the TNRCC has determined that no additional remediation of the Property is required as of the date of this filing, subject to the provisions of Paragraph II below regarding the use of the Property.

II

Cleanup levels established for the Property were based on current and future use of the site for (residential or commercial/ industrial) purposes. Without limitation of any other permissible uses, the use of the Property is suitable for (residential or commercial/industrial) purposes. The corrective action plan (does/does not) require continued (post closure care, engineering control measures, or legal control). (Describe) (Add next sentence when the terms of the institutional control place use conditions on the affected area.) Notwithstanding the foregoing, the current or future owner shall notify the TNRCC in writing at least 120 days prior to changes in site use or site condition which violate the terms of this notice.

The corrective action plan developed for this site reduces site risks to meet protection requirements for the site conditions at the time of this filing. However, persons who will be conducting subsurface construction activities such as, but not in way of limitation, the excavation of soils, installation or repair of subsurface utilities, installation of foundation piers, groundwater extraction, or other such activity may encounter the soils, soil vapors, or groundwater which have been affected by the release. The owner of the Property at the time of any future subsurface construction activities must comply with all environmental, worker protection and other laws, rules and regulations then applicable to the Property.

III

The current owner of the Property and/or any facility thereon is (Landowner), whose address is (Street address), (City), (State) (Zip) where more specific information may be obtained from the agents or assigns thereof. The current operator of the Property and/or any facility thereon is (Operator), whose address is (Street address), (City), (State) (Zip).

IV

This deed notice is not a representation or warranty by the TNRCC as to the suitability of the Property described within Exhibit A for any particular use or purpose, nor does it constitute any guarantee by the TNRCC that additional remediation will not be required in the future. Further information concerning this matter may be found in the TNRCC Underground Storage Tank Notice of Registration No.

file and Leaking Petroleum Storage Tank ("LPST") No. file, which are available for inspection upon request at the office of the TNRCC in Austin, Texas.

EXECUTED this the day of , 20 .

Landowner or Authorized Representative

By:

STATE OF

COUNTY OF

This instrument was acknowledged before me on ,20 , by (Owner).

Notary Public in and for the State of

(State)

My Commission Expires:

Typed or Printed Name of Notary

SUBCHAPTER H: REIMBURSEMENT PROGRAM

§§334.301 - 310, 334.312 - 334.315, 334.318, 334.320 - 334.322

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank.

§334.301. Applicability of this Subchapter.

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

(1) petroleum products from a petroleum storage tank;

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

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

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

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

(2) the release is confirmed by the agency.

(c) Expenses considered for payment - time frame in which corrective action performed. Subject to the other requirements of this subchapter, the expenses which may be considered for payment from the petroleum storage tank remediation fund (PSTR) are limited to expenses of corrective action which was performed for the owner or operator on or after September 1, 1987, and conducted in response to a confirmed release that was initially discovered and reported to the agency on or before December 22, 1998. Expenses for corrective action performed prior to September 1, 1987, are not

subject to reimbursement or payment. No expenses for corrective action will be reimbursed on or after September 1, 2003.

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

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

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

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

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

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

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

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

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

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

§334.302. General Conditions and Limitations Regarding Reimbursement.

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

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

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

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

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

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

(1) the owner/operator contribution described in §334.312 of this title (relating to Owner/Operator Contribution), which the agency may apportion in the case of multiple claimants as provided in §334.314(f) of this title (relating to Fund Payment Report);

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

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

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

(5) any corrective action expenses on or after September 1, 2003, regardless of when the expenses were incurred.

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

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

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

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

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

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

(6) The allowable costs for which reimbursement is sought and those which are to be applied to the owner/operator contribution must be reimbursable, as defined in §334.309 of this title (relating to Reimbursable Costs).

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

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

(f) All claims for assistance and reimbursement filed under this subchapter are subject to the availability of funds in the petroleum storage tank remediation fund.

(g) Nothing in this subchapter shall affect the liability or responsibility of an owner or operator of an underground or aboveground storage tank to take corrective action in response to a release pursuant to applicable law.

(h) Nothing in this subchapter shall be construed to create an entitlement to monies in the petroleum storage tank remediation fund or any other fund, and the commission reserves the right to amend or repeal without limitation any of the provisions of this subchapter, including provisions regarding eligibility and allowable costs.

(i) Payment made to persons other than the eligible owner or operator may only be made subject to subsections (j) and (k) of this section and may only be made to agents or assignees duly authorized to receive payment on behalf of an eligible owner or operator.

(j) Authorization for an agent or assignee to receive payment on behalf of an eligible owner or operator must be in writing and signed by the eligible owner or operator who is requesting payment. The authorization must clearly describe what funds the agent or assignee is authorized to receive. If the agency determines that the authorization is not clear as to the disposition of funds to which the eligible owner or operator is entitled, the agency may withhold payment and request written clarification from the eligible owner or operator. The agency may limit the number of agents or assignees who may receive payments for any one occurrence. Notwithstanding any review made or limitations imposed by the agency pursuant to this section, neither the State of Texas, nor the agency shall be responsible for insuring that payment is made to the parties as contemplated by the authorization. It is the responsibility of the eligible owner or operator and the agent requesting payment to insure that the agency is supplied with information sufficient to make the proper payments. The right to receive payment under this subchapter is not transferable for any purpose and only the people authorized to receive payment under this section are entitled to do so.

(k) No payment of funds will be made to any person other than the owner or operator under this subchapter except as follows:

(1) the person authorized to accept payment on behalf of an owner or operator is:

(A) a purchaser of the property where the release occurred and on which the claim for payment is based;

(B) a person who holds a security interest in personal property or in fixture that is not attached to the real estate or lienhold interest on the real estate or fixture that is attached to the real estate where the release occurred and on which the claim for payment is based;

(C) a person who has insured the owner or operator of petroleum storage tanks for pollution liability on or after July 17, 1990, and who has paid claims on that policy for remediation costs for which the tank owner may be reimbursed under this subchapter; or

(D) any other person who holds legal or equitable title to the property where the release occurred and on which the claim for payment is based; and

(2) the type of ownership interest required under paragraph (1)(A), (B), and (D) of this subsection is an interest in the surface estate of the property.

(l) The agency may require the execution of a contract of subrogation prior to the disbursement of payment.

§334.303. When to File Application.

(a) An application for reimbursement under this subchapter must be filed on or after January 17, 1990, but prior to June 1, 2003.

(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.

§334.304. Who May File Application.

Only the following person may file an application for reimbursement under this subchapter:

(1) the eligible owner of a tank from which a release has occurred and for which partial or completed corrective action has been performed, or his duly authorized agent;

(2) the eligible operator of a tank from which a release has occurred and for which partial or completed corrective action has been performed, or his duly authorized agent;

(3) an owner or operator ordered by the commission or required in a written corrective action directive by the agency staff on or after September 1, 1987, to assess the nature and extent of contamination in cases where no release is discovered, or the duly authorized agent of such owner or operator; or

(4) a past owner or operator who, in response to a release, performed corrective action on or after September 1, 1987.

§334.305. Where and How Documents Must be Filed.

(a) Any application for reimbursement or claim for payment filed pursuant to this subchapter, plus any fees and registration information required pursuant to §334.310(a) of this title (relating to Requirements for Eligibility) must be submitted to the agency, at the address specified on the application form.

(b) All documents to be filed under this subchapter shall be filed with the agency using one of the following:

(1) certified mail, return receipt requested;

(2) express mail or other overnight delivery service, return receipt requested;

(3) hand delivered to the appropriate offices; or

(4) any other method approved by the agency.

(c) The date of filing of any document required to be filed with the agency under this subchapter shall be the receipt date stamped on the document by the agency.

(d) The date of filing documents with the chief clerk or the commission on protested claims for payment shall be controlled by this subchapter and the procedural rules of the commission.

§334.306. Form and Contents of Application.

(a) An application for reimbursement filed pursuant to 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), 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 invoices, providing 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; and

(F) the total amount paid;

(7) proof that the amounts shown on the invoices for which reimbursement is requested have been paid in full by the claimant. The submission must include either:

(A) business receipts or invoices from the person who performed the work, indicating payments received;

(B) canceled checks;

(C) the certification of a certified public accountant that the expenses for which reimbursement is requested have been paid in full;

(D) a notarized affidavit signed by the person who performed the corrective action, affirming that the amounts which the applicant represents as being paid to the person who performed the corrective action were paid in full; or

(E) a promissory note issued by the eligible owner or operator to the person who performed the corrective action for the claimed amount accompanied by a notarized affidavit signed by the person who performed the corrective action, affirming that the amounts which the

applicant represents as being paid to person who performed the corrective action, were paid in full, via the promissory note;

(8) an estimate of the costs, if any, of corrective action which has not yet been completed, but for which reimbursement ultimately may be claimed. This estimate may be used for planning purposes only and will not be binding on the owner or operator for the purposes of payments from the petroleum storage tank remediation fund; and

(9) 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) 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.

§334.307. Technical Information Required.

(a) The following information may be required by the agency as part of any application for reimbursement under this subchapter:

(1) any information which the agency may require pursuant to Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(2) a detailed account of what corrective action has been taken, why specific actions were taken, when, by whom, and with what results;

(3) an estimate of which other corrective action measures may be required to remediate the facility and the estimated time required to complete such measures.

(b) 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.

§334.308. Allowable Costs and Restrictions on Allowable Costs.

(a) Only those costs which are allowable costs pursuant to the terms of this section shall be subject to reimbursement under this subchapter.

(b) Allowable costs are those costs and expenses which arise directly from the performance of necessary corrective action in accordance with the requirements of the agency, subject to the limitations prescribed by this section.

(c) Unless otherwise specified in subsection (g) of this section, allowable costs shall include, but not be limited to, the following:

(1) abatement of impacts and immediate threats of impact to human health, safety, and the environment, including measures necessary to prevent further releases and to identify and mitigate all fire, explosion, and human exposure hazards associated with a release;

(2) removal of phase-separated product;

(3) temporary provision of an alternate water supply. The agency shall determine the length of time during which the cost of water supply may be allowable, the amounts of water which may be allowable, the uses for which water supply may be allowable, and other conditions of approval;

(4) collection and analysis of surface and subsurface soil and water, phase-separated product, and vapor samples;

(5) emplacement of monitor wells;

(6) removal, storage, treatment, recycling, transport, and disposal of phase-separated product, sludges, vapors, contaminated soils, contaminated water, and other wastes and contaminated articles, in accordance with applicable laws;

(7) removal, disposal, and replacement (including transport) of soils and pavement where removal is necessary to the performance of corrective action;

(8) tank system integrity testing in accordance with the methods prescribed by this chapter when such testing:

(A) is necessary to the performance of corrective action;

(B) has been specifically requested by the agency staff on or after May 31, 1989; or

(C) has been specifically ordered by the commission on or after May 31, 1989;

(9) identification and testing of affected or potentially affected drinking water sources;

(10) design of plans for site assessment and remediation;

(11) acquisition, installation, startup, operation, and maintenance of remediation systems, including monitoring;

(12) removal, transport, and disposal of the piping, pumps, and dispensers associated with the underground or aboveground tank when necessary for performance of corrective action, and when removed after October 1, 1992, and before June 6, 1993;

(13) tank removal (as defined in this subchapter), transport, and disposal of the components of the underground or aboveground tank, including compliance with applicable requirements pursuant to Subchapter D of this chapter (relating to Release Reporting and Corrective Action), in accordance with applicable law when necessary for the performance of corrective action and performed before March 12, 1993;

(14) a portion of costs, as specified in this section, of tank removals, transport, and disposal of the components of the underground or aboveground tank, including compliance with applicable requirements pursuant to Subchapter D of this chapter, when necessary for the performance of corrective action and performed on or after March 12, 1993. Reimbursement of tank removals performed on or after March 12, 1993, shall be based on the volume of the tank removed and shall have a maximum reimbursable limit of $8,000 per leaking petroleum storage tank site. For underground storage tanks (USTs) having a volume of 5,000 gallons or less, the portion of reimbursable costs of removal for each such tank is $1,000. For USTs having a volume of greater than 5,000 gallons, the portion of reimbursable costs of removal for each such tank is $2,000;

(15) permanent abandonment in-place, of a tank system, including compliance with applicable requirements pursuant to Subchapter D of this chapter, where abandonment in-place rather

than tank system removal is deemed by the agency to be necessary to avoid destruction of substantial or significant surface improvements and conducted before June 6, 1993;

(16) temporary relocation of utility structures when necessary to the performance of corrective action;

(17) preparation of technical reports required pursuant to the requirements of Subchapter D of this chapter;

(18) the reasonable, as determined by the agency and as limited by the reimbursable cost guidelines, value of necessary time to obtain access to property outside of the facility boundaries where such access is necessary for the performance of corrective action;

(19) the reasonable value, as determined by the agency and as limited by the reimbursable cost guidelines, of necessary time spent by the applicant in planning and administering the applicant's corrective action plan;

(20) performance of any corrective action measure which is specifically required by an order of the commission or a written request by agency staff on or after September 1, 1987;

(21) state and federal sales taxes applicable to items which are otherwise allowable costs under this section; and

(22) any other costs determined by the agency to be allowable in accordance with the provisions of this subchapter.

(d) The costs of abatement or corrective action taken in response to a release of hydraulic fluid from a hydraulic lift system are allowable costs in situations where:

(1) the hydraulic fluid was released from a hydraulic lift system located at a vehicle service and fueling facility where the hydraulic lift system was used in conjunction with and contemporaneously with a vehicle service and fueling facility; and

(2) upon request by the agency, the eligible owner or operator demonstrates that a release from the hydraulic lift system is not mixed with any substance except for petroleum products from a petroleum storage tank system, spent oil from a spent oil tank located at a vehicle service and fueling facility (or another substance contained in such spent oil tank), or another substance that was contained in the hydraulic lift system owned or operated by the person claiming reimbursement.

(e) The costs of abatement or corrective action taken in response to a release of spent oil from a spent oil tank are allowable costs under the following:

(1) the spent oil was released from a spent oil tank located at a vehicle service and fueling facility where the spent oil tank was used in conjunction with and contemporaneously with a vehicle service and fueling facility; and

(2) Upon request by the agency, the eligible owner or operator demonstrates that a release of spent oil is not mixed with any substance except for petroleum products from a petroleum storage tank system, or hydraulic fluid (or another substance that was contained in the hydraulic lift system) or another substance that was contained in the spent oil tank owned or operated by the person claiming reimbursement.

(f) The costs of excavation, disposal, or treatment of backfill material generated during the tank removal process, any additional sampling and reporting required under Subchapter D of this chapter required because of the disposal or treatment of the backfill material are allowable costs where the concentration of constituents in the backfill material exceed a standard for which the agency will permit the backfill material to be returned to the original tank pit excavation and a prior written directive is obtained from the agency prior to implementation.

(g) The following types of costs are those which will not be considered allowable costs under this subchapter:

(1) the cost of replacement, repair, and maintenance of affected tanks and associated piping;

(2) the cost of upgrading existing affected tanks and associated piping, including but not limited to, the costs of corrosion protection, release detection, spill and overfill protection, or any other upgrading required by Subchapter C of this chapter (relating to Technical Standards);

(3) removal, transport, and disposal of the piping, pumps, and dispensers associated with the underground or aboveground tank when removed prior to October 1, 1992, or on or after March 12, 1993;

(4) tank removal (as defined in this subchapter) and transport, and disposal of the components of the underground or aboveground tank, unless otherwise specified in subsection (c)(13) and (14) of this section;

(5) permanent abandonment in-place of a tank system, where abandonment in-place rather than tank system removal is deemed by the agency to be necessary to avoid destruction of substantial or significant surface improvements when conducted on or after March 12, 1993;

(6) loss of income or profits, including without limitation, the loss of business income arising out of the review, processing, or payment of an application or request for assistance under this subchapter;

(7) decreased property values;

(8) bodily injury or property damage;

(9) attorney's fees;

(10) any costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this subchapter;

(11) the costs of making improvements to the facility beyond those that are required for corrective action;

(12) costs associated with corrective action performed for any purpose where no release of petroleum above action levels is discovered, except when the corrective action has been ordered by the commission;

(13) costs of compiling and storing records relating to costs of corrective action;

(14) costs of corrective action taken in response to the release of a substance which is not a petroleum product as defined in §334.322 of this title (relating to Subchapter H Definitions);

(15) costs of tank integrity testing when it is not specifically required by this chapter, requested by the agency staff, or ordered by the commission;

(16) costs of any corrective action incurred by an owner or operator on or after the date that the executive director commences corrective action at the owner's or the operator's facility pursuant to §334.84 of this title (relating to Corrective Action by the Agency), unless authorized in writing by the agency;

(17) costs incurred as a result of a release from a storage tank system owned, operated, or maintained by a common-carrier railroad;

(18) any activities, including those required by this chapter, which are not conducted in compliance with applicable state and federal environmental laws or laws relating to the transport and disposal of waste;

(19) interest on monies;

(20) excluding releases identified under subsections (d) and (e) of this section, the cost of abatement or corrective action taken in response to a release of:

(A) a regulated substance, which is not a petroleum product; and

(B) a release of a petroleum product that has commingled with a regulated substance, which is not a petroleum product; and,

(21) the costs of the installation or construction of on-site equipment, structures or systems used in the extraction or management of wastes, except soil excavation, landfill disposal, well sampling, or monitoring, unless:

(A) the plans and specification for such equipment, structures, or systems are properly sealed by a professional engineer; and

(B) the construction and installation of such equipment, structures or systems are performed under the supervision of a registered professional engineer.

§334.309. Reimbursable Costs.

(a) The agency will utilize the reimbursable cost guidelines, as outlined in §334.560 of this title (relating to Reimbursable Cost Guidelines), to evaluate the reimbursability of claims related to the cleanup of leaking petroleum storage tank sites.

(b) No cost shall be reimbursed unless it is also an allowable cost pursuant to §334.308 of this title (relating to Allowable Costs).

(c) For those activities that require preapproval, pursuant to §334.310(f) of this title (relating to Requirements for Eligibility), the agency will consider the pre-approved cost or the actual cost, whichever is lower, as the reimbursable cost.

§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 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, and on or before September 1, 2003, 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 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; and

(F) an adjacent landowner who can clearly prove that the land has been contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph which is not located on said land, and who performed corrective action in response to a release of petroleum products from such tank, and either:

(i) performed emergency abatement actions by completing all the following:

(I) notifying the agency within 24 hours of discovery that the emergency condition exists;

(II) notifying the local fire marshall (or state fire marshall if no local authority is available) within 24 hours;

(III) taking actions necessary to protect against imminent danger to human health and safety by mitigating fire, explosion, and vapor hazards, by removing phase-separated product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the executive director. Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and remediation are not considered part of emergency abatement activities. Any expenses incurred after 72 hours from commencement of the action must be approved by the agency in writing; and

(IV) having the release and threat ultimately confirmed by the agency; or

(ii) committed to undertake the entire cleanup of the leak and contamination from the tank on his property and on all other property by:

(I) obtaining prior approval in writing from the agency;

(II) performing a site assessment to define the extent of the vertical and horizontal contamination at the time of the agreement;

(III) entering into a legal agreement with the owner of the tank whereby the adjacent landowner agrees to indemnify and hold harmless the owner, operator, and other

affected landowners for any corrective action or third party liability effective from the date of the agreement; and

(IV) performing all corrective action in conformance with this chapter, and all other applicable rules and regulations. The applicable deductible for reimbursement under §334.312 of this title (relating to Owner/Operator Contribution) for cleanups undertaken by adjacent landowners under this subsection shall be the same as that applicable to the registered owner of the tank.

(2) An underground and aboveground storage tank installed prior to December 1, 1995, which is required to be registered pursuant §334.7 of this title (relating to Registration for Underground Storage Tanks ("USTs") and UST Systems) or §334.127 of this title (relating to Registration for ASTs) must be registered with the agency on or before December 31, 1995, or the owner or operator is not eligible to receive reimbursement for that tank, except for:

(A) an owner or operator of a registered facility who discovers an unregistered tank while removing, upgrading, or replacing a tank or while performing a site assessment;

(B) a state or local governmental agency that discovers an unregistered storage tank in a right-of-way during construction; or

(C) a property owner who reasonably could not have known that a tank was located on the property because a title search or the previous use of the property does not indicate a tank on the property.

(3) The owner or operator of an underground and aboveground storage tank installed on or after December 1, 1995, must be registered with the agency pursuant §334.7 of this title or §334.127 of this title no later than the 30th day after the date the installation is completed to be eligible for reimbursement for such tank.

(4) All annual facility fees due since September 1, 1987, pursuant to §334.21 of this title (relating to Fee Assessment), and since September 1, 1989, pursuant to §334.128 of this title (relating to Annual Facility Fees) for all underground and aboveground storage tanks which they own or operate must be paid to the agency, except for those tanks which the owner or operator, upon reasonable inquiry, could not have known existed. All fees which come due up until the time that reimbursement funds are released to the claimant must be paid.

(5) Any release on which a claim under this subchapter is based must be discovered and reported to the agency on or before December 22, 1998, and must subsequently be confirmed by the agency.

(b) Satisfaction of the eligibility criteria set forth in subsection (a) of this section shall constitute compliance for purposes of the Texas Water Code, §26.357(b)(2), for the purposes of this subchapter.

(c) The agency may determine other persons to be eligible owners or operators in accordance with the standards of the Texas Water Code, §26.3571.

(d) Compliance with the Texas Water Code, Chapter 26, Subchapter I, for the purposes of determining eligibility under this subchapter and the Texas Water Code, §26.3571, does not mean that an eligible owner or operator has not violated a statute or a rule or order of the commission. Eligibility of an owner or operator under this subchapter does not preclude the issuance of an enforcement order or the assessment of administrative penalties against an eligible owner or operator.

(e) In no case will reimbursement be made under subsection (a)(1)(F) of this section for duplication of assessment and remediation activities involving the same contamination plume. There will be no reimbursement for adjacent landowner cleanup allowed under subsection (a)(1)(F) of this section for activities at a site which occur after the site has been designated for state lead cleanup under §334.84 of this title (relating to Corrective Action by the Agency).

(f) Unless otherwise approved by the executive director, all corrective action activities, including activities proposed in corrective action plans, must be approved in writing by the executive director prior to implementation. For reimbursement of emergency, initial abatement measures and

phase-separated product recovery as required by §334.77 of this title (relating to Initial Abatement Measures and Site Check), approval by the executive director is not required prior to implementation, unless the emergency action extends beyond 72 hours, then written approval will be required for all activities.

§334.312. Owner/Operator Contribution.

(a) The agency shall deduct from any amount claimed for reimbursement an amount of allowable costs equal to the greater amount applicable for the owner/operator contribution as described in this section.

(b) The owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, $10,000;

(2) for a person who owns or operates a total of 100 - 999 petroleum storage tanks, $5,000;

(3) for a person who owns or operates a total of 13 - 99 petroleum storage tanks, $2,500; and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks, $1,000.

(c) If an owner or operator does not submit a site assessment in accordance with §334.78 of this title (relating to Site Assessment) before December 23, 1996, the owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, $20,000;

(2) for a person who owns or operates a total of 100 - 999 petroleum storage tanks, $10,000;

(3) for a person who owns or operates a total of 13 - 99 petroleum storage tanks, $5,000; and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks, $2,000.

(d) If an owner or operator's corrective action plan as required by §334.81 of this title (relating to Corrective Action Plan) is not approved by the agency before June 23, 1998, the owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, $40,000;

(2) for a person who owns or operates a total of 100 - 999 petroleum storage tanks, $20,000;

(3) for a person who owns or operates a total of 13 - 99 petroleum storage tanks, $10,000; and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks, $4,000.

(e) If an owner or operator's corrective action plan as required by §334.81 of this title is not approved by the agency before December 23, 1999, and if the owner or operator has not met the goals specified in the plan to be met by December 23, 1999, the owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, $80,000;

(2) for a person who owns or operates a total of 100 - 999 petroleum storage tanks, $40,000;

(3) for a person who owns or operates a total of 13 - 99 petroleum storage tanks, $20,000; and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks, $8,000.

(f) An owner or operator of a site for which a closure letter has been issued on or after September 1, 1995, the owner/operator contribution for each subsequent release occurrence shall be $50,000.

(g) It shall be presumed for purposes of this section that a person owns:

(1) the number of tanks for which he is registered as the owner in the records of the agency on the date that an administratively complete application is filed with the agency; or

(2) the number of tanks actually owned by the eligible owner or operator on the date that an administratively complete application is filed with the agency, whichever is greater.

§334.313. Review of Application.

(a) An application for reimbursement or supplemented application filed under this subchapter shall be subject to review by the agency:

(1) to determine if the information which is required to be submitted under this subchapter has been filed with the agency, utilizing the following procedure:

(A) an application submitted will be reviewed by the staff for completeness. To be considered complete, an application must contain the following information:

(i) a completed application form, which has been provided or approved by the agency, containing the information required under §334.306(a) and (b)(1) - (4) of this title (relating to Form and Contents of Application);

(ii) be accompanied by legible copies of invoices (contractor and subcontractor) and proof of payment as required under §334.306(b)(6) and (7) of this title;

(iii) be accompanied by copies of preapproval documentation and technical information requested in the application form, provided or approved by the agency, under §334.306(b)(5) of this title and §334.307(a) of this title (relating to Technical Information Required); and

(iv) the completion of an Application Checklist, provided with the application form, verifying that the applicant and application preparer have reviewed the application for completeness;

(B) if an application is received which is not complete, the agency shall notify the applicant of the deficiencies by mail. If the required information is not received within 30 days of the date of the deficiency notice, the applicant must reapply;

(C) if 30 days is insufficient time to prepare an adequate response, the applicant may request one extension of 30 days to supply the required information. If the extension is granted and the required information is not received from the applicant within that 30 days, the applicant must reapply;

(D) after an application is determined by the agency to be complete, the agency will then commence a substantive (technical and financial) review of the application;

(E) if it is determined that an otherwise complete application contains any costs which required prior agency approval prior to implementation as required by §334.310(f) of this title (relating to Requirements for Eligibility), and such prior approval was not obtained, the applicant will be notified and the application will not be forwarded for further review until such time as the agency reviews applications with non-preapproved costs as allowed under subsection (f) of this section;

(F) if it has been determined that an otherwise complete application contains costs for a corrective action activity which has been performed improperly, or the information or report that documents the activity has been determined to be deficient or defective by the agency under Subchapter D of this chapter (relating to Release Reporting and Corrective Action), the applicant will

be notified and the application will not be forwarded for further review. The applicant may resubmit the application after the defects or deficiencies have been resolved and the agency concurs that the corrective action activity or documentation is acceptable under Subchapter D of this chapter;

(G) the received date of the application is considered to be the date which the complete application was received by the agency, or the date which the required additional information (under subparagraph (B) of this paragraph) was received by the agency; and

(2) to examine the substance of the application, including without limitation:

(A) the cost effectiveness and fiscal merits of the corrective action taken at the facility; and

(B) the technical merits of the corrective action taken at the facility.

(b) An application which does not contain all the information required by this subchapter will not be considered a complete claim and will not be processed. This does not prevent the applicant from filing another application for the same occurrence at any time prior to June 1, 2003.

(c) The agency is not required to commence the substantive review of an application until he has received all of the information this subchapter requires the applicant to submit in order for the executive director to review a claim for payment.

(d) If, during the course of the substantive (technical and financial) review, the agency finds that additional information of the type required by this subchapter is needed to evaluate the application, it may:

(1) require the applicant to provide such additional information. Further review of the application will be postponed until such information is received by the agency. The received date for the complete claim will be considered the date on which the agency received such additional required information; or

(2) issue the fund payment report, but withhold payment for the insufficiently documented costs or insufficiently documented corrective action activity.

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

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

§334.314. Fund Payment Report.

(a) Upon completion of the review of an application, the agency shall prepare a fund payment report, indicating which of the applicant's claims the executive director believes should be reimbursed and which claims should not be reimbursed. If the executive director finds that any claim should not be paid or not paid to the full amount claimed, he shall briefly state the reasons in his report. The executive director shall submit a copy of his report to the applicant.

(b) The applicant shall review the fund payment report and shall file a written response with the agency within 60 days of the date on the report. The response shall be on a form provided or approved by the agency. The applicant may consent or object to all or any part of the report. If the agency has not received a response from the applicant within 60 days from the date of the report, the following shall occur:

(1) all claims approved for reimbursement in the fund payment report shall be eligible for payment, provided a signed subrogation contract is submitted, when required;

(2) any claim addressed in the fund payment report shall be deemed satisfied in full; and

(3) the applicant will have waived his right to object to any item addressed in the fund payment report.

(c) Any item recommended for payment in the fund payment report to which the applicant objects shall not be eligible for payment until the agency and the applicant agree on an amount for payment or until the commission orders payment in a prescribed amount, whichever occurs first.

(d) Any item recommended for payment in the fund payment report to which the applicant consents by filing a timely response to the fund payment report shall be eligible for reimbursement when the agency receives the applicant's consent form, which may include the submission of a signed subrogation contract, when required. The consent of the applicant to any item recommended for payment shall mean that any claim covered by that item is considered satisfied in full.

(e) The agency may in its discretion pay claims which it has approved for payment by sending payment with the fund payment report.

(f) In cases where there are two or more applicants filing claims for one occurrence, the executive director may make an equitable apportionment of the owner/operator contribution described in §334.312 of this title (relating to Owner/Operator Contribution).

§334.315. Protest of Fund Payment Report.

(a) If the applicant disagrees with any conclusion in the fund payment report, the applicant may file a protest with the executive director within 60 days of the date on the fund payment report.

(b) The protest must be in writing and signed by the applicant. It must be on a form prescribed or approved by the agency. It must contain the following:

(1) the name and address of the applicant;

(2) the address of the facility in question and the Texas Natural Resource Conservation Commission facility number, if any;

(3) a copy of the fund payment report which is the subject of the protest, or the application number which appears on the fund payment report; and

(4) a clear statement of each item which the applicant disputes on the fund payment report and any other documentation necessary to support the protest.

(c) The protest shall be filed with the executive director by sending or delivering it to the office indicated in the fund payment report materials.

(d) The applicant and the staff of the executive director shall attempt to resolve informally any disputes over the fund payment report. If no resolution is reached by the staff and the applicant, the applicant may file a petition requesting the commission to grant relief. Within 60 days of receipt of written notification from the agency that informal negotiations have ceased and the final informal fund

protest meeting has been held, the applicant shall file a petition as specified in §334.316 of this title (relating to Formal Petition).

§334.318. Recovery of Costs.

The agency may initiate proceedings against any owner or operator of a petroleum storage tank for recovery of costs, as provided by the Texas Water Code, §26.355.

§334.320. Responsibilities of Owners, Operators, and Others.

(a) Nothing in this subchapter changes the responsibilities of an owner or operator of an underground or aboveground storage tank to respond to a release of regulated substances or to comply with any other requirements of statutes or the rules or orders of the commission.

(b) The owner and operator are obligated to pursue whatever actions are necessary to minimize any immediate impacts of threats to human health and safety and the environment and to stabilize the conditions caused by the release. When financially unable to pursue immediate abatement actions, the owner or operator shall notify the agency immediately.

(c) No person shall knowingly submit false information to the agency as part of any materials required to be submitted under this subchapter.

§334.321. Corrective Action by the Agency.

No costs of corrective action incurred by an owner or operator at a facility on or after the date that the agency commences corrective action at the owner's or the operator's facility are allowable for reimbursement under this subchapter, unless authorized and the estimated costs preapproved in writing by the agency in accordance with this subchapter.

§334.322. Subchapter H Definitions.

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

(1) **Action level** - The concentration of constituents in the native soil or water at which corrective action will be required. Exceeding an action level warrants further assessment of the site, but does not mandate that site cleanup be required. Based upon the results of the site assessment, the need for site cleanup will then be determined and cleanup levels will be set. Action levels should not be used as cleanup levels; they are simply levels which signal the need for additional assessment.

(2) **Adjacent landowner** - A person who owns legal title to land which is within reasonably close proximity to property where a regulated underground storage tank (UST) or aboveground storage tank is located whether or not the land is contiguous to the property containing the tank.

(3) **Application preparer** - Any person responsible for preparing the application for reimbursement.

(4) **Commingled** - See definition in §334.2 of this title (relating to Definitions).

(5) **Confirmed** - In the context of a release being confirmed by the agency under this subchapter, means that the executive director has determined that sufficient evidence exists to prove that a release of petroleum products has occurred from a petroleum storage tank subject to regulation under this chapter.

(6) **Contract of subrogation** - A document of agreement between the executive director and the eligible tank owner and operator which authorizes the executive director to recover costs reimbursed from persons who performed corrective action activities at leaking petroleum storage tank sites.

(7) **Eligible aboveground storage tank** - A non-vehicular device with a capacity of more than 1,100 gallons, and all connecting piping both above and below ground, that is made of non-earthen materials; located on or above the surface of the ground or on or above the surface of the floor of a structure below ground, such as a mineworking basement, or vault; and designed to contain an accumulation of petroleum.

(8) **Eligible operator** - Any person in control of or having the responsibility for the daily operation of a petroleum storage tank who meets the eligibility requirements prescribed in §334.310 of this title (relating to Requirements for Eligibility).

(9) **Eligible owner** - Any person who meets the eligibility requirements prescribed in §334.310 of this title and who held or currently holds legal possession or ownership of a total or partial interest in a petroleum storage tank. For the purposes of this subchapter, where the actual ownership of the petroleum storage tank is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the petroleum storage tank is located shall be considered the petroleum storage tank owner, unless it can be shown by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally acceptable means that the petroleum storage tank is owned by another. "Owner" does not include a person who holds an interest in a petroleum storage tank solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the petroleum storage tank.

(10) **Emergency** - Any existing or potential fire, explosion, or vapor hazards which pose an imminent threat to human health and safety, or any imminent threat at the point of actual use to drinking water supplies actually being used.

(11) **Emergency abatement** - Taking mitigating actions necessary in an emergency to protect against imminent danger to human health and safety by removing phase-separated product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the agency.

Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and remediation are not considered part of emergency abatement activities.

(12) **Initial abatement measures** - The mitigation of all existing or potential fire, explosion, or vapor hazards, including the removal of phase-separated product, to provide adequate protection of human health, safety, and the environment in emergency situations or other situations where emergency actions must be implemented to prevent further impacts to the environment. Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and remediation are not considered part of initial abatement measures.

(13) **Petroleum product** - See definition in §334.2 of this title.

(14) **Petroleum storage tank** - See definition in §334.2 of this title.

(15) **Phase-separated product** - See Free-product as defined in §334.2 of this title.

(16) **Prime contractor** - Any natural person, firm, or any entity responsible for the contracting of any corrective action services.

(17) **Prime corrective action specialist** - A natural person, consulting firm, or any entity engaging in corrective action services, or acting as coordinator of others engaged in corrective action services.

(18) **Spent oil** - A regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

(19) **Tank removal** - The physical removal of an UST from the subsurface. Tank removals include removal and replacement of surface material, excavation and disposal of backfill material, tank removal and disposal, backfilling and compaction of excavation, and any other activities typically associated with the tank removal process.

(20) **Vehicle service and fueling facility** - A facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

SUBCHAPTER I: UNDERGROUND STORAGE TANK CONTRACTOR REGISTRATION AND INSTALLER LICENSING

§§334.402 - 334.407, 334.409, 334.411, 334.412, 334.414, 334.416 - 334.424, 334.426, 334.428

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank, and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors, and continuing education requirements for installers and on-site supervisors.

§334.402. Application for Certificate of Registration.

Any person as defined in §334.412 of this title (relating to Definitions) who engages in the installation, repair, or removal of an underground storage tank (UST) shall meet the following application requirements to obtain a certificate of registration.

(1) A person shall apply for a certificate of registration on a form approved by the agency.

(2) The application for certificate of registration shall include:

(A) the applicant's business name, business mailing address and telephone number, and permanent physical address;

(B) an authorized representative's name and title, when the applicant is not an actual individual;

(C) the address, telephone number, and an authorized representative for any branch office within the State of Texas which will be operating under the requested certificate of registration;

(D) documentation of:

(i) proof of commercial liability insurance designating the Texas Natural Resource Conservation Commission as the certificate holder in an amount of not less than $1 million and of a type approved by the agency; or

(ii) a financial statement (balance sheet) prepared in conformity with accounting principles as defined by the American Institute of Public Accountants, indicating an applicant's current net worth of not less than $25,000; or a letter from a certified public accountant who is not employed by the applicant or does not receive payment from the applicant on a regular basis verifying that the applicant’s current net worth is not less that $25,000;

(E) documentation of quality of performance including one of the following:

(i) sworn statements, on forms approved by the agency, from at least three persons (references), not related by blood or marriage, who have engaged the applicant within the previous 12 months to perform: UST installations, repairs, or removals; underground utility construction; or other engineering construction. These statements shall attest to the applicant's business integrity and levels of performance. Such statements shall also include a description of the type of construction which was performed by the applicant;

(ii) a written explanation indicating good cause as determined by the agency for not providing the sworn statements required in clause (i) of this subparagraph. The explanation shall include a detailed description of at least three case histories of typical UST construction activities performed by the applicant during the previous 12 months; or

(iii) other documentation of quality of performance which is determined by the agency to be sufficient for the purposes of this section;

(F) a sworn statement from the applicant attesting to the accuracy of the information provided on the application;

(G) payment of the initial application/issuance fee of $150 as required under §334.406 of this title (relating to Fee Assessments for Certificate Registration).

§334.403. Issuance of Certificate of Registration.

(a) An application for a certificate of registration shall be accepted for processing upon agency receipt of a properly completed application as required by §334.402 of this title (relating to Application for Certificate of Registration), and the initial application/issuance fee of $150 ($50 application fee and $100 certificate issuance fee) required under §334.406 of this title (relating to Fee Assessments for Certificate Registration).

(b) Within 30 days of receipt of an application, the agency shall evaluate the application for completeness and, if necessary, provide written comments to the applicant noting any additional information which is required for processing. The applicant will have 30 days from date of delivery of the agency's written comments to submit the requested information, after which time the certificate of registration may be denied.

(c) Within 30 days of receipt of a properly completed application, the agency shall either issue a certificate of registration or deny the application.

(d) A certificate of registration issued under this subchapter is not transferable, and shall be renewed annually as prescribed in §334.404 of this title (relating to Renewal of Certificate of Registration).

§334.404. Renewal of Certificate of Registration.

(a) All certificates of registration shall expire one year from the original date of issuance or from the last date of renewal.

(b) The agency shall notify each registered contractor in writing of the impending registration expiration at least 60 days prior to the expiration of the certificate of registration.

(c) The agency shall provide application forms for renewal of a certificate of registration.

(d) A properly completed application for renewal (including but not limited to proper payment of renewal fees and certification of adequate financial requirements as prescribed in §334.402(2)(D) of this subchapter (relating to Application for Certificate of Registration)) shall be submitted to the agency at least 30 days prior to the expiration date of the certificate of registration.

(1) If the applicant has not been notified by the agency of the renewal decision by the time the certificate of registration expires, and a complete renewal application was received 30 days prior to the expiration date, then the certificate of registration is considered provisionally renewed

during that interim period between that expiration date and the date the agency notifies the applicant of the renewal decision;

(2) If a complete application for renewal is not filed at least 30 days prior to the expiration date of the current registration, and the agency has not processed that late renewal application by the expiration date, the current registration shall expire and will not be considered provisionally renewed. The registration may be renewed any time within one year of the expiration date. Services performed after expiration, but before renewal, shall be considered to have been performed without a proper registration under this subchapter.

(3) Certificates of registration issued anytime during the one year period after the expiration date will have an expiration date of one year following the previous expiration date.

(e) The application must be accompanied by the renewal fee prescribed by §334.406 of this title (relating to Fee Assessments for Certificate of Registration), and the contractor must certify that he/she has maintained the financial requirements as prescribed by §334.402(2)(D) of this title. Documentation of the financial requirements must be available at any time requested by the agency.

(f) The contractor shall reapply for the issuance of a certificate of registration as prescribed by §334.402 of this title if the certificate is not renewed earlier than one year after the expiration date of the certificate.

(g) Upon proper completion of the certificate renewal process, the agency shall issue a renewal approval letter indicating the expiration date.

§334.405. Grounds for Denial of Certificate of Registration.

The agency may deny a certificate of registration or request for renewal of certificate for the following grounds:

(1) when an applicant fails to submit the required documentation as required by §334.402 of this title (relating to Application for Certificate of Registration);

(2) when an applicant fails to pay the appropriate fee as required under §334.406 of this title (relating to Fee Assessments for Certificate of Registration);

(3) when an applicant submits an application with fraudulent or deceptive information; or

(4) for other cause(s) which in the opinion of the agency constitute adequate grounds for denial.

§334.406. Fee Assessments for Certificate of Registration.

The fees for certificate of registration are as follows.

(1) The following fee schedule shall apply for the registration of underground storage tank contractors:

(A) initial application/issuance fee - $150;

(B) annual renewal fee - $75;

(C) duplicate certificate of registration - $10;

(D) application to change certificate of registration - $70;

(E) late renewal fee - $25.

(2) A certificate renewal application shall be considered late when received by the agency after the expiration date of the certificate, and shall be subject to the late renewal fee.

(3) All fees addressed by this section are nonrefundable.

§334.407. Other Requirements for Certificate of Registration.

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

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

(2) change of physical address;

(3) change in status of insurance;

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

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

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

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

(b) A registered UST contractor is required to maintain financial requirements required by §334.402 of this title throughout the period that the contractor holds a valid certificate of registration from the agency.

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

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

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

(a) If the executive director determines good cause exists to suspend or revoke the certificate of registration of a contractor, the executive director shall request that the commission schedule a hearing before the hearing examiner or the commission. Such hearing shall be held only after proper notice has been provided to the certificate holder. The commission may suspend or revoke the certificate if the commission finds that the holder of the certificate was responsible for violating the provisions of this chapter, for falsifying any information or documents submitted to the agency, or for other good cause.

(b) A certificate may be suspended for a period of up to one year, depending upon the seriousness of the offense(s). A certificate is revoked automatically upon a second suspension. At the request of the certificate holder, or for other good cause shown, the certificate may be suspended indefinitely by the commission.

(c) A certificate shall be revoked for a period of one year after which the holder of the certificate may reapply for reinstatement pursuant to the requirements of §334.402 of this title (relating to Application for Certificate of Registration). If a certificate is revoked a second time, the revocation shall be permanent. The holder of a certificate which has been revoked for a period of one year shall not have to meet the application requirement of §334.402(2)(E) of this title.

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

(a) A proceeding to revoke or suspend a certification of registration of a contractor must be commenced by:

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

(2) the commission on its own motion.

(b) If the executive director determines good cause exists to revoke or suspend a certificate of registration of a contractor, the executive director shall file a petition with the chief clerk and provide notice to the contractor. To the extent possible, the procedure required to assess administrative penalties under Chapter 70 of this title (relating to Enforcement) shall be followed to revoke or suspend a certification of registration under this subchapter.

(c) In response to a petition, or on its own motion to revoke or suspend a certificate of registration, the commission may:

(1) suspend a certification of registration issued under this subchapter for any period it deems reasonable and necessary under the circumstances, but typically up to one year for a first suspension, and permanent revocation for a second suspension;

(2) place conditions on reinstatement of registration; and

(3) issue any other orders permitted by law.

(d) Revocation or suspension of a certificate of registration is cumulative of any other remedies available to the commission by law.

§334.412. Definitions.

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

(1) **Certificate of registration** - The document issued to an underground storage tank (UST) contractor by the agency authorizing the contractor to engage in the UST business in the State of Texas.

(2) **Critical junctures** - In the case of an installation, repair, or removal of an UST system, all of the following steps:

(A) preparation of the tank bedding immediately prior to receiving the tank;

(B) setting of the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(C) connection of piping systems to the tank;

(D) all pressure testing of the UST, including associated piping, performed during the installation;

(E) completion of backfill and filling of the excavation;

(F) any time during the repair in which the piping system is connected or reconnected to the tank;

(G) any time during the repair in which the tank or its associated piping is tested; and

(H) any time during the removal of the tank.

(3) **Engineering construction** - That construction designed by civil and mechanical engineers, as opposed to building construction which is designed by architectural engineers.

(4) **Installation** - The installation of USTs and ancillary equipment, including, but not limited to, the following activities:

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

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

(C) addition of secondary containment equipment for new or existing tanks or piping;

(D) addition or replacement of the following types of equipment at a new or existing UST facility:

(i) spill and overfill prevention equipment, as required in §334.51 of this title (relating to Spill and Overfill Prevention and Control);

(ii) equipment or devices which are permanently installed for the purpose of providing release detection or release monitoring as required for compliance with §334.50 of this title (relating to Release Detection), except:

(I) observation wells or monitoring wells (excluding equipment and devices therein) constructed by a well driller who possesses the appropriate license required by the Texas Department of Licensing & Regulation pursuant to the Water Well Drillers Act (Texas Civil Statutes, Article 7621e, Water Auxiliary Laws); or

(II) any equipment temporarily installed solely for the purpose of conducting a tank or piping tightness test, as defined in §334.2 of this title (relating to Definitions), except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal. Temporarily in this context means the reasonable amount of time required to attach the equipment, make the tests, and remove the equipment, under the given conditions at the site;

(E) installation or replacement of anchoring systems designed to prevent tank flotation;

(F) installation or replacement of vent lines at new or existing UST facilities;

(G) installation or replacement of submersible pumping systems at new or existing UST facilities; and

(H) installation or replacement of any underground Stage I or Stage II vapor recovery systems.

(5) **License** - The document issued to an installer or on-site supervisor authorizing same to engage in the UST business in the State of Texas.

(6) **On-site supervisor** -

(A) A professional engineer registered to practice in the State of Texas who has met the licensing requirements of this subchapter; or

(B) An individual with at least two years of active experience in the vocation of installation, removal, or repair of USTs, underground utilities, or other engineering construction in the State of Texas, and who meets the licensing requirements of this subchapter.

(7) **Removal** - The process of removing and disposing of an UST that is no longer in service, or the process of abandoning an UST in place after purging the tank of vapors and filling the vessel of the tank with a solid inert material, or the change-in-service of an UST, as defined in §334.2 of this title.

(8) **Repair** - The modification or correction of an UST and ancillary equipment. The term does not include:

(A) relining an UST through the application of epoxy resins or similar materials;

(B) the performance of a tightness test to ascertain the integrity of the tank, except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal;

(C) the maintenance and inspection of cathodic protection devices by a corrosion expert or corrosion technician;

(D) emergency actions to halt or prevent leaks or ruptures; or

(E) minor maintenance on ancillary aboveground equipment.

(9) **Underground storage tank business (or UST business)** - A business whose particular field of endeavor relates to the installation, removal, or repair of USTs.

(10) **Underground storage tank contractor (or UST contractor)** - A person or business entity that offers to undertake, represents itself as being able to undertake, or does undertake the installation, repair, or removal of an UST.

(11) **Underground utilities** - Refers to the installation of public underground water, sanitary sewer, or storm sewer construction. This does not include private underground pipe systems (water or sewer piping), power or communication cables, or natural gas lines.

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

(a) Any installer or on-site supervisor as defined in §334.412 of this title (relating to Definitions) shall hold a valid License A, License B, or both, pursuant to this subchapter.

(b) After December 1, 1990, no person shall supervise the installation, removal, or repair of an underground storage tank (UST) system unless that person holds a valid license issued by the agency pursuant to this subchapter enabling that person to supervise the installation, repair, or removal of an UST.

(c) After December 1, 1990, no person shall participate in the installation, removal, or repair of an UST system unless:

(1) that person holds a valid license issued by the agency pursuant to this subchapter enabling that person to supervise the installation, repair, or removal of an UST; or

(2) that person is under the direct, on-site supervision of a licensed installer or on-site supervisor as described in subsection (b) of this section, provided that a licensed installer or on-site supervisor shall be present during all critical junctures, as prescribed in subsection (d) of this section.

(d) An UST system may not be installed, repaired, or removed except by a duly registered UST contractor who either has or is an installer or an on-site supervisor who is licensed by the agency pursuant to this chapter at the site at all times during the critical junctures of the installation, repair, or removal.

(e) This section does not apply to situations where no license is required pursuant to §334.425 of this title (relating to Exceptions to License A and License B Requirements).

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

(a) Each applicant desiring to obtain a License A or License B shall submit a completed application to the agency pursuant to §334.417 of this title (relating to Application for License A and License B).

(b) Each applicant shall pay the initial license application fee as required by §334.423 of this title (relating to Fee Assessments for License A and License B) upon submission of the application. An application submitted without the required application fee shall not be accepted.

(c) Each applicant shall be at least 18 years of age.

(d) Each applicant shall have at least two years of active experience in installation, removal, or repair of underground storage tanks (USTs), underground utilities, or other engineering construction.

(e) Each applicant's qualifications shall meet the minimum requirements of this section, and shall be approved by the agency before the applicant can take the examination required under §334.419 of this title (relating to License A and License B Examination).

(f) Subsequent to the agency’s approval of an applicant's qualifications, an applicant shall successfully complete the appropriate licensing examination.

(g) After December 1, 1991, prior to the examination, each applicant for License A shall have completed 28 hours of training and education courses in the installation and repair of USTs.

(h) After December 1, 1991, prior to the examination, each applicant for License B shall have completed 12 hours of training and education courses in the removal of USTs.

(i) The training and education courses prescribed in subsections (g) and (h) of this section shall be approved by the agency and sponsored by educational or governmental institutions, or recognized organizations including, but not limited to:

(1) Petroleum Equipment Institute;

(2) American Petroleum Institute;

(3) Steel Tank Institute;

(4) National Association of Corrosion Engineers;

(5) Fiberglass Petroleum Tank and Pipe Institute;

(6) National Fire Protection Association; or

(7) other nationally recognized organizations approved by the agency.

(j) The training and education courses may include instructional courses, seminars, workshops, and conferences.

(k) The applicant shall submit a certificate of completion for the appropriate training and education courses required in subsections (g) and (h) of this section. The certificate shall be dated and signed by the designated sponsor.

§334.417. Application for License A and License B.

(a) An applicant for License A and B shall provide the following information:

(1) the applicant's name, business address and telephone number, and permanent mailing address and telephone number;

(2) the applicant's birth date and social security number;

(3) a list of other professional registrations and licenses that the applicant holds from a governmental body within or outside of the State of Texas;

(4) a statement of circumstances in which a license or registration has been previously suspended, revoked, or any disciplinary action resulting from other underground storage tank (UST) related activities within or outside of the State of Texas;

(5) after December 1, 1991, documentation of the training and education courses on USTs that the applicant has completed;

(6) sworn statements, on forms approved by the agency, from at least four persons (three from clients not related by blood or marriage and one from a current or previous employer, or employer's representative), that have engaged the applicant or the applicant's employer within the previous 24 months to perform: UST installations, repairs, or removals; underground utilities; or other engineering construction. These statements shall attest to the applicant's character, knowledge of construction, and ability to supervise the construction activity. Such statements shall also include a description of the type of construction performed by the applicant; and

(7) a sworn statement by the applicant as to the authenticity of the information provided on the application.

(b) All applications for licensing shall be submitted on forms provided by the agency and shall be accompanied by the $200 initial application fee.

(c) The applicant shall take a license examination within 120 days after the agency's approval of the application.

(d) An application shall be denied and the application fee shall be forfeited, if the applicant fails to take the licensing examination within 120 days after the agency approves the application. An applicant who has received a denial may reapply for a license. The agency may extend the 120-day examination period upon written request by the applicant and for good cause.

§334.418. Notification of Examination.

Upon receipt of a properly completed application as required by §334.417 of this title (relating to Application for License A or License B) and the application fee required by §334.423 of this title (relating to Fee Assessments for License A and License B), the agency shall inform the applicant within 30 days of receipt of the application as to whether the application has been approved. The agency shall notify each applicant of the designated dates, times, and places of the examinations as required by §334.419 of this title (relating to License A and License B Examination).

§334.419. License A and License B Examination.

(a) The License A and License B examinations shall each be divided into categories comprising specific underground storage tank (UST) subjects. The number of categories in the License A and License B examinations shall be determined by the agency.

(b) Questions used in License A and License B examinations shall be derived from the applicable rules of this chapter and standards, instructions, and recommended practices published by organizations with expertise in various aspects of the installation, repair, or removal of USTs including, but not limited to:

(1) Petroleum Equipment Institute;

(2) American Petroleum Institute;

(3) Steel Tank Institute;

(4) National Association of Corrosion Engineers;

(5) Fiberglass Petroleum Tank and Pipe Institute; and

(6) National Fire Association.

(c) The rules contained in this chapter shall prevail as the definitive examination answer should a conflict arise between the rules of this chapter and the standards, instructions, and recommended practices of the organizations listed in subsection (b) of this section.

(d) The agency shall offer and proctor the appropriate examination at a designated time and place. The examination shall be offered with increased frequency whenever more than ten persons petition the agency in writing.

(e) Within 30 days prior to a scheduled examination, an applicant may petition the agency in writing requesting that an oral examination be administered. The agency may consider substituting an oral examination for a written examination. An applicant petitioning for such examination must demonstrate to the agency that the written examination would not provide a fair and equal test of the applicant's knowledge of UST installation, repair, and removal.

(f) The agency shall notify an applicant of the results of the examination within 30 days of the administration of the examination.

(g) At any time within six months of the date the applicant is notified of the results of the examination, an applicant may personally inspect the examination in the agency’s office during normal business hours for the purpose of assessing the accuracy of the grading.

(h) At any time within six months of the applicant's examination results, an applicant who does not successfully complete the examination may request in writing that the agency furnish the applicant with an analysis of the applicant's performance.

(i) An examination shall be considered successfully completed when an applicant correctly answers 70% of the questions of the examination as described in subsection (a) of this section.

§334.420. Issuance of License A or License B.

(a) After an applicant meets the requirements of §334.416 of this title (relating to Requirements for Issuance of License A or License B), the agency shall issue the appropriate license to the applicant.

(b) The license shall not be transferable or assignable and shall be issued one time only.

(c) The agency shall issue a wallet size card indicating the expiration date of the license.

(d) A duplicate license to replace a lost or destroyed license shall be issued by the agency upon payment of the fee required by §334.423 of this title (relating to Fee Assessments for License A and License B).

§334.421. Renewal of License.

(a) All licenses will expire one year following issuance or renewal of the license.

(b) The agency shall notify each licensee in writing of the impending license expiration at least 60 days before the expiration. The agency shall furnish application forms for license renewal.

(c) A properly completed application for renewal shall be submitted to the agency 30 days prior to expiration. The application must be accompanied by the following:

(1) documentation of compliance with the continuing education requirements of this section; and

(2) the renewal fee prescribed by §334.423 of this title (relating to Fee Assessments for License A and License B).

(d) A properly completed application for renewal (including but not limited to proper payment of renewal fees and documentation of completion of required continuing education) shall be submitted to the agency at least 30 days prior to the expiration date of the license.

(1) If the applicant has not been notified by the agency of the renewal decision by the time the current license expires, and a complete renewal application was received 30 days prior to the

expiration date, then the license is considered provisionally renewed during that interim period between that expiration date and the date the agency notifies the applicant of the renewal decision;

(2) If a complete application for renewal is not filed at least 30 days prior to the expiration date of the current license, and the agency has not processed that late renewal application by the expiration date, the current license shall expire and will not be considered provisionally renewed. The license may be renewed any time within one year of the expiration date. Services performed after expiration, but before renewal, shall be considered to have been performed without a proper license under this subchapter.

(3) Licenses issued anytime during the one year period after the expiration date will have an expiration date of one year following the previous expiration date.

(e) If the license is not renewed within one year after the expiration date of the license, a new license shall not be issued until the person meets the requirements of §334.416 of this title (relating to Requirements for Issuance of License A and License B) and successfully completes a subsequent examination pursuant to §334.419 of this title (relating to License A and License B Examination).

(f) Upon proper completion of the license renewal process, the agency shall issue a wallet size card indicating the expiration date of the license.

(g) Continuing education requirements for renewal of licenses are as follows:

(1) License A - eight hours every two years.

(2) License B - eight hours every two years.

(3) License A and B - eight hours every two years for each license. Courses which are approved for both License A and B may be applied as credit for both licenses (for example: a holder of both License A and B may satisfy the requirement for both licenses by attending a course which is approved for eight hours for both licenses). Attendance at courses which are approved for only License A or License B will not be accepted as satisfying the requirement for 8 hours for both licenses.

(h) The training and educational courses required in subsection (g) of this section shall be approved by the agency and sponsored by educational or governmental institutions or recognized organizations including, but not limited to, the following:

(1) Petroleum Equipment Institute;

(2) American Petroleum Institute;

(3) Steel Tank Institute;

(4) National Association of Corrosion Engineers;

(5) Fiberglass Petroleum Tank and Pipe Institute;

(6) National Fire Protection Association; or

(7) other nationally recognized organizations.

(i) The renewal application shall submit a certificate of completion for the appropriate training and education courses required in subsection (g) of this section. The certificate shall be dated and signed by the designated sponsor's representative.

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

The agency shall deny the issuance of a license or request for renewal based on the following factors, including, but not limited to:

(1) when an applicant fails to achieve a passing grade on an examination as required in §334.419 of this title (relating to License A and License B Examination);

(2) when an applicant is found to have provided fraudulent or deceptive information;

(3) when an applicant fails to submit the required documentation as required by §334.417 of this title (relating to Application for License A and License B);

(4) when an applicant fails to pay the appropriate fee pursuant to §334.423 of this title (relating to Fee Assessments for License A and License B);

(5) when an applicant is identified by the Texas Guaranteed Student Loan Corporation (TGSLC) as being in default on loans guaranteed by the TGSLC, the agency will proceed as described in Texas Education Code, Chapter 57;

(6) delinquent child support payments: upon receipt of a final order suspending license, the agency will proceed as described in Texas Family Code, Chapter 232; or

(7) for other cause(s) which in the opinion of the executive director constitutes adequate ground(s) for denial.

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

(a) The following fee schedule for a License A and License B shall apply to installers and on-site supervisors:

(1) initial license application fee - $200;

(2) examination fee - $50.00 (retests only);

(3) annual license renewal fee - $175;

(4) late renewal fee - $25;

(5) duplicate license fee - $10.

(b) The license applicant shall not pay more than $200 for the initial license application fee and the examination fee.

(c) A license renewal application shall be considered late when received by the agency after the expiration date of the license and shall be subject to a late renewal fee.

(d) All fees addressed by this section are nonrefundable.

§334.424. Other Requirements for a License A and License B.

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

(1) change of employer;

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

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

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

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

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

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

(a) If the executive director determines good cause exists to suspend or revoke the license of an installer or on-site supervisor, the executive director shall request that the commission shall schedule a hearing before the hearing examiner or the commission. Such hearing shall be held only after proper notice has been provided to the license holder. Factors upon which a license may be suspended or revoked include, but are not limited to:

(1) failure by the holder of the license to follow the technical standards required for the installation, repair, or removal of tanks under this chapter;

(2) violations by the holder of the license of the provisions of this chapter;

(3) falsification of information or documents submitted to the agency;

(4) disposal of contaminated soils or water in a manner which violates state or federal law; or

(5) for other good cause as determined by the executive director.

(b) A license may be suspended for a period of up to one year, depending upon the seriousness of the offense(s). A license is revoked automatically upon a second suspension. At the request of the

license holder, or for other good cause shown, the license may be suspended indefinitely by the commission.

(c) A license shall be revoked for a period of one year, after which the holder of the revoked license may reapply for reinstatement pursuant to the requirements of §334.416 of this title (relating to Requirements for Issuance of License A and License B). The holder of license which has been revoked for a period of one year shall not have to meet the application requirements of §334.417(6) of this title (relating to Application for License A and License B) when applying for reinstatement. If a license is revoked a second time, the revocation shall be permanent.

(d) delinquent child support payments: not withstanding the requirements of subsections (a) - (c) of this section, upon receipt of a final order suspending license, the agency will proceed as described in Texas Family Code, Chapter 232.

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

(a) A proceeding to revoke or suspend the license of an installer or on-site supervisor must be commenced by:

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

(2) the commission on its own motion.

(b) If the executive director determines good cause exists to revoke or suspend the license of an installer or on-site supervisor, the executive director shall file a petition with the chief clerk and provide notice to the installer or on-site supervisor. To the extent possible, the procedure required to assess administrative penalties under Chapter 70 of this title (relating to Enforcement) shall be followed to revoke or suspend such a license under this subchapter.

(c) In response to a petition, or on its own motion to revoke or suspend the license of an installer or on-site supervisor, the commission may:

(1) suspend the license of an installer or on-site supervisor issued under this subchapter for any period it deems reasonable and necessary under the circumstances, but typically up to one year for a first suspension, and permanent revocation for a second suspension;

(2) place conditions on reinstatement of the license; and

(3) issue any other orders permitted by law.

(d) Revocation or suspension of the license is cumulative of any other remedies available to the commission by law.

SUBCHAPTER I: UNDERGROUND STORAGE TANK CONTRACTOR REGISTRATION AND INSTALLER LICENSING

§334.413, §334.429

STATUTORY AUTHORITY

These repeals are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. These repeals are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank.

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

§334.429. Penalties Effective On or After September 1, 1995.

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

§§334.452, 334.453, 334.455 - 334.463, 334.465 - 334.467

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank, and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors and continuing education requirements for installers and on-site supervisors.

§334.452. Exemptions from Subchapter J.

(a) The requirements of this subchapter do not apply to corrective action services which the party claiming the exemption can show were performed or offered to be performed at leaking petroleum storage tank (LPST) sites which are:

(1) completely exempt from regulation under §334.3(a) of this title (relating to Exemptions for Underground Storage Tanks ("USTs") and UST Systems) or §334.123 of this title (relating to Exemptions for ASTs); or

(2) completely excluded from regulation under §334.4(a) of this title (relating to Exclusions for Underground Storage Tanks ("USTs") and UST Systems) or §334.124 of this title (relating to Exclusions for ASTs);

(b) The requirements of this subchapter do not apply to corrective action specialists when the party claiming the exemption can show that corrective action services were completed on or prior to October 1, 1994. Any corrective action service commenced by a corrective action specialist on or after October 1, 1994, is subject to the requirements of this subchapter. Any corrective action service commenced by a corrective action specialist prior to October 1, 1994, which is still being performed on or after October 1, 1994, is subject to the requirements of this subchapter.

(c) The requirements of this subchapter do not apply to corrective action project managers when the party claiming the exemption can show that corrective action services were completed on or before January 1, 1995. Any corrective action service commenced by a corrective action project manager on or after January 1, 1995, is subject to the requirements of this subchapter. Any corrective action service commenced by a corrective action project manager prior to January 1, 1995, which is still being performed on or after January 1, 1995, is subject to the requirements of this subchapter.

(d) The requirements of this subchapter do not apply to:

(1) installation, repair, and removal of underground storage tanks (USTs) when conducted and supervised by persons or entities registered or licensed in accordance with Subchapter I of this chapter (relating to Underground Storage Tank Contractor Registration adnd Installer Licensing); and

(2) the following limited activities, but only when such activities are performed as part of an UST permanent removal-from-service project conducted under the direct supervision of an on-site supervisor licensed to remove USTs under Subchapter I of this chapter, and further subject to all appropriate requirements and standards in this subchapter, including enforcement authority:

(A) subject to prior written agency approval, excavation of contaminated soil when necessary for corrective action at the LPST site of an amount not to exceed 300 cubic yards of compacted materials (390 cubic yards of uncompacted materials) beyond the backfill unless specific prior written authorization from the agency is granted for additional excavation yardage;

(B) sampling of the excavated materials described in subparagraph (A) of this paragraph, and the floor and walls of the area excavated as necessary to determine levels of contamination as required by Subchapter C of this chapter (relating to Technical Standards) or Subchapter D of this chapter (relating to Corrective Action and Release Reporting);

(C) passive aeration and necessary routine tilling and sampling of the excavated materials described in subparagraph (A) of this paragraph in accordance with air program regulations; and

(D) lawful disposal of the excavated materials described in subparagraph (A) of this paragraph.

(e) The requirements of this subchapter do not apply to:

(1) the provision of alternate water supplies;

(2) analysis of samples by a laboratory.

(f) The requirements of this subchapter do not apply to emergency abatement actions described in §334.454 of this title (relating to Exception for Emergency Abatement Actions) if done in compliance with §334.454.

(g) The requirements of this subchapter do not apply to facilities which are authorized to store or treat petroleum-substance waste from more than one LPST site under the provisions of Subchapter K of this chapter (relating to Petroleum Substance Waste).

(h) The requirements of this subchapter do not apply to owners or operators, their direct employees, parent companies, or subsidiaries who on behalf of the owner or operator coordinate with, manage, or supervise corrective action specialists or corrective action project managers, or coordinate with the agency, or review the corrective action reports. The tank owners or operators, their direct employees, parent companies, or subsidiaries who conduct corrective action services are subject to all provisions of this subchapter.

(i) A professional engineer, duly licensed to practice engineering in the State of Texas, may become registered as a corrective action project manager by submitting a signed and sealed written request to that effect to the agency. With said written request, said engineer shall also provide a copy of his or her certificate of registration or licensure as a professional engineer, and a written statement from the Texas Board of Professional Engineers to the effect that the applicant is currently duly licensed to practice engineering in the State of Texas and that there is no indication that the applicant is not qualified to perform corrective action. Except as provided in subsection (j) of this section, an engineer who obtains registration as a corrective action project manager in this manner is subject only to the examination requirements, continuing education requirements, fees, and disciplinary procedures adopted by the Texas Board of Professional Engineers, and as such is generally exempt from the requirements in this subchapter which apply to corrective action project managers in the areas of examination, continuing education, fees and disciplinary procedures.

(j) A professional engineer who is currently duly licensed with the Texas Board of Professional Engineers, and who is also properly registered as a “corrective action project manager” in accordance

with the applicable requirements of this subchapter shall be subject only to the disciplinary procedures adopted by the Texas Board of Professional Engineers relative to any violations of the agency's requirements for corrective action activities which involve the “practice of engineering”, as defined in the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a, as amended, or which meet the definition of “engineering” or “professional engineering” or “professional engineering services” in the rules of the Texas Board of Professional Engineers (22 TAC §§131.1 et seq.), or which are otherwise within the statutory or regulatory jurisdiction of the Texas Board of Professional Engineers. A duly licensed professional engineer who is responsible for any other violations of agency requirements shall remain subject to all other applicable enforcement actions, sanctions, and penalties by the agency, as authorized under applicable law.

(1) When the agency determines that an alleged violation of the provisions of this chapter related to corrective action activities has been made by a registered corrective action project manager who is also duly licensed as a professional engineer by the Texas Board of Professional Engineers, the agency shall refer the matter to the Texas Board of Professional Engineers for appropriate disciplinary actions, enforcement, sanctions, or penalties, as applicable.

(2) If the Texas Board of Professional Engineers does not pursue appropriate disciplinary or enforcement actions due to a lack of statutory or regulatory authority or jurisdiction, or for any other reason, the agency shall reserve the authority to pursue all appropriate enforcement actions, sanctions, and or penalties, in accordance with applicable law and rules.

§334.453. General Requirements and Prohibitions.

(a) Requirements. Except as otherwise provided by this subchapter, on or after the effective date of these rules:

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

(2) all corrective action services covered by this subchapter must be supervised by a person registered as a corrective action project manager;

(3) all corrective action specialists and corrective action project managers shall perform corrective action services in accordance with accepted industry practices and standards and in accordance with all applicable local, state, and federal regulations;

(4) all reports submitted to the agency pertaining to corrective action covered by this subchapter must possess the signature of an authorized representative of the corrective action specialist and the corrective action project manager, and the corrective action registration numbers for the corrective action specialist and corrective action project manager;

(5) any person or entity performing corrective action services as a corrective action specialist at an leaking petroleum storage tank (LPST) site must prominently display their corrective

action registration number and the executive director's LPST number for the site on all LPST bids, proposals, offers, and drawings.

(b) Prohibitions.

(1) Except as otherwise provided by this subchapter, on or after the effective date of these rules:

(A) no person shall perform any corrective action services covered by this subchapter unless the person performing the service:

(i) is duly registered under this subchapter as a corrective action specialist; or

(ii) is offering to perform the service under the coordination of a duly registered corrective action specialist;

(B) no person shall commence or perform any corrective action service covered by this subchapter unless the person commencing or performing the service is duly registered under this subchapter as a corrective action specialist;

(C) no person shall perform, direct, allow, or cause any corrective action service covered by this subchapter to be performed unless the corrective action service is being performed by or coordinated by a duly registered corrective action specialist;

(D) no person offering to perform corrective action service may enter into a contract for any corrective action service unless he provides the owner or operator or other person who directs, causes, or authorizes the service with notice of corrective action in the manner required by §334.455 of this title (relating to Notice to Owner or Operator);

(E) no person or entity who submits the following types of information to the executive director shall submit information which they know or reasonably should have known to be false or deceptive:

(i) an application for registration or renewal submitted to the executive director under this subchapter; or

(ii) an application for reimbursement submitted to the executive director under Subchapter H of this chapter (relating to Reimbursement Program);

(iii) any report submitted to the executive director in the course of performing corrective action on an LPST site; or

(iv) an affidavit to the executive director regarding notice of corrective action under §334.455 of the title.

(2) Except as otherwise provided by this subchapter, on or after the effective date of these rules:

(A) no person shall commence or perform any corrective action service covered by this subchapter unless the person commencing or performing the service is duly registered under this subchapter as a corrective action project manager;

(B) no person shall supervise the performance of any corrective action service covered by this subchapter unless the person supervising is duly registered under this subchapter as a corrective action project manager;

(C) no person shall perform, direct, allow, or cause any corrective action service covered by this subchapter to be performed unless the corrective action service is being supervised by a person duly registered under this subchapter as a corrective action project manager;

(D) no person or entity offering to perform or performing corrective action services as a corrective action specialist shall represent that they are registered under this subchapter or represent that any corrective action services they perform are subject to reimbursement by the agency

unless the person or entity making such representation possesses a valid certificate of registration issued under this subchapter;

(E) no person or entity who is a registered underground storage tank contractor or a licensed installer or on-site supervisor pursuant to Subchapter I of this chapter (relating to Underground Storage Tank Contractor Registration and Installer Licensing) shall represent that they are authorized to perform any corrective action service covered by this subchapter except as provided under §334.452(d) of this title (relating to (Exemptions from Subchapter J) unless that person or entity is registered as a corrective action specialist pursuant to this subchapter.

(c) Any violation of this section or any other requirements of this subchapter shall be subject to enforcement including administrative, civil, and/or criminal penalties as provided in Chapter 70 of this title (relating to Enforcement) and Texas Water Code, Chapter 7.

(d) Corrective action specialists and/or corrective action project managers may be held responsible and subject to enforcement including administrative, civil, and/or criminal penalties for any violation of this section or any other requirements of this subchapter by them or by any other person performing corrective action services under their supervision or coordination.

(e) Any penalty assessed or order issued under this section is cumulative of any other remedies available to the agency.

§334.455. Notice to Owner or Operator.

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

(b) The notice requirements of this section apply regardless of whether or not the person offering the services is working directly for an owner or operator. The notice of corrective action must be given to the owner or operator prior to the time when the offer to perform corrective action services is accepted.

(c) The notice must contain the following:

(1) whether the person or entity is registered pursuant to this subchapter;

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

(3) proof of commercial liability insurance required in §334.456(2)(D)(i) of this title (relating to Application for Certificate of Registration for Corrective Action Specialist); and

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

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

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

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

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

(1) The registration of a corrective action specialist with the agency does not constitute endorsement, licensing, or promotion of any corrective action specialist. Registration does not imply

that the agency guarantees the quality of the work performed or that the cost of the work may be reimbursed.

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

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

As determined by the executive director, an application for registration as a corrective action specialist shall meet the following requirements.

(1) The application shall be made on a form provided or approved by the executive director.

(2) The application shall include at a minimum:

(A) the applicant's business name, business mailing address and telephone number, and permanent physical address;

(B) an authorized representative's name and title, when the applicant is not an actual individual;

(C) the address, telephone number, and authorized representative for any branch office that will be operating under the issued certificate of registration;

(D) documentation of:

(i) proof of comprehensive general liability insurance designating the Texas Natural Resource Conservation Commission as the certificate holder in an amount of not less than $1 million and of a type approved by the executive director; and

(ii) one of the following:

(I) a financial statement (balance sheet) prepared in conformity with accounting principles as defined by the American Institute of Public Accountants, indicating an applicant's current (not more than 12 months old) net worth of not less than $25,000 that is signed by the applicant's representative; or

(II) a letter from a certified public accountant, who is not employed by the applicant or does not receive payment from the applicant on a regular basis, verifying the applicant’s net worth to be not less than $25,000;

(E) documentation of quality of performance including one of the following:

(i) sworn statements, on forms approved by the executive director, from at least three references, not related by blood or marriage, for whom the applicant performed corrective action services, within the immediately preceding 24 months. Applicable corrective action experience shall not be limited to experience gained at leaking petroleum storage tank sites, but shall also include corrective actions conducted pursuant to the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Oil Spill Prevention and Response Act; the Texas Water Code, Chapter 26; or any corrective action conducted under the auspices of the Texas Water Commission, the General Land Office, the Texas Railroad Commission, or the United States Environmental Protection Agency. These statements shall also attest to the applicant's job reliability and the client's satisfaction of performance. Such statements shall also include a description of the type of corrective action services work including engineering, geology, or hydrogeology which was performed by the applicant and the physical address where the activity occurred; or

(ii) a written explanation indicating good cause as determined by the executive director for not providing the sworn statements required in clause (i) of this subparagraph. For the purposes of this subsection, an applicant's experience under the supervision of a registered corrective action project manager may be sufficient documentation of quality of performance if the executive director determines that the applicant had substantial involvement in the decision-making process during the performance of the work. The written explanation shall include a detailed

description of three case histories of corrective action services performed by the applicant during the previous 24 months.

(3) The applicant shall submit a completed application that contains a sworn statement from the applicant attesting to the accuracy of the information provided to the executive director.

(4) The applicant shall submit payment for applicable fees as provided by §334.467 of this title (relating to Fee Assessments for Certificates of Registration).

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

An application for registration as a corrective action project manager shall meet the following requirements:

(1) Applications for a certificate of registration shall be made on forms provided or approved by the executive director.

(2) Application for certificate of registration shall include at a minimum:

(A) business mailing address and telephone number, and permanent physical address;

(B) documentation of quality of performance including one of the following:

(i) sworn statements, on forms approved by the executive director, from at least three references, not related by blood or marriage, for whom the applicant has performed corrective action services, within the immediately preceding 24 months. Applicable corrective action experience shall not be limited to experience gained at leaking petroleum storage tank sites, but shall also include relevant professional experience derived while working in the oil and gas industry, and corrective actions conducted pursuant to the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Oil Spill Prevention and Response Act; the Texas Water Code, Chapter 26; or any corrective action conducted under the auspices of the Texas Water Commission, the General Land Office, the Texas Railroad Commission, or the United States Environmental Protection Agency. These statements shall also attest to the applicant's job reliability and the client's satisfaction of performance. Such statements shall also include a description of the type of corrective action services including engineering, geology, or hydrogeology which was performed by the applicant and the physical address where the activity occurred; or

(ii) a written explanation indicating good cause as determined by the executive director for not providing the sworn statements required in clause (i) of this subparagraph. For the purposes of this subsection, an applicant's experience under the supervision of a registered corrective action project manager may be sufficient documentation of quality of performance if the executive director determines that the applicant had substantial involvement in the decision-making process during the performance of the work. The written explanation shall include a detailed

description of three case histories of corrective action services performed by the applicant during the previous 24 months; or

(3) At the time of applying for registration as a corrective action project manager, the applicant shall qualify under either option in subparagraph (A) or (B) of this paragraph:

(A) two years of experience in corrective action services, as described in paragraph (2)(B)(i) of this subsection, and passage of a registration examination prepared and administered by the agency or an entity authorized by the agency, and a bachelor's degree from an accredited college or university in a physical science, natural science, biological science, environmental science, engineering, applied geography, or in a subject directly relevant to the environmental field which is technical in focus. (For each degree relied upon, the applicant shall include with the registration application an original official transcript from the college or university where the degree was taken.)

(i) a bachelor's degree from an accredited college or university in a physical science, natural science, biological science, environmental science, engineering, applied geography, or in a subject directly relevant to the environmental field which is technical in focus (for each degree relied upon, the applicant shall provide with the registration application an original official transcript from the college or university where the degree was taken); or

(ii) current license as a professional engineer in Texas. The registration examination requirement is waived for qualified professional engineers who are currently duly licensed to practice engineering in the State of Texas, as provided in §334.452(i) of this title (relating to Exemptions From Subchapter J);

(B) four years of experience in corrective action services, as described in paragraph (2)(B)(i) of this subsection, and the passage of a registration examination prepared and administered by the agency or an entity authorized by the agency.

(4) The applicant shall submit a completed application that contains a sworn statement from the applicant attesting to the accuracy of the information provided to the executive director.

(5) The applicant shall submit payment for applicable fees as provided by §334.467 of this title (relating to Fee Assessments for Certificates of Registration).

(6) The applicant must take a registration examination within 120 days after the agency's approval of the application. Failure to take the examination within the allowed time will result in denial of the application. An applicant who has received a denial may reapply for a registration.

§334.458. Review and Issuance of Certificates of Registration.

(a) An application for a certificate of registration for a corrective action specialist is complete when the executive director has received all the information required by §334.456 of this title (relating to Application for Certificate of Registration for Corrective Action Specialist). An application for a certificate of registration for a corrective action project manager is complete when the executive director has received all the information required by §334.457 of this title (relating to Application for Certificate of Registration for Corrective Action Project Manager).

(b) Upon receipt of an application, the executive director shall review the application for completeness. If it is determined that the application is not complete, the applicant shall be informed in writing within 45 days of any deficiency and informed what additional information is required for processing. The applicant shall have 30 days from the date noted on the executive director's written comments to submit the requested additional information. If the executive director does not receive all of the information required within the 30 days prescribed, review will cease and the application will be returned to the applicant. An applicant whose application has been returned under this subsection may reapply for a certificate of registration at any time by resubmitting a new application in accordance with §334.457 of this title.

(c) The executive director shall issue the applicant a certificate of registration within 45 days if:

(1) the application is complete including payment of the applicable fees; and

(2) the applicant meets the education and/or experience criteria required by §334.456 of this title or §334.457 of this title, as applicable.

(d) A certificate of registration issued under this subchapter is not transferable, and must be renewed as prescribed in §334.460 of this title (relating to Renewal of Certificate of Registration for Corrective Action Specialist and Registration for Corrective Action Project Manager).

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

(a) Except as provided with regard to professional engineers in 334.452(i) of this title (relating to Exemptions From Subchapter J), a person must complete a minimum of 32 hours of continuing education instruction to renew the registration (sixteen hours of continuing education instruction hours are required for the annual renewals during the designated period as prescribed in §334.460 of this title (relating to Renewal of Certificate of Registration for Corrective Action Specialist and Registration for Corrective Action Project Manager)). To count towards the required hours, each hour of instruction used must have been completed prior to the date on which a completed application for renewal is submitted. A single continuing education course may not be used for more than one renewal. "Hours of instruction" as used in this section refers to actual time spent in instruction, rather that credits assigned to a course.

(b) To be counted toward the continuing education requirement, each hour of instruction must be in:

(1) environmental contamination assessment or remediation at a leaking petroleum storage tank (LPST) site or other types of relevant sites;

(2) handling, treatment, or recycling of contaminated media;

(3) sampling techniques, accepted protocol, and quality assurance/quality control;

(4) groundwater hydrogeology;

(5) risk assessment applicable to corrective action for environmental contamination; or

(6) any other subject which has application in the field of assessment and remediation of LPST site contamination.

(c) The training and education courses prescribed in subsection (b) of this section shall be evaluated and accepted by the executive director and provided by educational institutions, governmental institutions, recognized professional organizations, or private businesses, including, but not limited to:

(1) National Ground Water Association;

(2) United States Environmental Protection Agency; or

(3) other recognized professional organizations, or private businesses designated by the executive director as eligible for use toward the continuing education requirements of this section.

(d) The training and educational courses may include instructional courses, seminars, workshops, and conferences.

(e) Courses taken to fulfill Occupational Safety and Health Agency requirements will not count towards the required continuing education instruction hours.

(f) Corrective action project managers shall submit to the executive director certificates of completion for the training and education courses required by this section with the application for renewal of registration. The certificates of completion shall be dated and signed by the designated provider.

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

(a) As of the effective date of this rule, the agency will transition to renewal of certificates of registration on a two-year basis. For one year after the effective date of this subsection, existing certificates with even registration numbers will be renewed for one year and certificates with odd

registration numbers will be renewed for two years. Following this designated period, each certificate of registration issued under this subchapter shall expire two years from the original date of issuance or two years from the last date of expiration.

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

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

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

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

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

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

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

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

(2) If a complete application for renewal is not filed at least 30 days prior to the expiration date of the current registration and the executive director has not processed the renewal application, the current registration shall expire and will not be considered provisionally renewed. The registration may be renewed within 60 days of the expiration date. Corrective action services performed after expiration, but before renewal, shall be considered to have been performed without a proper registration under this subchapter.

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

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

§334.461. Denial of Certificate of Registration.

The executive director may deny a certificate of registration or request for renewal of certificate upon the following reasons, including, but not limited to:

(1) when an applicant registering or renewing registration as a corrective action specialist or corrective action project manager fails to timely and completely submit the information and fees required by this subchapter for the registration or renewal being sought;

(2) when the executive director determines that an applicant has submitted information which he knows or reasonably should have known to be false or deceptive, whether the information is on:

(A) an application for registration or renewal submitted to the executive director under this subchapter;

(B) an application for reimbursement submitted to the executive director under Subchapter H of this chapter (relating to Reimbursement Program);

(C) any report submitted to the executive director in the course of performing corrective action on an leaking petroleum storage tank site; or

(D) an affidavit to the executive director regarding notice of corrective action under §334.455 of the title (relating to Notice to Owner or Operator);

(3) when an applicant has performed, offered to perform, or supervised corrective action without possessing a valid certificate of registration pursuant to this subchapter;

(4) when the applicant has performed, or has allowed to be performed, corrective action or disposed of soils, tank systems, wastes, or other materials generated by corrective action in a manner prohibited by applicable state, local, or federal laws;

(5) when the applicant has not performed corrective action services in accordance with acceptable industry practices and standards;

(6) when an applicant is identified by the Texas Guaranteed Student Loan Corporation (TGSLC) as being in default on loans guaranteed by the TGSLC, the agency will proceed as described in Texas Education Code, Chapter 57;

(7) delinquent child support payments: upon receipt of a final order suspending license, the agency will proceed as described in Texas Family Code, Chapter 232; or

(8) for any other cause which in the opinion of the executive director constitutes reasonable grounds for denial.

§334.462. Other Requirements.

(a) All registered corrective action specialists shall notify the executive director in writing within 30 days of any change which occurs during the validated year. Such changes shall include, but are not limited to:

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

(2) change of physical address;

(3) change in status of insurance;

(4) change of authorized representative as described in §334.456(2)(B) of this title (relating to Application for Certificate of Registration for Corrective Action Specialist);

(5) permanent cessation of corrective action business or corrective action activities;

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

(7) change in the number of branch offices conducting corrective action services in Texas, or change of branch office name, address, or telephone number.

(b) A registered corrective action specialist is required to maintain such financial information required by §334.456(2)(D) of this title (relating to Application for Certificate of Registration for Corrective Action Specialist) throughout the period during which that person performs activities which require registration as a corrective action specialist under this subchapter.

(c) Except as provided with regard to professional engineers in 334.452(i) of this title (relating to Exemptions From Subchapter J), a corrective action project manager is required to complete the continuing education requirement as provided by §334.459 of this title (relating to Continuing Education for Corrective Action Project Managers).

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

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

(a) The commission may revoke or suspend the certificate of registration of a corrective action specialist for reasons including, but not limited to:

(1) when a corrective action specialist submits information to the executive director which the corrective action specialist knows or reasonably should have known to be false or deceptive, whether the information is on:

(A) an application for registration or renewal submitted to the executive director under this subchapter;

(B) an application for reimbursement submitted to the executive director under Subchapter H of this chapter (relating to Reimbursement Program);

(C) any report submitted to the executive director in the course of performing corrective action on an leaking petroleum storage tank (LPST) site;

(D) an affidavit to the executive director regarding notice of corrective action under §334.455 of this title (relating to Notice to Owner or Operator); or

(E) any other report or document filed with the agency or any other governmental agency having applicable jurisdiction;

(2) when a corrective action specialist provides corrective action services covered by this subchapter without having the services supervised by a corrective action project manager duly registered under this subchapter;

(3) when a corrective action specialist or a person performing corrective action services under the supervision or coordination of a corrective action specialist has performed corrective

action or disposed of soils, tank systems, wastes, or other materials generated by corrective action in a manner prohibited by applicable state, local, or federal laws;

(4) when a the corrective action specialist has failed to maintain commercial liability insurance required in §334.456(2)(D)(i) of this title (relating to Application for Certificate of Registration for Corrective Action Specialist);

(5) when a corrective action specialist, or a person performing corrective action services under the supervision or coordination of a corrective action specialist, violates any requirement or prohibition of this subchapter; or

(6) for any other cause which in the opinion of the executive director or commission constitutes reasonable grounds for suspension or revocation.

(b) The commission may revoke or suspend the certificate of registration of a corrective action project manager for reasons including, but not limited to:

(1) when a corrective action project manager submits information to the executive director which the corrective action project manager knows or reasonably should have known to be false or deceptive, whether the information is on:

(A) an application for registration or renewal submitted to the executive director under this subchapter;

(B) an application for reimbursement submitted to the executive director under Subchapter H of this chapter;

(C) any report submitted to the executive director in the course of performing corrective action on an LPST site;

(D) an affidavit to the executive director regarding notice of corrective action under §334.455 of this title; or

(E) any other report or document filed with the agency or any other governmental agency having applicable jurisdiction;

(2) when a corrective action project manager, or a person performing corrective action services under the supervision of a corrective action project manager, has performed corrective action or disposed of soils, tank systems, wastes, or other materials generated by corrective action in a manner prohibited by applicable state, local, or federal laws;

(3) when a corrective action project manager, or a person performing corrective action services under the supervision or coordination of a corrective action project manager, violates any requirement or prohibition of this subchapter; or

(4) for any other cause which in the opinion of the agency constitutes reasonable grounds for suspension or revocation.

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

(a) A proceeding to revoke or suspend a certification of registration for a corrective action specialist or a corrective action project manager must be commenced by:

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

(2) the commission on its own motion.

(b) If the executive director determines that good cause exists to revoke or suspend a certificate of registration of a corrective action specialist or a corrective action project manager, the executive director shall file a petition with the chief clerk and provide notice to the corrective action specialist or corrective action project manager. To the extent possible, the procedure required to assess administrative penalties under Chapter 70 of this title (relating to Enforcement) shall be followed to revoke or suspend a certification of registration under this subchapter.

(c) In response to a petition, or on its own motion to revoke or suspend a certificate of registration, the commission may:

(1) suspend a certification of registration issued under this subchapter for any period it deems reasonable and necessary under the circumstances, but typically up to one year for a first suspension, and permanent revocation for a second suspension;

(2) place conditions on reinstatement of registration; and

(3) issue any other orders permitted by law.

(d) Revocation or suspension of a certificate of registration is cumulative of any other remedies available to the agency by law.

(e) delinquent child support payments: not withstanding the requirements of subsections (a) - (d) of this section, upon receipt of a final order suspending license, the agency will proceed as described in Texas Family Code, Chapter 232.

§334.466. Reinstatement of a Certificate of Registration.

(a) A certificate of registration which has not expired during the period that the holder of the certificate is under suspension shall be reinstated upon termination of the suspension period. The

agency shall notify the certificate holder of the registration's reinstatement at least ten days prior the expiration of the suspension period.

(b) If the period of suspension exceeds the expiration date of the certificate of registration, the holder of the certificate must reapply for a new registration pursuant to the requirements of §334.456 of this title (relating to Application for Certificate of Registration as Corrective Action Specialist) or pursuant to the requirements of §334.457 of this title (relating to Application for Certificate of Registration as Corrective Action Project Manager).

(c) The holder of a certificate, including a professional engineer, that has been revoked by the agency may file a new application for registration under this subchapter following the period of revocation. A corrective action project manager whose certificate of registration is revoked will be subject to the same continuing education requirements as a new registrant under §334.457 of this title at the time a new application is filed.

§334.467. Fee Assessments for Certificates of Registration.

(a) The following fee schedule shall apply to the registration of corrective action specialists:

(1) initial application fee - $400;

(2) renewal fee:

(A) one-year renewal - $175;

(B) two-year renewal - $350;

(3) late renewal fee:

(A) one-year renewal - $25;

(B) two-year renewal - $50;

(4) duplicate certificate of registration - $10;

(5) application to change certificate of registration - $70;

(b) The following fee schedule shall apply to the registration of corrective action project managers, except qualified professional engineers who are currently duly licensed to practice engineering in the State of Texas, as provided in §334.452(i) of this title (relating to Exemptions From Subchapter J):

(1) initial application fee - $250, includes the initial $50 examination fee;

(2) examination fee - $50 (required for retakes);

(3) renewal fee:

(A) one-year renewal - $75;

(B) two-year renewal - $150;

(4) late renewal fee:

(A) one-year renewal - $25;

(B) two-year renewal - $50;

(5) duplicate certificate of registration - $10;

(c) An application for renewal shall be considered late when received by the agency after the expiration date of the certificate and shall be subject to the late renewal fee.

(d) All fees addressed by this section are non-refundable.

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

§§334.481, 334.482, 334.484 - 334.488, 334.490, 334.492 - 334.497, 334.499 - 334.504, 334.506 - 334.508

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank.

§334.481. Definitions.

Except as provided in this subchapter, the following words and terms, when used in this subchapter, shall have the meanings prescribed in §334.2 of this title (relating to Definitions), unless the word or term is redefined in this subchapter or unless the context clearly indicates otherwise. Words used in more than one subchapter are defined in Subchapter A of this chapter (relating to

General Provisions). Words widely used in more than one chapter are defined in Chapter 3 of this title (relating to Definitions).

(1) **Active life -** The period from the initial receipt of waste at the facility until the executive director receives certification of final closure.

(2) **Active portion** - That portion of a facility where treatment, or storage operations are being or have been conducted and which is not a closed portion. (See also "closed portion" and "inactive portion").

(3) **Aquifer** - A geologic formation, group of formations, or part of a formation capable of yielding groundwater to wells or springs.

(4) **Area subject to active shoreline erosion** - A coastal area where shoreline erosion has been documented within historic time.

(5) **Areas of direct drainage** - Those land areas from which surface water runoff could flow into a lake or other surface water used to supply public drinking water.

(6) **Authorized** - Allowed in writing by agency registration, by order, by permit, by license, or by rule.

(7) **Authorized Representative** - The person designated by the owner or operator to represent the facility or the person designated by the waste generator as the generator's representative.

(8) **Class A facility** - A facility which will at any time store or treat petroleum-substance contaminated soils generated from more than one leaking petroleum storage tank (LPST) site.

(9) **Class B facility** - A mobile treatment unit which will treat petroleum-substance soils from only one LPST site at a time at that LPST site. The petroleum-substance soils treated at that site must have originated from that site.

(10) **Class C facility** - A facility located elsewhere than the LPST site but which will store or treat petroleum-substance soils generated from only that one LPST site.

(11) **Class D facility** - A facility located at the LPST site which will store or treat the petroleum-substance soils generated from only that site.

(12) **Clean fill standard** - Soil which is no longer considered waste.

(13) **Closed portion** - That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(14) **Contingency plan** - A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of waste or waste constituents which could threaten human health and safety or the environment.

(15) **Critical habitat of a endangered species** - An area that is determined by the United States Fish and Wildlife Service to be a critical habitat for an endangered species.

(16) **Designated facility** - The authorized storage, treatment, or disposal facility that has been designated on the petroleum-substance waste manifest by the generator.

(17) **Discharge** - The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(18) **Disposal** - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste (whether containerized or noncontainerized) into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwater.

(19) **Disposal facility** -- A facility or part of a facility at which waste is intentionally placed into or on any land or water or adjacent to any water, and at which such waste will remain.

(20) **Effective substitute** - A substance which may be used in the place of another substance for the same purpose without creating adverse environmental conditions.

(21) **Erosion** - The group of natural processes, including weathering, deterioration, detachment, dissolution, abrasion, corrosion, wearing away, and transportation, by which earthen or rock material is removed from any part of the earth's surface.

(22) **Existing Portion** - That land surface area of an existing waste management unit, on which wastes have been placed prior to the issuance of a registration.

(23) **Facility** - Includes structures, other appurtenances, and improvements on the land for storing or treating petroleum-substance waste. A facility may consist of several storage or treatment operational units. A facility may also be a mobile treatment unit.

(24) **Facility Operator** - The person responsible for the overall operation of a facility or an operation unit (i.e., part of facility), e.g., the plant manager, superintendent, or person of equivalent responsibility for the regulated activity.

(25) **Facility Owner** - The person who owns a facility or part of a facility.

(26) **Final closure** - The closure of all waste management units at the facility in accordance with all applicable closure requirements.

(27) **Generator** - Any person who produces petroleum-substance waste; any person who stores or treats petroleum-substance waste; any person who possesses petroleum-substance waste to be shipped to any other person; or any person whose act first causes the petroleum-substance waste to become subject to regulation under this subchapter.

(28) **Groundwater** - Water below the land surface in a zone of saturation.

(29) **Hazardous waste** - Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq., as amended.

(30) **Inactive portion** - That portion of a facility which is not operated. (See also "active portion" and "closed portion.")

(31) **In operation** - Refers to a facility which is treating or storing petroleum-substance waste.

(32) **In-situ treatment** - The reduction of contaminant levels in soil or groundwater which is conducted without removing the contaminated media from the ground.

(33) **Interim registration** - Authorization for a storage or treatment facility received by the facility up to September 25, 1992.

(34) **Land disposal facility** - Any landfill, surface impoundment, waste pile, injection well, or other facility at which waste is finally disposed.

(35) **Land surface treatment facility** - A facility, unit, or part of a facility at which waste is applied onto a liner on the soil surface during treatment.

(36) **Liner** - A continuous layer of man-made materials, beneath and on the sides of a surface area which restricts the downward and lateral escape of waste, waste constituents, or leachate.

(37) **Maximum allowable inventory** - The maximum amount of petroleum contaminated soil (not including soil that meets the “Clean fill standard” criteria) that may be at a registered facility at any one time. The maximum allowable inventory amount will be designated in the application for registration and will be the basis for the facility closure cost estimate required to meet financial assurance requirements.

(38) **New petroleum-substance waste management facility** - Any facility to be used for the storage or treatment of petroleum-substance waste and which is not an existing petroleum substance waste management facility.

(39) **One hundred-year floodplain** - Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

(40) **On-site** - The same or geographically contiguous property which may be divided by public or private rights-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which that person controls and to which the public does not have access, is also considered on-site property.

(41) **PST-Waste Manifest** - The form furnished by the agency to accompany shipments of petroleum-substance waste to track the movement and transference of petroleum-substance waste.

(42) **Partial closure** - The closure of a petroleum-substance waste management unit in accordance with the applicable closure requirements at a facility that contains other active petroleum-substance waste management units.

(43) **Personnel or facility personnel** - All persons who work at or oversee the operations of a waste management facility, and whose actions or failure to act may result in noncompliance with the requirements of this subchapter.

(44) **Petroleum substance waste** - Any waste, excluding hazardous waste and liquid wastes, which is generated as a result of a release of a petroleum substance from an underground

storage tank or a petroleum product from an aboveground storage tank regulated by the commission pursuant to the Texas Water Code, Chapter 26, Subchapter I.

(45) **Public water system** - A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly services an average of at least 25 individuals daily at least 60 days out of the year.

(46) **Registration** - Written authorization issued by the executive director, which, by its conditions, may authorize the registrant to construct, install, modify, or operate a petroleum-substance waste storage or treatment facility or unit in accordance with specified limitations.

(47) **Representative sample** - A sample of a universe or whole (e.g., waste pile, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(48) **Reuse of petroleum-substance wastes** - The process by which a petroleum-substance waste is utilized as an effective substitute for a commercial product, such as the proper use as a component of stabilized road base or use as fill for LPST tankholds.

(49) **Run-off** - Any rainwater, leachate, or other liquid that drains over or into land from any part of a facility, land surface treatment unit, or stockpile.

(50) **Run-on** - Any rainwater, leachate, or other liquid that drains over land onto or into any part of a facility, land surface treatment unit, or stockpile.

(51) **Saturated zone or zone of saturation** - That part of the earth's crust in which all voids are filled with water.

(52) **Secondary containment** - A system designed and constructed to collect rainfall run-on and to contain spills, leaks, or discharges within the facility without environmental contamination until such waste can be removed.

(53) **Shipment** - Any action involving the conveyance of petroleum-substance waste by any means to or from a site.

(54) **Sole-source aquifer** - An aquifer designated pursuant to the Safe Drinking Water Act, §1424(e) which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health.

(55) **Spill** - The spilling, leaking, pumping, emitting, emptying, or dumping of wastes or materials which, when spilled, become wastes into or on any land or water.

(56) **Storage** - The holding of petroleum-substance waste for a temporary period, prior to the final treatment, disposal of, reuse, or storing of the waste elsewhere.

(57) **Stockpile** - A soil storage area from which all petroleum-substance wastes are removed for treatment or final disposition and from which all wastes are removed at the time of closure of the facility.

(58) **Thermal treatment unit** - An enclosed device using controlled flame combustion, microwave, UV, infrared, or other thermal treatment process.

(59) **Treatment** - Methods which are designed to change, by physical, chemical, or biological means, the levels of contamination of the waste to render the waste suitable for reuse or disposal.

(60) **Treatment facility** - A facility or unit which treats, recycles, and/or reuses petroleum-substance wastes.

(61) **Transporter** - Any person who conveys or transports petroleum-substance waste by truck, ship, pipeline, or other means.

(62) **Unsaturated zone or zone of aeration** - The zone between the land surface and the water table.

(63) **Uppermost aquifer** - The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(64) **Waste management area** - Any area on which one or more waste management units resides.

(65) **Waste management unit** - A contiguous area of land on or in which petroleum substance waste is placed, or a structure or machine used to store or treat waste pursuant to a registration issued under this subchapter. Examples of waste management units include a waste stockpile, a land surface treatment area, a thermal treatment unit, a stockpile, a tank and its associated piping and underlying containment system, and a container storage area.

(66) **Wetlands** - Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

§334.482. General Requirements.

(a) No person may cause, suffer, allow, or permit the storage, treatment, transport, reuse, or disposal of petroleum-substance waste except as authorized by this subchapter and the rules of the commission.

(b) Prior to proceeding in any manner that differs from the requirements of this subchapter, the generator and/or an authorized representative of the treatment facility must secure written agency approval in the form of a variance in accordance with this section.

(c) The agency has authority to review and approve requests for variances from the requirements of this subchapter. The agency may approve such requests only if the generator and/or an authorized representative of the treatment facility can demonstrate to the satisfaction of appropriate agency staff that the proposed alternative procedure is protective of human health and safety and the environment.

(d) Any request to the agency for approval of a variance must be made in writing, must be signed and dated by the generator and/or an authorized representative of the treatment facility, and must be accompanied by complete project identification and documentation as requested by agency staff.

(e) If a variance is granted by the agency, the generator and treatment facility must maintain complete copies of the variance and supporting documentation (including the request for the variance) in

the manner described in §334.497 (relating to Recordkeeping and Reporting Procedures Applicable to Generators).

(f) Once a person has received a written variance from the agency under this subsection, that person must adhere to the terms of that variance as written or to the rule requirements for which the variance was sought.

§334.484. Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities.

(a) A person shall submit the required application and receive the appropriate registration issued after December 27, 1996, prior to storing or treating petroleum-substance wastes at a new Class A facility or treating soil utilizing a new Class B waste management facility.

(b) A person may not commence physical construction of a new Class A or utilize a Class B petroleum-substance waste management facility without first having submitted the required application and received the appropriate registration unless otherwise authorized by the agency.

(c) Any person who intends to store or treat petroleum-substance waste at a Class A or Class B facility after December 27, 1996, must submit an application for registration on a form approved by the agency. Such person must submit information to the executive director which is sufficiently detailed and complete to enable the agency to determine whether such storage or treatment is compliant with the terms of this subchapter. Such information shall include, at a minimum:

(1) information concerning the location of the facility;

(2) identification of the facility owner, facility operator, and landowner;

(3) the job descriptions of all key operating personnel;

(4) documentation on the proposed access routes to the facility, proposed daily volumes of traffic associated with the facility, and confirmation on the suitability of roads leading to the facility;

(5) waste storage, management, handling, and shipping methods;

(6) waste treatment methods;

(7) waste sampling and analytical methods;

(8) disposition or reuse documentation;

(9) recordkeeping requirements;

(10) security and emergency procedures;

(11) facility closure plan and closure cost estimate (see §334.508 of this title (relating to Closure Requirements Applicable to Class A and Class B Facilities));

(12) facility plans and specifications;

(13) site maps and vicinity maps;

(14) documentation on the land use in the vicinity of the facility;

(15) identification of all potential contaminant receptors in the vicinity, including any water wells within 1,000 feet;

(16) documentation on the financial assurance required (see Chapter 37, Subchapter K of this title (relating to Financial Assurance Requirements for Class A or B Petroleum-Substance Contaminated Soil Storage, Treatment, and Reuse Facilities));

(17) documentation on all required restrictive easements;

(18) the geology and hydrogeology where the facility is located;

(19) documentation on the effectiveness of the treatment method;

(20) documentation of the receipt of any additional authorization required by any other federal, state, or local regulatory agency; and

(21) any other information as the agency may deem necessary to determine whether the facility and operation thereof will comply with the requirements of this subchapter. The application shall be submitted to the agency's central office.

(d) If the applicant is other than an individual, the application must be signed by the owner or operator of the facility, the president or chief executive officer of the company, or all the partners of the company.

(e) Any person who stores or treats petroleum-substance waste shall have the continuing obligation to immediately provide written notice to the agency of any changes or additional information concerning the information submitted to the commission or activities authorized in any registration within 15 days of the change or from the date the additional information was acquired.

(f) Any information required by this subsection must be submitted to the agency's office in Austin.

(g) The registration is not transferable to any other facility or facility owner. Any transfer of ownership shall require a change in registration of the facility. However, a change in registration of a

facility shall not relieve the transferor of any liability which may have been incurred prior to the change in registration.

(h) The applicant or a person affected may file with the chief clerk of the commission a motion for reconsideration under §50.39(b) - (f) of this title (relation to Motion for Reconsideration) of the agency's final approval or denial of an application for registration.

§334.485. Suspension or Revocation of Registration.

(a) A registration may be suspended or revoked for the following reasons:

(1) if the registrant fails to maintain complete and accurate records required under this subchapter;

(2) if the registrant falsifies information in, or omits material information from, any records or documents maintained, received, or required by this chapter;

(3) if the registrant fails to comply with any rule or order entered by the commission pursuant to the requirements of Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks);

(4) if the registrant fails to maintain financial assurance as required by this subchapter and Chapter 37, Subchapter K of this title (relating to Financial Assurance Requirements for Class A or B Petroleum-Substance Contaminated Soil Storage, Treatment, and Reuse Facilities);

(5) if the registrant exceeds maximum allowable inventory without prior written authorization from the agency; or

(6) for any good cause which, in the opinion of the executive director, constitutes grounds for suspension or revocation of the registration.

(b) If the executive director determines that good cause exists for suspension or for revocation of a registration, the executive director will petition the commission for an order, suspending or revoking the registration.

(1) The executive director will notify the registrant in writing, by registered or certified mail, of the grounds for the suspension or revocation, and provide the registrant with an opportunity for hearing on the executive director's petition.

(2) The executive director will provide notice at least ten days prior to the date of the hearing.

(3) The registrant must be afforded an opportunity to answer the executive director's petition for suspension or revocation in the manner generally described by this title.

(4) A registration may be suspended for any length of time which is warranted in the opinion of the commission. The commission may impose terms and conditions on the suspension, as well as conditions for reinstatement of the registration.

(5) If the term of the suspension does not exceed the original term of the registration, the registrant does not need to reapply at the termination of the suspension.

(6) A revocation pursuant to this section is permanent.

§334.486. Denial of Application for Registration or Renewal.

The agency may deny an application for registration or an application for renewal of registration of a facility under this subchapter for the following reasons:

(1) if the applicant fails to meet any of the requirements set forth in §334.484 of this title (relating to Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities);

(2) if the applicant fails to comply with any rule or order of the commission;

(3) if the applicant submits false information on or omits material information from the application or any other documentation required to be maintained or submitted under this chapter; or under Chapter 37, Subchapter K, of this title (relating to Financial Assurance Requirements for Class A or B Petroleum-Substance Contaminated Soil Storage, Treatment, and Reuse Facilities); or

(4) for any good cause which in the opinion of the executive director constitutes grounds for denial of the application for registration.

§334.487. Renewal of Registration.

(a) All registrations under this subchapter shall expire five years from the date of issuance.

(b) The agency will notify each registrant in writing of the impending registration expiration at least 60 days prior to the expiration of the registration.

(c) The agency will provide application forms for renewal of a registration.

(d) A properly completed application for renewal shall be submitted to the agency at least 30 days prior to the expiration date of the registration. The current registration shall be valid until the agency notifies the applicant of renewal or denial of the submitted renewal application, provided a properly completed application for renewal was submitted at least 30 days prior to the expiration date of the registration.

(e) Upon proper completion of the registration renewal process, the agency will either issue a renewed registration indicating the expiration date or deny the application for renewal, as authorized by §334.486 of this title (relating to Denial of Application for Registration or Renewal).

§334.488. Authorization for Class C and Class D Facilities.

Authorization for Class C and Class D facilities is issued by the agency when the leaking petroleum storage tank (LPST) site is subject to a corrective action plan involving storage and treatment activities pursuant to §334.81 of this title (relating to Corrective Action Plan). Agency approval of the corrective action plan for the storage or treatment activities shall constitute authorization for the Class C or Class D facility. A Class C or Class D storage or treatment facility shall remain in operation only as long as is necessary to store or treat the soil from that one LPST site and it shall not accept soil from any other site at any time. The underground or aboveground storage tank owner or operator shall ensure that the approved storage and treatment activities comply with the following applicable provisions: §§334.482, 334.483, 334.490, 334.494, 334.496 - 334.503, and 334.505 - 334.507 of this title (relating to General Prohibitions; Disposal by Generator; Notification and Mobilization Requirements for Class B Facilities; Closure and Facility Expansion; 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; Recordkeeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; Additional Reports; Design and Operating Requirements of Stockpiles and Land

Surface Treatment Units; Reuse of Petroleum-Substance Waste; Security; Contingency Plan; and Emergency Procedures).

§334.490. Notification and Mobilization Requirements for Class B Facilities.

In addition to the required registration under §334.484 of this title (relating to Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities).

(1) The owner or operator of a Class B facility shall notify the appropriate agency regional office at least 48 hours in advance of moving the treatment unit to the leaking petroleum storage tank (LPST) site.

(2) The owner or operator of the Class B facility shall notify the local fire marshal or other appropriate fire official at least 48 hours in advance of moving the treatment unit to the LPST site.

(3) The owner or operator of the underground or aboveground storage tank who intends to utilize a Class B facility at a particular LPST site shall obtain agency approval pursuant to §334.81 of this title (relating to Corrective Action Plan).

(4) The Class B facility shall remain at the LPST site for only the time period necessary to complete the treatment, but no longer than 30 days, unless written authorization is obtained from the agency.

(5) The Class B facility owner or operator shall provide notice to the public by means of posting signs at the LPST site at least 14 days prior to moving the treatment unit onto the LPST site or within another time frame as approved by the agency. The signs shall be legible from a distance of at least 25 feet and shall be posted at all entrances to the facility. The signs shall state "Public Notice of Petroleum-Substance Contaminated Soil Treatment", the name and phone number of the treatment facility owner, the name and phone number of the tank owner or operator, the registration number of the treatment facility, the type of soil treatment to be conducted, and the date(s) the treatment will be conducted.

(6) The Class B facility owner or operator shall produce upon demand the registration certificate issued by the agency under this subchapter as well as any other permit or authorization required by law.

§334.492. Public Notice.

The Class A facility owner or operator shall provide notice to the general public regarding the location, construction, operation, and potential impacts of the storage or treatment facility.

(1) The facility owner or operator shall provide notice of the facility to the general public by means of a notice by publication and a notice by mail.

(2) The notice shall contain, at a minimum, the following information in accordance with forms approved by the agency:

(A) the name, address, phone number, and contact person for the owner of the facility;

(B) the name, address, phone number, and contact person for the operator of the facility;

(C) the name, address, phone number, and contact person for the landowner (if different from the facility owner);

(D) the address and the physical description for the location of the facility;

(E) notice to the public of the opportunity to submit written comments regarding the application for registration of the facility and to request a public meeting regarding the proposed facility within 30 days of the date of the notice;

(F) notice that an application for registration has been filed with the agency;

(G) a complete description of the activities which will be conducted at the facility, including details on the construction of the facility, the soil storage methods, the soil treatment methods, the final disposition of the treated soils, and documentation on any points of discharge;

(H) the method for obtaining additional information on the facility.

(3) The notice by publication shall be published in a newspaper published daily, if available, and generally circulated in the county or area where the proposed facility is to be located and within each county or area wherein persons reside who would be affected by the facility.

(4) The notice by certified mail, return receipt requested, shall be sent to the following persons:

(A) all adjacent landowners and all owners of property within 1,000 feet of the boundary of the facility as defined in the application;

(B) the mayor and health authorities of the city in which the facility will be located, if applicable;

(C) the county judge and county health authority of the county in which the facility will be located;

(D) the appropriate state senator and representative for the area encompassing the facility;

(E) all persons or organizations who have requested the notice or expressed interest in the facility. The agency may designate persons or organizations in addition to those specified by the facility owner or operator.

(5) The facility owner or operator shall provide copies of each notice sent by mail, copies of the published notice, and copies of the signed publisher's affidavits for the notices to the agency's central office and to the appropriate agency regional office within two calendar days of publication and mailing.

§334.493. Public Meetings for Class A Facilities.

(a) The agency may, in response to a request from the public or at its own discretion, require the Class A facility owner or operator to hold a public meeting whenever such a meeting might clarify one or more issues concerning an application for registration of a facility.

(b) Upon request by the agency, the Class A facility owner or operator, at its expense, shall schedule and hold a public meeting at a time and place which are convenient for the general public affected by the facility. Notice of the public meeting shall be provided by the Class A facility owner or

operator to the public, not less than 30 days prior to the date of the meeting, in the manner described in §334.492(3), (4), and (5) of this title (relating to Public Notice).

(c) The forum chosen for the meeting shall be accessible to persons who are mobility impaired. Prior to scheduling of the meeting, the applicant shall coordinate the scheduling of the meeting with agency personnel to ensure the availability of agency personnel for the meeting. The applicant shall confirm with the agency the date, time, and location of the meeting not less than 15 days prior to the meeting. The meeting shall be open to the public to provide information on the proposed facility and to allow for comments by the public. The agency will consider all comments relating to the requirements of this subchapter when determining the outcome of the registration application. The applicant shall again confirm with the agency on the time and place of the meeting at least 72 hours prior to the meeting.

(d) If the agency does not request the Class A facility owner or operator to hold a public meeting as authorized by this section, no public meeting shall be required before the agency may approve or deny an application for registration of a Class A facility.

§334.494. Closure and Facility Expansion.

A person who stores or treats petroleum-substance waste at a Class A or B facility shall notify the agency in writing of any closure activity or facility expansion not specifically stated in the original application for registration at least 30 days prior to conducting such activity. Such person shall submit

to the agency upon request such information as may reasonably be required to enable the agency to determine whether such activity is compliant with this subchapter and whether additional public notice should be conducted. Any information provided under this section shall be submitted to the agency's office in Austin and to the appropriate regional office.

§334.495. Location Standards for Class A Petroleum-Substance Waste Storage or Treatment Facilities.

(a) The agency will not issue a registration for a Class A petroleum-substance waste management facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of surface water and groundwater. In making this determination, the agency will consider the following factors:

(1) flooding or active geologic processes such as erosion, subsidence, submergence, and faulting;

(2) groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge or discharge conditions;

(3) soil conditions such as stratigraphic profile, stratigraphic complexity, and hydraulic conductivity of strata;

(4) separation distance from the facility to the aquifer and to points of discharge to surface water; and

(5) climatological conditions.

(b) Class A storage or treatment facilities shall not be located:

(1) in the 100-year floodplain;

(2) in wetlands;

(3) on the recharge or transition zone of a sole-source aquifer;

(4) within 1,000 feet of an established residence, church, hospital, school, licensed day-care center, or dedicated public park;

(5) within 1,000 feet of any property owned by a person other than the facility owner unless the applicant obtains a variance from the agency pursuant to subsection (d) of this section relating to variances;

(6) in areas of direct drainage within 1/2 mile of any surface water if the surface water is used to supply public drinking water through a public water system, unless it is designed, constructed, operated, and maintained to prevent any releases of contaminants from the facility;

(7) in the critical habitat of an endangered species of plant or animal; or

(8) in an area where the roads leading to the facility which will be utilized to transport soil are not adequate to handle the anticipated traffic volume and load.

(c) Nothing in this subchapter shall be construed to require the agency to issue a registration. In addition to an applicant's compliance with location requirements, the agency will consider public comment on the proposed facility, surrounding land uses, past performance record if any, and enforcement history with this agency and other state agencies, when determining whether or not to register an applicant under this subchapter.

(d) The agency may, in its discretion, grant a variance of the requirements of subsection (b) of this section, relating to location requirements for Class A Facilities. Before the agency may issue a variance under this subsection, it shall require the applicant to demonstrate that the provisions of subsection (b) of this section are not necessary to ensure adequate protection of human health and the environment.

§334.496. Shipping Procedures Applicable to Generators of Petroleum-Substance Waste.

(a) No generator shall transport petroleum-substance waste from the generating site unless the waste has been properly sampled to determine the levels of all possible contaminants in the waste. Necessary documentation shall, at a minimum, consist of documentation on the sampling, handling, chain-of-custody documentation, and copies of signed laboratory reports on samples collected from the specified wastes that contain results of analysis for:

(1) the major components of the petroleum-substance waste such as benzene, toluene, ethyl benzene, total xylenes, and total petroleum hydrocarbons or the major components of total petroleum hydrocarbons; and

(2) any other contaminants as specified by the agency based on specific conditions of the generating site.

(b) No generator of petroleum-substance waste within the State of Texas shall allow the transport of such wastes to an off-site waste storage, treatment, reuse, or disposal facility unless the following requirements are met:

(1) a Texas Natural Resource Conservation Commission (TNRCC) petroleum-substance manifest is initiated, to include all applicable information, by the generator;

(2) the generator designates on the manifest at least one facility or area legally authorized to receive the waste. A generator may also designate one alternate facility or area which is legally authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. If the transporter is unable to deliver the waste to either the designated facility or the alternate facility, the generator shall either immediately designate another facility for receipt or instruct the transporter to immediately return the waste. Upon such redesignation by the generator, the generator shall immediately prepare an amended waste manifest.

(c) No generator of petroleum-substance waste from outside of the State of Texas shall allow transport of waste into the State of Texas unless the following requirements are met:

(1) a TNRCC petroleum-substance manifest is initiated by the generator to include all applicable information;

(2) the manifest shall accompany the waste to the receiving facility;

(3) the waste is classified as nonhazardous by the state in which it is generated.

(d) At the time of waste transfer, the generator or generator's authorized representative shall:

(1) sign the manifest by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy, in accordance with §334.497 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators); and

(4) give the transporter the remaining copies of the manifest.

§334.497. Recordkeeping and Reporting Procedures Applicable to Generators.

Each generator of petroleum-substance waste shall comply with the following.

(1) The generator shall keep records of all petroleum-substance waste activities regarding the quantities generated and shipped off-site for storage, treatment, or disposal and which, at a minimum, includes the information described in paragraphs (1) - (5) of this section. The maintained records shall be retrievable, legible, and immediately available for inspection and copying by agency personnel. The required records shall be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to the following:

(A) the description, character, and classification of each waste;

(B) the quantity of waste and the date(s) it was generated;

(C) identification of the generating location and the tank owner or operator;

(D) the methods of storage, treatment, or disposal;

(E) the quantity and date(s) the waste was shipped off-site for storage, treatment, or disposal including the name, address, and location of each off-site facility and transporter receiving shipments.

(2) The generator shall retain a legible copy of each waste manifest required by §334.496 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste) for a minimum of five years from the date of shipment by the generator.

(3) A generator of petroleum-substance waste shall keep records of all test results, waste analyses, or other determinations made for at least five years from the date that the waste was last sent to an off-site storage, treatment, disposal, or reuse area or facility.

(4) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days from the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the petroleum-substance waste.

(5) A generator shall submit an exception report to the agency if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report shall be retained by the generator for at least five years from the date the waste was accepted by the initial transporter and shall include:

(A) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(B) a legible copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the waste and the results of those efforts.

(6) The periods of record retention required by this section may be extended by the agency during the course of any unresolved enforcement action regarding the regulated activity.

§334.499. Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities.

(a) No owner or operator of a storage, treatment, or disposal facility may accept delivery of petroleum-substance waste for storage, treatment, or disposal unless:

(1) a Texas Natural Resource Conservation Commission (TNRCC) Petroleum Storage Tank (PST) - Waste Manifest accompanies the shipment which designates that facility to receive the waste;

(2) the facility owner or operator signs the PST-Waste Manifest and immediately gives at least one copy of the signed PST-Waste Manifest to the transporter;

(3) the facility owner or operator retains one copy of the PST-Waste Manifest in accordance with §334.500 of this title (relating to Recordkeeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities); and

(4) within 30 days after receipt of the waste, the facility owner or operator sends a copy of the PST-Waste Manifest to the generator.

(b) When a facility or reuse area receives petroleum-substance waste accompanied by a PST-Waste Manifest, the facility owner or operator, or his agent, or the owner or operator of the property designated for the reuse area shall note any significant discrepancies on each copy of the PST-Waste Manifest.

(1) Significant discrepancies are differences between the quantity or type of waste designated on the PST-Waste Manifest and the quantity or type of waste a facility actually received.

Significant discrepancies in type of waste are obvious differences which can be discovered by inspection or waste analysis.

(2) Upon discovering a significant discrepancy, the facility owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the facility owner or operator shall, within five days, submit to the agency a letter describing the discrepancy and attempts to reconcile it, and a copy of the PST-Waste Manifest at issue. The facility owner or operator shall ensure that the waste is a petroleum-substance waste eligible for acceptance by the facility pursuant to this subchapter and shall report any unreconciled discrepancies discovered during any analyses or evaluation.

(c) No owner or operator of a storage, treatment, or disposal facility in Texas shall accept wastes from an out-of-state generator or location unless the following requirements are met:

(1) the waste is accompanied by legible copies of the signed TNRCC PST-Waste Manifest for all wastes received pursuant to §334.496 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste);

(2) the facility owner or operator obtains documentation that the wastes contain only petroleum-substance contamination, have been generated from an underground or aboveground storage tank as defined in this chapter, and are classified as nonhazardous in the state where generated. This

documentation shall consist of documentation on the sampling methods, sample handling, chain-of-custody documents, and legible copies of signed laboratory reports on samples collected from the specified wastes. The number of samples shall be sufficient to characterize the entire quantity of wastes. The analyses shall include:

(A) volatiles and semi-volatiles by United States Environmental Protection Agency (EPA) Methods 8240 and 8270, respectively;

(B) toxicity characteristic listed constituents as specified in 40 Code of Federal Regulations, Part 261;

(C) organochlorine pesticides and polychlorinated biphenyls by EPA Method 8080; and

(D) any other analyses necessary to characterize the wastes or as specified by the agency; and/or

(3) the facility owner or operator obtains documentation from the appropriate governing agency in the originating jurisdiction that the wastes are classified as nonhazardous and meet the definition of petroleum-substance wastes (as such wastes are defined in §334.2 of this title (relating to Definitions)), and provides such documentation to the agency prior to receiving the out-of- state soils.

(d) The facility owner or operator shall not accept any wastes for storage, treatment, or disposal from an in-state generator or location which contain any contaminants above natural background levels other than petroleum substances as defined in this subchapter, unless otherwise approved by the agency. Documentation of the contaminants in the waste shall consist of a sufficient number of samples to characterize the waste and the samples shall be analyzed for all contaminants that may occur in that waste.

§334.500. Recordkeeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities.

(a) All records required by this subchapter shall be retained by the facility owner or operator for a minimum of five years from the date of receipt of the waste. The records shall be maintained in a secure location on the premises of the storage, treatment, or disposal facility and shall be immediately accessible by the facility owner and operator. In the event that copies of the required records cannot reasonably be maintained on the premises of the facility, such records may be maintained at a readily-accessible alternate site, provided that the following conditions are met.

(1) If the facility is in operation, the records shall be readily accessible for reference by the facility owner and operator.

(2) The records shall be readily accessible and available for inspection and copying upon request by agency personnel.

(3) The facility owner or operator shall provide the following information in writing to the agency's central office:

(A) the specific location where the required records are maintained; and

(B) the name, address, and telephone number of the authorized custodian of the records.

(4) The written information required in paragraph (3) of this subsection shall be submitted with the application for registration and within 15 days after the records are moved to an alternate site from that specified in the registration.

(b) For facilities which have completed the closure requirements and are no longer in service, the facility owner may submit the appropriate records required by this subchapter to the agency in lieu of maintaining the records on the premises or at an alternate site, provided that the following conditions are met:

(1) the facility owner shall provide written justification adequate to explain why the records cannot be maintained at a readily-accessible alternate site; and

(2) the records shall be submitted at one time in one package for each facility, and the records shall be appropriately labeled with the facility identification number and location information.

(c) A facility owner or operator who initiates a shipment of petroleum-substance waste from a treatment or storage facility shall comply with the generator standards contained in §334.496 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste) and §334.497 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators) and this subsection.

(d) The periods of record retention required by this subsection may be extended by the agency during the course of any unresolved enforcement action regarding the regulated activity.

(e) The following information, at a minimum, shall be maintained by the facility owner or operator:

(1) documentation on all shipments of contaminated media received at the facility as specified on the waste manifest;

(2) the method(s) of storage or treatment for all media received;

(3) the method of reuse or disposal of all wastes removed from the facility including:

(A) the location of final disposition;

(B) the quantity and contaminant levels of wastes placed at any and every location;

(C) the name, work address, and work phone number of the authorized representative for the receiving facility or location. If the receiving facility cannot be identified by street address, other specifics shall be included to adequately identify the exact location;

(D) the name, work address, and work phone number of the authorized representative for the landowner at the receiving location;

(E) documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site;

(F) a detailed description of the reuse methods;

(G) the date(s) of transport off-site and the dates of reuse;

(H) legible copies of the authorization from the landowner at the receiving location pursuant to §334.503 of this title (relating to Reuse of Petroleum-Substance Waste);

(4) documentation on the operations at the facility, including:

(A) information on the actual treatment efficiency of the unit;

(B) documentation on the results of all air emissions monitoring;

(C) any changes in the operations at the facility;

(D) documentation on any releases, fires, or explosions and the measures taken to abate the situation;

(5) monitoring data under §334.504 of this title (relating to Contaminant Assessment Program and Corrective Action) when required;

(6) a summary of the types and volumes of any petroleum-substance waste received without manifests. This documentation shall include the following information:

(A) the dates the facility received the wastes;

(B) the leaking petroleum storage tank or other identification number of the generating facility, and the names and addresses of the tank owner or operator and the transporter, if available;

(C) a description and the quantity of each petroleum-substance waste the facility received which was not accompanied by a Petroleum Storage Tank-Waste Manifest;

(D) the method of storage and/or treatment for each petroleum-substance waste;

(7) any other information deemed necessary by the agency.

§334.501. Additional Reports.

The owner or operator of a Class A or Class B facility shall report to the agency within 24 hours of the discovery of any releases, fires, explosions, breakdowns, shutdowns, releases, or spills which result or may result in the discharge of any contaminants to the ground, surface water, or groundwater.

§334.502. Design and Operating Requirements of Stockpiles and Land Surface Treatment Units.

(a) A stockpile or land surface treatment unit located at any storage or treatment facility or at any leaking petroleum storage tank site shall have an appropriate means of preventing any discharge or release of petroleum-substance waste or petroleum-substance waste constituents into any media. This shall be accomplished with:

(1) a synthetic, impermeable liner that is designed, constructed, and installed to prevent any migration of petroleum-substance wastes out of the stockpile or land surface treatment unit into the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the stockpile, or land surface treatment unit. The liner shall be constructed of materials that do not allow petroleum-substance waste or petroleum-substance waste constituents to migrate into the liner itself or into the adjacent subsurface soil, groundwater, or surface water during the active life of the facility. The liner shall:

(A) be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydro geologic forces), physical contact with the hydrocarbons or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operations;

(B) be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, tearing, or uplift;

(C) be installed to cover all surrounding earth likely to be in contact with the petroleum-substance waste or leachate; and

(D) contain a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate and

rainwater from the stockpile or land surface treatment unit. The facility owner and operator shall specify the design and operating conditions which will ensure that the leachate depth over the liner does not exceed the depth of soil on the liner. The leachate collection and removal system shall be constructed of materials that are:

(i) chemically resistant to the hydrocarbons managed in the pile and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying petroleum-substance wastes, petroleum-substance waste cover materials, and any equipment used at the stockpile or treatment unit; and

(iii) designed and operated to function without clogging through the scheduled life of the stockpile or land surface treatment unit; or

(2) an alternate design or operating practice that is effective in preventing any release or discharge and is approved by the agency. The facility owner or operator shall demonstrate that the alternate design or operating practices, together with location characteristics, will prevent the migration of any petroleum-substance waste constituents into the soil, groundwater, or surface water at any future time. In deciding whether to approve the alternate design, the agency will consider:

(A) the nature and quantity of the wastes;

(B) the proposed alternate design and operation;

(C) the hydro geologic setting of the facility, including a tentative capacity and thickness of the liners and soils present between the stockpile or land surface treatment unit and groundwater or surface water; and

(D) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to soil, groundwater, or surface water.

(b) The facility owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the stockpile or land surface treatment unit.

(c) The facility owner or operator shall design, construct, operate, and maintain a run-off management system to prevent flow from a stockpile or land surface treatment unit.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems shall be emptied and managed expeditiously in accordance with applicable state and federal requirements after storms to maintain design capacity of the system.

(e) If the stockpile or land surface treatment unit contains any particulate matter which may be subject to wind dispersal, the facility owner or operator shall cover or otherwise manage the stockpile or land surface treatment unit to control wind dispersal.

(f) The agency may specify other design and operating practices that may be necessary to ensure that the requirements of this section are satisfied.

(g) The facility owner or operator shall ensure that treatment is initiated on stockpiled soil within 90 days from the date of receipt at the facility and that the treated soil is removed from the facility for final disposition within 90 days after completing treatment.

(h) In addition to the requirements specified in subsections (a) - (g) of this section, the facility owner or operator shall design, construct, operate, and maintain the land surface treatment unit to maximize the degradation, transformation, or immobilization of petroleum-substance waste constituents in the treatment area. At a minimum, the facility owner or operator shall specify the following items, if applicable, in the facility registration application:

(1) the rate and method of petroleum-substance waste application to the treatment area;

(2) measures to control soil pH;

(3) measures to enhance microbial or chemical reactions (e.g., fertilization); and

(4) measures to control the moisture content of the treatment area.

(i) The facility owner or operator shall inspect the unit weekly and after storms to detect evidence of:

(1) deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(2) improper functioning of wind dispersal control measures.

§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. §§334.482, 334.496 - 334.500, and 334.502 of this title (relating to General Prohibitions; Shipping Procedures Applicable to Generators of Petroleum-Substance Waste; Recordkeeping and Reporting Procedures Applicable to Generators; Shipping Requirements Applicable to Transporters of Petroleum-Substance Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; Record-keeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; and Design and Operating Requirements of Stockpiles and Land Surface Treatment Units).

(b) Petroleum-substance waste may be reused in accordance with §350.36 of this title (relating to the Relocation of Soils Containing COCs for Reuse Purposes). Recordkeeping and reporting requirements for any person who intends to reuse petroleum-substance wastes shall be in accordance with §350.36 of this title except under the conditions of subsections (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 subsection, the person must maintain records and provide to the agency when requested such information deemed necessary by the agency to ensure compliance with the requirements of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Reuse requirements are as follows.

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

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

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

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

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

(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste must not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title, and must not be at concentrations which compromise the integrity of the cold-mix asphalt product. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

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

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

(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste must not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title, and must not be at such concentrations which compromise the integrity of the hot-mix asphalt product. The petroleum-substance waste must be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized shall be obtained prior to laying the asphalt.

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

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

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

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

(E) For releases reported to the agency on or before August 31, 2003, petroleum-substance wastes will be considered clean, and 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 contamined 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).

§334.504. Contaminant Assessment Program and Corrective Action.

(a) The facility owner or operator shall conduct an assessment when, in the opinion of the agency, there exists a possibility of migration of contaminants into or adjacent to waters in the state. The assessment shall be capable of determining:

(1) whether petroleum-substance waste or petroleum-substance waste constituents have entered the groundwater, surface water, or soils.

(2) the rate and extent of migration of any petroleum-substance waste or petroleum-substance waste constituents in the soil, groundwater, or surface water; and

(3) the concentrations of petroleum-substance waste or petroleum-substance waste constituents in the soil, groundwater, or surface water.

(b) The owner or operator of the facility shall conduct corrective action at the facility when, in the opinion of the agency, petroleum-substance waste constituents exist in the soil, groundwater, or nearby surface water at levels which are harmful to human health and safety or the environment.

(c) The corrective action program shall be capable of preventing the migration of contaminants and shall prevent the contaminants from exceeding the levels determined by the agency.

(d) The facility owner or operator shall ensure that the corrective action measures under this subsection shall be initiated and completed within a reasonable period of time as determined by the agency considering the extent of contamination. The agency may issue additional directives should the corrective action activities prove to not be effective in reducing the contaminant levels at a sufficient rate.

(e) The facility owner or operator shall report in writing to the agency the effectiveness of the corrective action program. The facility owner or operator shall submit these reports to the agency's central office and to the appropriate agency regional office upon request by the agency.

§334.506. Contingency Plan.

(a) Each facility owner or operator shall have a contingency plan for each facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any release of petroleum-substance waste or petroleum-substance waste constituents to air, soil, groundwater, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of petroleum-substance waste or petroleum-substance waste constituents which could threaten human health or the environment.

(c) The contingency plan shall describe the actions facility personnel shall take in order to respond to fires, explosions, or any release of petroleum-substance waste or petroleum-substance waste constituents to air, soil, groundwater, or surface water at the facility.

(d) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as facility emergency coordinators and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

(e) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications, and alarm systems (internal and external). This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by release of petroleum-substance waste or fires).

(g) A legible copy of the contingency plan and all revisions to the plan shall be:

(1) submitted to the agency with the application for registration;

(2) maintained at the facility; and

(3) submitted to all local fire departments or emergency response officials who may be called upon to provide emergency services.

(h) The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) the facility registration is revised;

(2) the plan fails in an emergency;

(3) the facility changes its design, construction, operations, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or release of petroleum-substance waste or petroleum-substance waste constituents, or changes the response necessary in an emergency;

(4) the list of emergency coordinators changes; or

(5) the list of emergency equipment changes.

§334.507. Emergency Procedures.

(a) At all times, there shall be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(b) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) shall immediately:

(1) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) notify appropriate state or local agencies with designated response roles if their help is needed.

(c) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials.

The emergency coordinator may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(d) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that regenerated, or the effects of any surface water run-off from water or chemical agents used to control fire and heat-induced explosions).

(e) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the emergency coordinator shall report his findings as follows.

(1) If the emergency coordinator's assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated.

(2) The emergency coordinator shall notify as soon as possible, but not later than 24 hours: during working hours, the agency regional office; during non-working hours, the Texas Emergency Response Unit at (512) 239-2507 or the State Toll Free Emergency Hotline at 1-800-832-

8224; and if federal reportable spill quantities are exceeded, the National Response Center (using their 24-hour toll free number 1-800-424-8802). The report shall include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and type of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known; and

(E) the possible hazards to human health or the environment outside the facility.

(f) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other petroleum-substance waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(g) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(h) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, and/or disposing of recovered water, contaminated soil and surface water, and any other material that results from a release, fire, or explosion at the facility.

(i) The emergency coordinator shall ensure that, in the affected area(s) of the facility, all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(j) The facility owner or operator shall notify the agency and appropriate state and local authorities that the facility is in compliance with subsection (h) of this section before operations are resumed in the affected areas(s) of the facility.

(k) The facility owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the facility owner or operator shall submit a written report on the incident to the agency. The report shall include:

(1) name, address, and telephone number of the facility owner or operator;

(2) name, address, and telephone number of the facility;

(3) the facility's registration number;

(4) date, time, and type of incident (e.g. fire, explosion);

(5) name and quantity of material(s) involved;

(6) the extent of injuries, if any;

(7) an assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(8) estimated quantity and disposition of recovered material that resulted from the incident.

§334.508. Closure Requirements Applicable to Class A and Class B Facilities.

(a) The facility owner or operator shall submit his closure plan to the agency for approval with the application for registration.

(b) In the closure plan, the facility owner or operator shall address the following objectives and indicate how they will be achieved:

(1) removal and decontamination of all structures, equipment, or improvements which will no longer be utilized at the facility;

(2) removal and proper disposal or treatment and reuse of all petroleum-substance wastes from the facility; and

(3) removal or treatment of any petroleum-substance waste and petroleum-substance waste constituents which exist above the established cleanup levels that have been released from the facility into the soil, groundwater, or surface water.

(c) During the closure period, the facility owner or operator of a petroleum-substance treatment facility shall:

(1) continue the contaminant assessment or corrective action at the facility as directed by the agency;

(2) maintain the run-on and run-off control systems required under §334.502 of this title (relating to Design and Operating Requirements of Stockpiles and Land Surface Treatment Units);

(3) control wind dispersal of particulate matter which may be subject to wind dispersal.

(d) When closure is completed, the facility owner or operator shall submit to the agency for approval certification both by the facility owner or operator and by an independent qualified hydro geologist, geologist, or an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(e) The facility owner or operator shall prepare a written estimate, in current dollars, of the cost of closing the facility in accordance with the closure plan as specified in subsections (a) and (b) of this section. The closure cost estimate shall equal the cost of closing at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost estimate shall be based on the costs to the facility owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary for the facility owner or operator. Notwithstanding other closure costs, such estimate shall also include the costs associated with third party removal, shipment off-site, and treatment or disposal off-site of the following wastes to an authorized storage, treatment, or disposal facility:

(1) maximum inventory of wastes possible in storage and/or treatment units;

(2) any contaminated soils, groundwater, or surface water generated as a result of releases at the site;

(3) wastes generated as a result of closure activities;

(4) contaminated storm water or leachate.

(f) The closure cost estimate may not incorporate a positive cost that may be realized by the sale of petroleum-substance wastes, facility structures or equipment, land, or other facility assets at the time of partial or final closures rather than or in addition to waste disposal and clean-up costs. The facility owner or operator may also not incorporate a zero cost for petroleum-substance waste that might have economic value rather than the waste disposal cost.

(g) The facility owner or operator shall revise the closure cost estimate whenever a change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in Chapter 37, Subchapter B of this title (relating to Financial Assurance Requirements for Closure, Post Closure, and Corrective Action).

(h) The facility owner or operator shall keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (e) and (f) of this section and, when this estimate has been adjusted for inflation, the latest adjusted closure cost estimate.

(i) For the remaining financial assurance requirements, see Chapter 37, Subchapter K of this title (relating to Financial Assurance Requirements for Class A or B Petroleum-Substance Contaminated Soil Storage, Treatment, or Reuse Facilities).

SUBCHAPTER L: OVERPAYMENT PREVENTION

§§334.531 - 334.535, 334.537

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks, and §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an underground or aboveground storage tank.

§334.531. Responsibility of Recipients of Money from the PSTR Fund and Persons Paid by Recipients of Money from the Petroleum Storage Tank Remediation Fund.

(a) The recipient of reimbursement shall cooperate fully with any audit or investigation by the agency regarding the work performed and/or the costs charged and amounts paid.

(b) Each person who performs work at a leaking petroleum storage tank site, who is paid by a person who anticipates being, or actually is, reimbursed from the Petroleum Storage Tank Remediation

Fund, shall cooperate fully with any audit or investigation by the executive director regarding the work performed and/or the costs charged.

(c) Failure to provide the documentation or information requested by the agency to support the work performed, the costs charged, and/or amounts paid may result in a denial of the costs.

(d) No person shall knowingly submit false information to the agency as part of any materials required to be submitted under this subchapter.

§334.532. Payments.

(a) Payment by the agency of a claim for money from the Petroleum Storage Tank Remediation Fund means that the claim is subject to post-payment audit.

(b) By making payment of claims to eligible persons (see §334.310 of this title (relating to Requirements for Eligibility)), the executive director makes no statement or admission that the payments are for necessary, reimbursable, or allowable costs, as those terms are defined by this chapter, nor that the corrective action taken was not in excess of agency cleanup standards for effective protection of the environment, public health and safety.

§334.533. Audits.

Audits will be conducted in accordance with auditing standards as provided by Texas Water Code, §26.35735. Such audits may occur prior to or after claims have been paid. Such audits may include an investigation into whether activities performed and/or the amounts claimed were:

(1) allowable;

(2) technically necessary;

(3) cost effective; and

(4) reimbursable under §334.560 of this title (relating to Reimbursable Cost Guidelines) and §334.309 of this title (relating to Reimbursable Cost) (for work performed on or after June 7, 1993), or reasonable (for work performed prior to June 7, 1993).

§334.534. Notice of Overpayment.

(a) If the agency conducts an audit or investigation and concludes that reimbursement of a claim was for an amount which exceeded the necessary, allowable, or reimbursable cost of corrective action, the agency shall prepare a notice of overpayment. The notice of overpayment shall briefly summarize the findings of the audit and identify the amounts which were overpaid.

(b) The notice of overpayment will be delivered to the person who received money from the Petroleum Storage Tank Remediation (PSTR) Fund or to persons who were paid by the person who received money from the PSTR fund.

(c) Upon receipt of a notice of overpayment, the recipient shall submit a check returning the amount of overpayment to the Texas Natural Resource Conservation Commission.

(d) All checks rendered to return overpayments shall be made out to "The State of Texas-Petroleum Storage Tank Remediation Fund", and mailed to the address specified on the notice of overpayment.

(e) In cases where the agency demonstrates fraud on the PSTR Fund, the recipient of a notice of overpayment may also be required to pay interest, calculated at New York Prime, plus two points, dating from the date of overpayment by the Texas Natural Resource Conservation Commission (or predecessor agency), to the date of repayment to the Texas Natural Resource Conservation Commission.

§334.535. Objections to the Notice of Overpayment and Formal Petition for Hearing.

(a) If the party receiving the notice of overpayment disputes any portion of the amount to be repaid to the commission, he or she must, within 30 days of receipt of the notice of overpayment, file a

petition for hearing with the chief clerk in the manner prescribed generally by this title for filing petitions with the commission and shall serve a copy of the petition on the executive director.

(b) The petition must assert which funds the party is entitled to retain, and why such funds represent claims for allowable, necessary, cost-effective, and/or reimbursable amounts or activities.

(c) If a person does not object to a notice of overpayment, in whole or in part, as prescribed by this section, then all objections to the notice are waived.

(d) Any amount not specifically disputed in accordance with this section must be returned within 30 days of receipt of the notice of overpayment.

§334.537. Failure to Return Overpayment or Cooperate with Audit or Investigation.

(a) If the overpayment has not been returned to the agency, or objected to by the recipient, in accordance with the requirements of this subchapter, the executive director shall file a petition seeking an order from the commission to compel payment.

(b) All commission orders issued pursuant to this subchapter shall be enforceable in the same manner as any order issued pursuant to the Texas Water Code, Chapter 26, including administrative penalties of up to $10,000 per day of violation.

(c) The executive director may seek an order from the commission to compel cooperation with an audit or investigation at any time.