

SUBCHAPTER A: GENERAL PROVISIONS
§§334.1 - 334.10, 334.12, 334.14 - 334.19
Effective April 19, 2012

§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).

Adopted November 1, 2000

Effective November 23, 2000

§334.2. Definitions.

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

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

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

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

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

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

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

(6) Action level--The concentration of constituents of any substance or product listed in §334.1(a)(1) of this title (relating to Purpose and Applicability) in the soil or water at which corrective action will be required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) Common carrier--With respect to delivery prohibitions, a person (as defined in this section) who physically delivers a regulated substance into an underground storage tank directly from a cargo tank which is affixed or mounted to a self-propelled, towable, or pushable vehicle (e.g., wagon, truck, trailer, railcar, aircraft, boat, or barge).

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

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

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

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

(26) Corrective action plan (or remedial action plan)--A detailed plan developed to address site remediation of soil, groundwater, or surface water contamination that provides for required protection of human health, safety, and the environment. The selection of the most effective and efficient remedial method will be dictated by the nature and location of the release, the site soils, hydrogeological conditions, and the required degree of remediation. The remedial method selection should take into consideration such factors as cost, time, and state compliance requirements with each method. The title of any report which contains a corrective action plan must include the designation "remedial action plan."

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

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

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

(28) Corrosion technician--A person who can demonstrate an understanding of the principals of soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements related to corrosion protection and control on buried or submerged metal tanks and metal piping systems; who is qualified by appropriate training and experience to engage in the practice of inspection and testing for corrosion protection and control on such systems, including the inspection and testing of all common types of cathodic protection systems; and who is either:

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

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

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

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

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

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

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

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

(34) Existing underground storage tank (UST) system--A UST system which is used or designed to contain an accumulation of regulated substances for which installation either had commenced prior to December 22, 1988, or had been completed on or prior to December 22, 1988. Installation will be considered to have commenced if the owner or operator had obtained all federal, state, and local approvals or permits

necessary to begin physical construction at the site or installation of the tank system, and if either a continuous on-site physical construction or installation program had begun or the owner or operator had entered into contractual obligations (which could not be canceled or modified without substantial loss) which required that the physical construction at the site or installation of the tank system was to be completed within a reasonable time.

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

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

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

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

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

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

(41) Free product (or free-product or non-aqueous phase liquid)--A regulated substance in its free-flowing non-aqueous liquid phase at standard conditions of temperature and pressure (i.e., that portion of the product not dissolved in water or adhering to soil).

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

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

(44) Hazardous substance underground storage tank (UST) system--A UST system that contains an accumulation of either a hazardous substance, a mixture of two or more hazardous substances, or a mixture of one or more petroleum substances with one or more hazardous substances, and which does not meet the definition of a petroleum UST system in this section.

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

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

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

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

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

(50) In service--The status of an underground storage tank (UST) beginning at the time that regulated substances are first placed into the tank and continuing until the tank is permanently removed from service by means of either removal from the ground, abandonment in-place, or change-in-service. An in-service

UST may or may not contain regulated substances, and may be either in operation or out of operation at any specific time.

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

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

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

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

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

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

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

(58) Monitoring well--An artificial excavation constructed to measure or monitor the quantity or movement of substances, elements, chemicals, or fluids below

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

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

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

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

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

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

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

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

(66) Observation well--A monitoring well or other vertical tubular structure which is constructed, installed, or placed within any portion of an underground storage tank excavation zone (including the tank hole and piping trench), and which is designed or used for the observation or monitoring of groundwater, or for the observation, monitoring, recovery, or withdrawal of either released regulated

substances (in liquid or vapor phase) or groundwater contaminated by such released regulated substances.

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

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

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

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

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

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

(73) Owner--Any person who holds legal possession or ownership of an interest in an underground storage tank (UST) system or an aboveground storage tank (AST). For the purposes of this chapter, if the actual ownership of a UST system or an AST is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the UST system or the AST is located is considered the UST system or AST owner unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the UST system or AST is owned by another person. A person who has registered as an owner of a UST system or AST with the commission under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems) (or a preceding rule section concerning tank registration) after September 1, 1987, shall be considered the UST system owner and/or AST owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the UST system or AST was transferred to a different person subsequent to the date of the tank registration. This definition is subject to the limitations found in Texas Water Code,

§26.3514, Limits on Liability of Lender; §26.3515, Limits on Liability of Corporate Fiduciary; and §25.3516, Limits on Liability of Taxing Unit.

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

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

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

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

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

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

(80) Petroleum storage tank--

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

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

(81) Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is liquid at standard conditions of temperature and

pressure (except for any substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code, §§6921, *et seq.*)). For the purposes of this chapter, a petroleum substance is limited to one or a combination of the substances or mixtures in the following list:

- (A) basic petroleum substances--crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;
- (B) motor fuels--(see definition for "Motor fuel" in this section);
- (C) aviation gasolines--(e.g., Grade 80, Grade 100, and Grade 100-LL);
- (D) aviation jet fuels--(e.g., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8);
- (E) distillate fuel oils--(e.g., Number 1-D, Number 1, Number 2-D, and Number 2);
- (F) residual fuel oils--(e.g., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6);
- (G) gas-turbine fuel oils--(e.g., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT);
- (H) illuminating oils--(e.g., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil);
- (I) solvents--(e.g., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane);
- (J) lubricants--automotive and industrial lubricants;
- (K) building materials--(e.g., liquid asphalt and dust-laying oils);
- (L) insulating and waterproofing materials--(e.g., transformer oils and cable oils); or
- (M) used oils--(see definition for "Used oil" in this section).

(82) Petroleum underground storage tank (UST) system--A UST system that contains, has contained, or will contain a petroleum substance (as defined in this

section), a mixture of two or more petroleum substances, or a mixture of one or more petroleum substances with very small amounts of one or more hazardous substances. In order for a UST system containing a mixture of petroleum substances with small amounts of hazardous substances to be classified as a petroleum UST system, the hazardous substance must be at such a dilute concentration that the overall release detectability, effectiveness of corrective action, and toxicity of the basic petroleum substance is not altered to any significant degree.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(118) Used oil--Any oil or similar petroleum substance that has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities; and including spent motor vehicle and aircraft lubricating oils (e.g., car and truck engine oil, transmission fluid, and brake fluid), spent industrial oils (e.g., compressor, turbine, bearing, hydraulic, metalworking, gear, electrical, and refrigerator oils), and spent industrial process oils.

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

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

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

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

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

Adopted October 8, 2008

Effective October 30, 2008

§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 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.);

(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.

Adopted March 13, 2002

Effective April 2, 2002

§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, overflow, 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), the following applies.

(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 that owner or operator has a valid, current delivery certificate issued by the agency covering that UST system.

(B) For new or replacement UST systems, only during the initial period ending 90 days after the date that a regulated substance is first deposited into the new or replacement system(s), a common carrier may accept, as adequate to meet the requirements of subparagraph (A) of this paragraph 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) It is an affirmative defense to the imposition of an administrative penalty for a violation of subparagraph (A) of this paragraph that the person delivering a regulated substance into a UST relied on:

(i) a valid, current paper delivery certificate presented by the owner or operator of the UST or displayed at the facility associated with the UST;

(ii) a temporary delivery authorization presented by the owner or operator of the UST or displayed at the facility associated with the UST; or

(iii) registration and self-certification information for the UST obtained from the commission's Internet Web site not more than 30 days before the date of delivery.

(2) Concerning UST systems which are not required to be self-certified compliant at a given time under §334.8(c) of this title, but which are required to be registered under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems), the following applies.

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

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

(3) Concerning both types of delivery prohibition referenced in this subsection, the following documentation is considered adequate:

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

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

Adopted March 28, 2012

Effective April 19, 2012

§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 overflow 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.

(C) When an UST system has been taken temporarily out-of-service under §334.54 of this title (relating to Temporary Removal from Service), the owner or operator must first submit a construction notification form before returning the UST system to service.

(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.

Adopted March 13, 2002

Effective April 2, 2002

§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; or

(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 a 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 in §334.5(b)(2) of this title (relating to General Prohibitions for Underground Storage Tanks (USTs) and UST Systems).

(b) Existing tanks. Any person who owns a 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 a 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:

(i) amended registrations of owner or operator information (other than ownership transfers) may be submitted by the owner, operator, or an authorized representative of the owner or operator; and

(ii) amended registrations reflecting UST ownership transfers must be provided by the new UST owner or a legally-authorized representative of the new UST owner (i.e., registrations of ownership transfers submitted by others will be returned and will not be recorded);

(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 §37.870(b) of this title (relating to Reporting, Registration, and Certification).

(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.

Adopted October 27, 2004

Effective November 18, 2004

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

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

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

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

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

(c) UST compliance self-certification requirements.

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

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

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

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

(iii) USTs into which deliveries or deposits of regulated substances are exclusively made by persons other than a common carrier, as defined in §334.2 of this title (relating to Definitions);

(iv) USTs used for storing regulated substances that are not motor fuels as defined in §334.2 of this title; and

(v) USTs temporarily out-of-service under §334.54 of this title (relating to Temporary Removal from Service) which are empty by definition.

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

(2) Non-provision of delivery certificate. The agency will not provide a UST delivery certificate for USTs covered by the exceptions in paragraph (1)(A) of this subsection.

(3) Conditions and limitations.

A) Filing of the UST registration and self-certification form does not relieve an owner or operator from the responsibility for timely compliance with other applicable filing requirements under this chapter.

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

(C) The agency's issuance of a delivery certificate for a UST(s) does not constitute agency certification or affirmation of the compliance status of the tank(s) in question with agency UST technical and/or administrative requirements, and this issuance does not preclude the agency from investigating these tanks and pursuing enforcement actions under the Texas Water Code when apparent violations are discovered.

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

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

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

(iii) financial assurance, as described in Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems) (Copies of financial assurance documents are required to be submitted as part of self-certification, as specified in paragraph (4)(A)(viii) of this subsection); and

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

for only the 60 days prior to and including the date of certification).

(4) UST registration and self-certification form.

(A) Requirements for completion of the form.

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

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

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

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

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

(vi) An owner or operator must submit the required UST registration and self-certification form (including any additional or supplemental information required under clause (v) of this subparagraph) to the agency no later than the following dates.

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

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

(vii) To ensure timely renewal of a previously issued UST delivery certificate, the deadline for submission is 30 days before the annual renewal

date for the UST delivery certificate for that specific facility, as indicated in paragraph (5)(B)(iii) of this subsection.

(viii) The owner or operator must submit annually, proof of current financial assurance, in accordance with §37.870(b) of this title (relating to Reporting, Registration, and Certification).

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

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

(5) UST delivery certificate.

(A) Certificate availability.

(i) The owner and operator of USTs regulated under this section must make available to a common carrier a valid, current Texas Commission on Environmental Quality (TCEQ) delivery certificate (or TCEQ temporary delivery authorization under subparagraph (D) of this paragraph, as applicable) before delivery of a regulated substance into the UST(s) can be accepted. The delivery certificate must cover each UST at the facility accepting a delivery. (The owner or operator may comply with this requirement by obtaining or by directing the common carrier to view a current copy of the delivery certificate from the agency's Internet Web site.) The bill of lading for the first delivery of regulated substance into any new or replacement UST at the facility must be attached to the temporary delivery authorization for that facility.

(ii) The owner and operator of USTs regulated under this section must make immediately available, upon request by agency staff, a valid, current TCEQ delivery certificate (or TCEQ temporary delivery authorization under subparagraph (D) of this paragraph, as applicable) for the USTs at a facility.

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

(B) Annual delivery certificate renewal.

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Identifying tanks. Within 30 days of the effective date of this section, or within 30 days of a subsequent tank installation, the owner and operator of USTs regulated under this section are responsible for ensuring that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the facility. That tag, label, or marking must clearly and legibly show the designated UST identification number of that UST at that facility and that identification number must be identical to the UST identification number listed on the UST registration and self-certification form filed with the agency under this subsection. All UST identification numbers at a given facility must be numeric, must begin with the number one, and must proceed sequentially without skipping numbers (i.e., 1, 2, 3 . . .). In addition, for each compartmented UST where a single UST has a separate fill tube for each internal compartment, the numeric UST identification number must be the same for each fill tube serving that single UST; however, to allow differentiation between compartments on the UST registration and self-certification form and at the facility, that common UST identification number must also be followed by a single additional alphabetic identifier for each compartment, beginning with the letter "A" and proceeding sequentially without skipping letters (i.e., 1A, 1B, 1C . . .).

(D) Temporary delivery authorization.

(i) Upon receipt of a TCEQ construction notification form indicating the pending installation of a new or replacement UST system(s), or indicating that a UST system temporarily out-of-service under §334.54 of this title will be returned to service, the agency will issue a temporary delivery authorization for those tank systems.

(ii) The temporary delivery authorization is valid for no more than 90 days after the first delivery of regulated substance into the UST system described in clause (i) of this subparagraph.

(iii) The UST owner and operator are responsible for maintaining complete and accurate records of the date of the first deposit of regulated substances into the UST system(s), as well as the date that the initial 90-day period expires. The bill of lading for the first delivery of regulated substance into the UST system at the facility must be attached to the temporary delivery authorization for that facility.

(6) Revocation of delivery certificate.

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

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

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

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

(B) Procedures for revocation of delivery certificate.

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

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

(II) the commission on its own motion.

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

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

(I) revoke a certificate; and

(II) issue any other orders permitted by law.

(iv) Revocation of a delivery certificate is cumulative of any other remedies available to the agency by law.

Adopted October 8, 2008

Effective October 30, 2008

§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) or an aboveground storage tank (AST) 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/installation notification provisions under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems); §334.127 of this title (relating to Registration for Aboveground Storage Tanks (ASTs)); §334.8 of this title (relating to Certification 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); and §334.126 of this title (relating to Installation Notification for Aboveground Storage Tanks (ASTs)).

(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 and/or ASTs 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 as to USTs, 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 Commission on Environmental Quality and may be subject to certain registration, compliance self-certification, construction notification, and other requirements found in Title 30 Texas Administrative Code, Chapter 334."

(5) For the purpose of fulfilling the disclosure requirements of this section as to ASTs, the following language (together with the information in paragraph (1) of this section) is deemed sufficient: "The aboveground storage tank(s) which are included in this conveyance are presumed to be regulated by the Texas Commission on Environmental Quality and may be subject to certain registration, delivery prohibition,

installation notification, and other requirements found in Title 30 Texas Administrative Code, Chapter 334."

Adopted October 27, 2004

Effective November 18, 2004

§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) 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);

(7) payment of UST fees, in accordance with Subchapter B of this chapter (relating to Underground Storage Tank Fees);

(8) 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 (NAPLs));

(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);

(9) 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

(10) 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. When agency requirements specify documents that must be prepared by, or prepared under, the supervision of a duly licensed professional engineer, a duly licensed professional geoscientist, or a duly licensed professional surveyor, those documents must be prepared in accordance with all requirements of statute and rule applicable to that respective professional.

(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 a 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 a 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 must be 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, 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 Underground Storage Tank Systems) and §334.46(i) of this title (relating to Installation Standards for New Underground Storage Tank 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 Underground Storage Tank 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 overflow control records, in accordance with §334.51(c) of this title (relating to Spill and Overflow Prevention and Control);

(viii) records for repairs and relining of a UST system, in accordance with §334.52(d) of this title (relating to Underground Storage Tank 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 (relating to Temporary Removal from Service);

(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. 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 Commission on Environmental Quality, and any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(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 a UST or an 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 Texas Water Code (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 a UST or an 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 a UST or an 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 a UST or an 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.

Adopted October 27, 2004

Effective November 18, 2004

§334.14. Memorandum of Understanding Between the Attorney General of Texas and the Texas Natural Resource Conservation Commission.

(a) Applicability. This MOU applies to civil enforcement proceedings and complaints filed on storage tanks subject to this chapter. Pursuant to the Texas Water Code, §5.104, the Texas Natural Resource Conservation Commission adopts a MOU between the Texas Natural Resource Conservation Commission (TNRCC) and the Attorney General of Texas. The MOU contains the TNRCC's and the Attorney General's

interpretation concerning intervention in the civil enforcement process under the Texas Water Code. This section applies as follows.

(1) The Texas Water Commission (now the Texas Natural Resource Conservation Commission, TNRCC) was designated as the state agency for the regulation of underground storage tanks by enactment of Senate Bill 779 of the 70th Texas Legislature, 1987.

(2) The Texas Water Code authorizes the Texas Natural Resource Conservation Commission to have instituted civil suits for injunctive relief and the assessment and recovery of a civil penalty, whenever it appears that a person has violated, or is violating or threatening to violate, any provision of the Texas Water Code, or of any rule, permit, or other order of the Texas Natural Resource Conservation Commission.

(3) The Texas Water Code provides that at the request of the executive director of the Texas Natural Resource Conservation Commission, the Attorney General of Texas shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover a civil penalty, or for both injunctive relief and penalty.

(4) Federal regulations promulgated by the United States Environmental Protection Agency pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, Subtitle I, require that any state agency administering the Underground Storage Tank Program authorized under that act provide for public participation in the state enforcement process.

(5) All citizen complaints filed, either orally or in writing, that relate to underground storage tanks will be investigated timely and thoroughly by the Texas Natural Resource Conservation Commission. Citizen complaint responses will be first initiated by attempting to establish telephone contact with the complainant within 48 hours of receipt of the complaint, and concurrently beginning whatever records review is necessary. Upon completion of the investigation, the complainant will be informed in writing of the results. In addition, the complainant will be apprised of the ultimate resolution of the problem. The executive director of the Texas Natural Resource Conservation Commission shall keep a complaint file in accordance with §337.4 of this title (relating to Enforcement).

(6) Notice of proposed settlements of civil enforcement actions that relate to underground storage tanks will be published by the attorney general of Texas in the *Texas Register* (except where immediate action is necessary to adequately protect human health and the environment) and that opportunity will be provided for the public to comment on such proposed settlements.

(7) Nothing in this agreement shall be construed to limit or impair the attorney general's right to control and direct litigation on behalf of the state.

(8) The attorney general will not oppose intervention where permissive intervention may be authorized by statute, rule, or regulation into any civil suit involving the State of Texas relating to violations of the Underground Storage Tank Program by any citizen having an interest which is or may be adversely affected.

(9) The attorney general, on behalf of the State of Texas, will consent to a proposed judgment in an action to enjoin violations of the Underground Storage Tank Program only after the publication of notice which provides at least 30 days for public comment on the proposed judgment prior to its entry by the court, provided that the attorney general may permit an exception to the 30-day comment period if a settlement or judgment is required to avoid delays that would adversely affect public health or the environment.

(b) Execution by all signatories. After execution by all signatories, this agreement shall remain in effect until rescinded by formal action of either agency.

(c) Effective date. The effective date of the memorandum of understanding is the effective date of this rule adoption.

§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.

§334.16. Limits on Liability of Corporate Fiduciary.

(a) A corporate fiduciary or its agent(s) is not liable in an individual capacity as an owner or operator under this chapter solely because:

(1) the corporate fiduciary or its agent has legal title to real or personal property for purposes of administering a trust or estate of which the property is a part; or

(2) the corporate fiduciary or its agent does not have legal title to the real or personal property but operates or manages the property under the terms of an estate or trust of which the property is a part.

(b) Subsection (a) of this section does not relieve a trust, estate, or beneficiary of any liability the trust, estate, or beneficiary may have as an owner or operator under this chapter.

Adopted October 11, 1995

Effective November 8, 1995

§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.

Adopted November 1, 2000

Effective November 23, 2000

§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.

Adopted November 1, 2000

Effective November 23, 2000

§334.19. Fee on Delivery of Petroleum Product.

(a) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection and pursuant to Texas Water Code, §26.3573. "Withdrawal from bulk means" the removal of a petroleum product from a bulk facility storage tank for delivery directly into a cargo tank or a barge to be transported to another location other than another bulk facility for distribution or sale in this state. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows, subject to future adjustments made under subsection (b) of this section:

(1) \$2.75 for each delivery made after June 30, 2012 into a cargo tank having a capacity of less than 2,500 gallons.

(2) \$5.50 for each delivery made after June 30, 2012 into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons.

(3) \$8.65 for each delivery made after June 30, 2012 into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons.

(4) \$11 for each delivery made after June 30, 2012 into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) \$5.50 for each increment of 5,000 gallons or any part thereof delivered after June 30, 2012 into a cargo tank having a capacity of 10,000 gallons or more.

(b) TCEQ may adjust the fee rates in subsection (a) of this section through an appropriate notification process, such as but not limited to Texas Register publication with public comment, based on the agency's cost of administering this chapter, but not to exceed the maximum rates set by Texas Water Code, §26.3574. The projected rates will account for the biennial appropriations to the agency from the Petroleum Storage Tank Remediation Account Number 655, as well as fund obligations for Account Number 655, with projected revenue from the fee based on such factors as estimated fuel sales, population growth, consumer price index, and gas production.

Adopted March 28, 2012

Effective April 19, 2012