

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 9, 2016

Thru: Richard A. Hyde, P.E., Executive Director

Thru:  Ramiro Garcia, Jr., Deputy Director

From:  Susan M. Jablonski, P.E., Central Texas, Area Director

Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 334 - Underground and Aboveground Storage Tanks

Suggested short title: Implementation of Federal Petroleum Storage Tank Updates

Introduction and reason(s) for the rulemaking:

In order for the State of Texas to be consistent with federal underground storage tank (UST) requirements, the Texas Commission on Environmental Quality (commission) incorporates specific United States Environmental Protection Agency (EPA) federal rule changes into state rules after promulgation.

EPA promulgated UST regulation in 1988 (40 Code of Federal Regulations (CFR) Part 280), which set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or remove them. That same year, EPA also promulgated a regulation for state program approval (40 CFR Part 281). EPA has not significantly changed these regulations since 1988.

On July 15, 2015, EPA published the 2015 UST regulation and the 2015 state program approval regulation. The stated goal of the revisions to the 1988 federal UST regulation is to establish federal requirements similar to key provisions of the Energy Policy Act of 2005 (EPAct). The revisions increase the emphasis on proper operation and maintenance of UST equipment, address UST systems deferred in the 1988 regulation, include current technologies and practices, and make technical and editorial corrections.

The revisions include the following:

- adding secondary containment requirements for new and replaced tanks and piping;
- adding operator training requirements;
- adding periodic operation and maintenance requirements for UST systems;
- adding requirements to ensure UST system compatibility before storing certain biofuel blends;
- removing past deferrals for emergency generator tanks, airport hydrant systems, and field-constructed tanks; and
- updating codes of practice.

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Scope of the proposed rule:

This rulemaking initiative will update Title 30 Texas Administrative Code (TAC), Chapter 334 to include federal rule revisions required by the EPA for the State of Texas to reapply for state program approval.

The proposed rules are anticipated to do the following:

- Establish requirements for secondary containment and operator training similar to those established by EPAAct;
- Add operation and maintenance requirements, including:
 - 30-day walkthrough inspections;
 - three-year overfill prevention equipment inspections, spill prevention equipment tests, and containment sump tests; and
 - annual operability tests for release detection equipment and containment sump inspections;
- Remove release detection deferrals for emergency generator tanks, airport hydrant fuel distribution systems (AHFDSs) and UST systems with field-constructed tanks (FCTs);
- Provide for other changes to improve release prevention and detection, including:
 - require testing after repairs to spill and overflow prevention equipment and secondary containment;
 - eliminate flow restrictors in vent lines as an overfill prevention option for all new tanks and when overfill prevention equipment is replaced;
 - require closure of lined tanks that cannot be repaired according to a code of practice;
 - address responses to interstitial monitoring alarms;
 - retain vapor monitoring and groundwater monitoring as methods of release detection for tanks and piping only if owners and operators demonstrate proper installation and performance;
 - require notification of ownership change; and
 - establish requirements for demonstrating compatibility with fuels containing greater than E10 and greater than B20; and
- Update codes of practice, reference newer release detection technologies (e.g., statistical inventory reconciliation [SIR] and continuous in-tank leak detection [CITLD]), remove outdated implementation deadlines, and make editorial and technical corrections.

Of the federal revisions listed, the State of Texas has previously passed many of these requirements as the 30 TAC Chapter 334 rules are more stringent than the 1988 UST regulation. For example, requirements for both secondary containment and operator training have been established, emergency generator tank systems are already considered regulated tanks, containment sumps that are used for release detection must be inspected every 60 days, documentation of initial groundwater and vapor monitoring site assessment is required if using as a method of release detection, notification of ownership change is required within 30 days, and SIR is referenced as an approved method of release detection.

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Significant changes to the current 30 TAC Chapter 334 rules will include 30-day walkthrough inspections (current state rules only require 60-day sump and spill bucket inspections), three-year overfill prevention equipment testing, and removing the deferrals for AHFDSs and FCTs.

Potential controversial concerns and legislative interest:

There are no known controversial concerns or legislative interest at this time.

Potential alternatives:

The commission may opt not to incorporate the EPA federal revisions or may incorporate only some of the EPA federal revisions into the state rules. The commission has the option whether to adopt the federal rule revisions.

The State of Texas is required to reapply for state program approval no later than October 13, 2018. If these revisions are not incorporated into the state rules, state program approval may not be granted by the EPA.

Effect on the:

A) Regulated community:

The regulatory revisions generally focus on additional testing and inspection of existing equipment. The proposed revisions do not reflect large-scale equipment investments or significant changes from existing state rules to operations at the facility level. Because the State of Texas has already incorporated many of the federal revisions to the state requirements, impacts to the regulated community are expected to be minimized.

B) Public:

No direct effect on the public is anticipated.

C) Agency programs:

By adoption of these revisions, the State can pursue renewal of state program approval from the EPA.

Proposed schedule and constraints:

Tentative Proposal: July 2017

Tentative Adoption: January 2018

Planned stakeholder involvement:

An early, informal meeting was requested by industry representatives in order to begin dialogue on the new federal rule revisions. This meeting was held on May 16, 2016. A stakeholder meeting is planned prior to rule proposal. At this meeting, staff would like to share potential state rule revisions with the stakeholders for review and informal comment. A formal public hearing is also planned to be held following rule proposal.

Statutory authority:

- 30 TAC §20.15, which provides such procedures specific to the commission;

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- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; and
- TWC, §7.002, which authorizes the commission to enforce provisions of the TWC.

Direction and Guidance:

Rule or Non-Rule Project number: 2016-019-334-CE

Electronic cc: Stephanie Bergeron Perdue
Lori Wilson
Barbara Robinson
Emily Lindley
Brian Christian
Mark Harmon
Patricia Durón
Ramiro Garcia, Jr.
Susan M. Jablonski, P.E.
Beryl Thatcher
Kelly Wilson

NOTE: TR will submit electronic notice to the following after ED Briefing:

Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel