

SUBCHAPTER H: REIMBURSEMENT PROGRAM
§§334.301 - 334.322
Effective October 30, 2008

§334.301. Applicability of this Subchapter.

(a) Authorization for reimbursement. This subchapter authorizes the reimbursement of the expenses of corrective action taken in response to a release of:

- (1) petroleum products from a petroleum storage tank;
- (2) hydraulic fluid and other substances from a hydraulic lift system located at a vehicle service and fueling facility; and
- (3) spent oil and other substances from spent oil tanks located at a vehicle service and fueling facility, provided that the tank listed under this subsection is also subject to regulation under Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(b) Deadline for commencing corrective action. This subchapter applies only under the following conditions:

- (1) the confirmed release or releases which necessitated the corrective action were reported to the agency on or before December 22, 1998; and
- (2) the release is confirmed by the agency.

(c) Expenses considered for payment--time frame in which corrective action performed. Subject to the other requirements of this subchapter, the expenses which may be considered for payment from the petroleum storage tank remediation fund are limited to expenses of corrective action which was performed for the owner or operator on or after September 1, 1987, and conducted in response to a confirmed release that was initially discovered and reported to the agency on or before December 22, 1998. Expenses for corrective action performed prior to September 1, 1987, are not subject to reimbursement or payment. No expenses for corrective action performed after September 1, 2005 will be reimbursed unless the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571 and has been granted such an extension by the executive director. The Petroleum Storage Tank Remediation (PSTR) Account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2011. No reimbursements will be made for corrective action expenses sought in claims submitted to the agency after March 1, 2012. Under no circumstances will any reimbursements be made on or after September 1, 2012.

(d) Limitations. This subchapter shall not be construed to authorize reimbursement or payment from the PSTR fund in situations other than those described in subsection (a) of this section and any person seeking reimbursement under this subchapter must meet the requirements of this subchapter.

(e) Operative date for this subchapter. This subchapter applies as follows.

(1) This subchapter authorizes applications for payment from the PSTR fund to be filed and processed pursuant to its terms on and after July 17, 1990, and ratifies any actions relating to filing and processing applications taken in accordance with this subchapter.

(2) This subchapter authorizes the agency to make payments pursuant to its terms from the PSTR fund on and after July 17, 1990, and ratifies any payments made in accordance with this subchapter.

(3) All costs incurred in the course of performing corrective action which are incurred on or after September 1, 1987, will be subject to the terms of this subchapter for the purposes of determining whether those costs are allowable. Nothing in this paragraph shall be construed to invalidate payments made by the agency under prior rules of the commission.

(f) Possibility of invalidity. If any section, subsection, paragraph, subparagraph, clause, or subclause of this subchapter is held invalid, such invalidity shall not affect any other section, subsection, paragraph, subparagraph, clause, or subclause which can be given effect without the invalid provision, and to this end the provisions of this subchapter are declared to be severable.

(g) Suspending payments from the PSTR fund. The executive director may suspend payments from the fund, in whole or in part, as necessary to preserve the viability of the fund.

(h) Order of consideration, processing, and payment of claims. Effective September 1, 1995, the executive director shall consider and process a claim by an eligible owner or operator for reimbursement from the PSTR fund in the order in which it is received, with the following provisions:

(1) The executive director shall consider and process all claims by eligible owners and operators for reimbursement from the fund that were received before September 1, 1995, before the executive director considers a claim received after that date.

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

Adopted October 8, 2008

Effective October 30, 2008

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

(a) To be considered for reimbursement under this subchapter, corrective action must be performed either as provided in subsection (b) of this section or in response to a release which:

(1) results in contamination which penetrates beyond the excavation zone of the tank system and which is above action levels determined by the agency;

(2) is ultimately confirmed by the agency, either before or after corrective action commences, provided that it shall be the burden of the person claiming monies under this subchapter to

show both that a release which is eligible for reimbursement occurred and the expenses claimed are allowable and reimbursable; and

(3) the confirmed release was initially discovered and reported to the agency on or before December 22, 1998.

(b) Subsection (a) of this section does not apply if the corrective action is specifically required by an order of the commission, or a written request or confirmation by the agency, and the release was initially discovered and reported to the agency on or before December 22, 1998.

(c) No payments shall be made by the agency under this subchapter for:

(1) the owner/operator contribution described in §334.312 of this title (relating to Owner/Operator Contribution), which the agency may apportion in the case of multiple claimants as provided in §334.314(f) of this title (relating to Fund Payment Report);

(2) any expenses for corrective action which exceed \$1 million per occurrence;

(3) any expenses relating to compensation for bodily injury or property damage;

(4) any expenses for corrective action incurred for confirmed releases initially discovered and reported to the agency after December 22, 1998;

(5) any expenses related to corrective action performed after September 1, 2005, unless the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571 and has been granted such an extension by the executive director. The Petroleum Storage Tank Remediation (PSTR) Account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2011;

(6) any expenses related to corrective action contained in a reimbursement claim filed with the agency after March 1, 2012;

(7) any expenses on or after September 1, 2012; or

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

(d) No expenses for which reimbursement is claimed under this subchapter and no expenses which are to be applied to the owner/operator contribution shall be subject to reimbursement or applied to the owner/operator contribution unless the following conditions have been met.

(1) An application for reimbursement must be filed by the owner or operator of a petroleum storage tank or his/her duly authorized agent, as required by §334.304 of this title (relating to Who May File Application).

(2) Unless otherwise approved by the agency, a certification affidavit as provided in the application for reimbursement must be signed by all of the following: owner or operator of a petroleum storage tank, the application preparer, and the prime contractor and/or the prime corrective action specialist, as defined in §334.322 of this title (relating to Subchapter H Definitions).

(3) The application has been filed within the time prescribed in §334.303 of this title (relating to When to File Application).

(4) The person seeking reimbursement must be an eligible owner or operator, as defined in §334.322 and §334.310 of this title (relating to Subchapter H Definitions and Requirements for Eligibility, respectively) or they must be authorized through an assignment by an eligible owner or eligible operator to receive such payment under subsections (i) - (k) of this section.

(5) The expenses for which reimbursement is sought, and those which are to be applied to the owner/operator contribution must be allowable costs, as defined in §334.308 of this title (relating to Allowable Costs and Restrictions on Allowable Costs).

(6) The allowable costs for which reimbursement is sought and those which are to be applied to the owner/operator contribution must be reimbursable, as defined in §334.309 of this title (relating to Reimbursable Costs).

(7) An application for reimbursement has been filed in accordance with this subchapter which contains the information required by this subchapter.

(e) For purposes of this subchapter only, the persons listed in §334.310 of this title may be eligible owners or operators, provided that they meet the other criteria prescribed by this subchapter.

(f) All claims for assistance and reimbursement filed under this subchapter are subject to the availability of funds in the petroleum storage tank remediation fund.

(g) Nothing in this subchapter shall affect the liability or responsibility of an owner or operator of an underground or aboveground storage tank to take corrective action in response to a release in accordance with applicable law.

(h) Nothing in this subchapter shall be construed to create an entitlement to monies in the petroleum storage tank remediation account or any other fund, and the commission reserves the right to amend or repeal without limitation any of the provisions of this subchapter, including provisions regarding eligibility and allowable costs.

(i) Payment made to persons other than the eligible owner or operator may only be made subject to subsections (j) and (k) of this section and may only be made to assignees duly authorized to receive payment on behalf of an eligible owner or operator except as provided by §334.306(f) of this title (relating to Form and Contents of Application).

(j) Authorization for an assignee to receive payment on behalf of an eligible owner or operator must be in writing and signed by the eligible owner or operator who is requesting payment. The

authorization must clearly describe what funds the assignee is authorized to receive. If the agency determines that the authorization is not clear as to the disposition of funds to which the eligible owner or operator is entitled, the agency may withhold payment and request written clarification from the eligible owner or operator. The agency may limit the number of assignees who may receive payments for any one occurrence. Notwithstanding any review made or limitations imposed by the agency under this section, neither the State of Texas, nor the agency shall be responsible for ensuring that payment is made to the parties as contemplated by the authorization. It is the responsibility of the eligible owner or operator and the assignee requesting payment to ensure that the agency is supplied with information sufficient to make the proper payments. The right to receive payment under this subchapter is not transferable for any purpose and only the people authorized to receive payment under this section are entitled to do so.

(k) No payment of funds will be made to any person other than the eligible owner or operator under this subchapter, except as follows:

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

(A) a Prime Corrective Action Specialist, properly registered under Subchapter J of this chapter (relating to Leaking Petroleum Storage Tank Corrective Action Specialist Registration and Project Manager Licensing), hired by the owner or operator to perform corrective action activities at the leaking petroleum storage tank site in question who also holds a lienhold interest on the real estate or fixture that is attached to the real estate where the release occurred and on which the claim for payment is based; or

(B) a person who has insured the owner or operator of petroleum storage tanks for pollution liability on or after July 17, 1990, and who has paid claims on that policy for remediation costs for which the tank owner may be reimbursed under this subchapter; or

(C) any other person who holds legal or equitable title to the property where the release occurred and on which the claim for payment is based; and

(2) the type of ownership interest required under paragraph (1)(A) and (C) of this subsection is an interest in the surface estate of the property.

Adopted October 8, 2008

Effective October 30, 2008

§334.303. When to File Application.

(a) An application for reimbursement under this subchapter must be filed on or after January 17, 1990, but not after March 1, 2012.

(b) No expenses are allowable for reimbursement under this subchapter unless a complete application for reimbursement is filed.

(c) For claimed expenses of corrective action activities, the application for reimbursement will not be considered complete until the supporting information, reports, and/or documentation required by

the agency under Subchapter D of this chapter (relating to Release Reporting and Corrective Action) have been filed with the agency.

Adopted October 8, 2008

Effective October 30, 2008

§334.304. Who May File Application.

Only the following person may file an application for reimbursement under this subchapter:

(1) the eligible owner of a tank from which a release has occurred and for which partial or completed corrective action has been performed, or his duly authorized agent;

(2) the eligible operator of a tank from which a release has occurred and for which partial or completed corrective action has been performed, or his duly authorized agent;

(3) an owner or operator ordered by the commission or required in a written corrective action directive by the agency staff on or after September 1, 1987, to assess the nature and extent of contamination in cases where no release is discovered, or the duly authorized agent of such owner or operator; or

(4) a past owner or operator who, in response to a release, performed corrective action on or after September 1, 1987.

Adopted November 1, 2000

Effective November 23, 2000

§334.305. Where and How Documents Must be Filed.

(a) Any application for reimbursement or claim for payment filed pursuant to this subchapter, plus any fees and registration information required pursuant to §334.310(a) of this title (relating to Requirements for Eligibility) must be submitted to the agency, at the address specified on the application form.

(b) All documents to be filed under this subchapter shall be filed with the agency using one of the following:

(1) certified mail, return receipt requested;

(2) express mail or other overnight delivery service, return receipt requested;

(3) hand delivered to the appropriate offices; or

(4) any other method approved by the agency.

(c) The date of filing of any document required to be filed with the agency under this subchapter shall be the receipt date stamped on the document by the agency.

(d) The date of filing documents with the chief clerk or the commission on protested claims for payment shall be controlled by this subchapter and the procedural rules of the commission.

Adopted November 1, 2000

Effective November 23, 2000

§334.306. Form and Contents of Application.

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

(b) The application must contain the following:

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

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

(A) each owner and operator of the tanks;

(B) the facility owner; and

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

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

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

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

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

(A) any work performed;

(B) who performed the work;

(C) where the work was performed;

(D) the dates the work was performed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) initial abatement measures and emergency actions phase;
- (2) preliminary site assessment phase;
- (3) comprehensive site assessment phase;
- (4) risk assessment and remediation planning phase;
- (5) remediation phase;
- (6) post-remediation monitoring phase; and
- (7) site closure.

Adopted October 18, 2006

Effective November 9, 2006

§334.307. Technical Information Required.

(a) The following information may be required by the agency as part of any application for reimbursement under this subchapter:

(1) any information which the agency may require under Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(2) a detailed account of what corrective action has been taken, why specific actions were taken, when, by whom, and with what results;

(3) an estimate of what other corrective action measures may be required to remediate the facility and the estimated time required to complete such measures.

(b) The agency may require the applicant to supplement information already submitted, or may return the application if the information is not sufficient to allow for proper application review.

Adopted October 27, 2004

Effective November 18, 2004

§334.308. Allowable Costs and Restrictions on Allowable Costs.

(a) Only those costs that are allowable costs under the terms of this section shall be subject to reimbursement under this subchapter.

(b) Allowable costs are those costs and expenses directly required for the performance of necessary corrective action in accordance with commission rules.

(c) Unless otherwise specified in subsection (g) of this section, allowable costs shall include, but not be limited to, the following:

(1) abatement of impacts and immediate threats of impact to human health, safety, and the environment, including measures necessary to prevent further releases and to identify and mitigate all fire, explosion, and human exposure hazards associated with a release;

(2) removal of phase-separated product;

(3) temporary provision of an alternate water supply. The agency shall determine the length of time during which the cost of water supply may be allowable, the amounts of water which may be allowable, the uses for which water supply may be allowable, and other conditions of approval;

(4) collection and analysis of surface and subsurface soil and water, phase-separated product, and vapor samples;

(5) emplacement of monitor wells;

(6) removal, storage, treatment, recycling, transport, and disposal of phase-separated product, sludges, vapors, contaminated soils, contaminated water, and other wastes and contaminated articles, in accordance with applicable laws;

(7) removal, disposal, and replacement (including transport) of soils and pavement where removal is necessary to the performance of corrective action;

(8) tank system integrity testing in accordance with the methods prescribed by this chapter when such testing:

(A) is necessary to the performance of corrective action;

(B) has been specifically requested by the agency staff on or after May 31, 1989;

or

(C) has been specifically ordered by the commission on or after May 31, 1989;

(9) identification and testing of affected or potentially affected drinking water sources;

(10) design of plans for site assessment and remediation;

(11) acquisition, installation, startup, operation, and maintenance of remediation systems, including monitoring;

(12) removal, transport, and disposal of the piping, pumps, and dispensers associated with the underground or aboveground tank when necessary for performance of corrective action, and when removed after October 1, 1992, and before June 6, 1993;

(13) tank removal (as defined in this subchapter), transport, and disposal of the components of the underground or aboveground tank, including compliance with applicable requirements under Subchapter D of this chapter (relating to Release Reporting and Corrective Action), in accordance with applicable law when necessary for the performance of corrective action and performed before March 12, 1993;

(14) a portion of costs, as specified in this section, of tank removals, transport, and disposal of the components of the underground or aboveground tank, including compliance with applicable requirements under Subchapter D of this chapter, when necessary for the performance of corrective action and performed on or after March 12, 1993. Reimbursement under this paragraph performed on or after March 12, 1993, shall be based on the volume of the tank and shall have a maximum reimbursable limit of \$8,000 per leaking petroleum storage tank site. For underground storage tanks (USTs) having a volume of 5,000 gallons or less, the portion of reimbursable costs under this paragraph for each such tank is \$1,000. For USTs having a volume of greater than 5,000 gallons, the portion of reimbursable costs under this paragraph for each such tank is \$2,000;

(15) permanent abandonment in-place, of a tank system, including compliance with applicable requirements under Subchapter D of this chapter, where abandonment in-place rather than tank system removal is deemed by the agency to be necessary to avoid destruction of substantial or significant surface improvements and conducted before June 6, 1993;

(16) temporary relocation of utility structures when necessary to the performance of corrective action;

(17) preparation of technical reports required in accordance with the requirements of Subchapter D of this chapter;

(18) the reasonable, as determined by the agency and as limited by the reimbursable cost specifications, value of necessary time to obtain access to property outside of the facility boundaries where such access is necessary for the performance of corrective action;

(19) the reasonable value, as determined by the agency and as limited by the reimbursable cost specifications, of necessary time spent by the applicant in planning and administering the applicant's corrective action plan;

(20) performance of any corrective action measure which is specifically required by an order of the commission or a written request by agency staff on or after September 1, 1987;

(21) state and federal sales taxes applicable to items which are otherwise allowable costs under this section; and

(22) any other costs determined by the agency to be allowable in accordance with the provisions of this subchapter.

(d) The costs of abatement or corrective action taken in response to a release of hydraulic fluid from a hydraulic lift system are allowable costs in situations where:

(1) the hydraulic fluid was released from a hydraulic lift system located at a vehicle service and fueling facility where the hydraulic lift system was used in conjunction with and contemporaneously with a vehicle service and fueling facility; and

(2) upon request by the agency, the eligible owner or operator demonstrates that a release from the hydraulic lift system is not mixed with any substance except for petroleum products from a petroleum storage tank system, spent oil from a spent oil tank located at a vehicle service and fueling facility (or another substance contained in such spent oil tank), or another substance that was contained in the hydraulic lift system owned or operated by the person claiming reimbursement.

(e) The costs of abatement or corrective action taken in response to a release of spent oil from a spent oil tank are allowable costs under the following:

(1) the spent oil was released from a spent oil tank located at a vehicle service and fueling facility where the spent oil tank was used in conjunction with and contemporaneously with a vehicle service and fueling facility; and

(2) upon request by the agency, the eligible owner or operator demonstrates that a release of spent oil is not mixed with any substance except for petroleum products from a petroleum storage tank system, or hydraulic fluid (or another substance that was contained in the hydraulic lift system) or another

substance that was contained in the spent oil tank owned or operated by the person claiming reimbursement.

(f) The costs of excavation, disposal, or treatment of backfill material generated during the tank removal process and any additional sampling and reporting required under Subchapter D of this chapter required because of the disposal or treatment of the backfill material are allowable costs where the concentration of constituents of any substance listed in §334.301(a) of this title (relating to Applicability of this Subchapter) in the backfill material exceed a standard for which the agency will permit the backfill material to be returned to the original tank pit excavation and a prior written directive is obtained from the agency prior to implementation.

(g) The following types of costs are those which will not be considered allowable costs under this subchapter:

- (1) the cost of replacement, repair, and maintenance of affected tanks and associated piping;
- (2) the cost of upgrading existing affected tanks and associated piping, including, but not limited to, the costs of corrosion protection, release detection, spill and overflow protection, or any other upgrading required by Subchapter C of this chapter (relating to Technical Standards);
- (3) removal, transport, and disposal of the piping, pumps, and dispensers associated with the underground or aboveground tank when removed prior to October 1, 1992, or on or after March 12, 1993;
- (4) tank removal (as defined in this subchapter) and transport, and disposal of the components of the underground or aboveground tank, unless otherwise specified in subsection (c)(13) and (14) of this section;
- (5) permanent abandonment in-place of a tank system, where abandonment in-place rather than tank system removal is deemed by the agency to be necessary to avoid destruction of substantial or significant surface improvements when conducted on or after March 12, 1993;
- (6) loss of income or profits, including without limitation, the loss of business income arising out of the review, processing, or payment of an application or request for assistance under this subchapter;
- (7) decreased property values;
- (8) bodily injury or property damage;
- (9) attorney's fees;
- (10) any costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this subchapter;

(11) the costs of making improvements to the facility beyond those that are required for corrective action;

(12) costs associated with corrective action performed for any purpose where no release of petroleum product above action levels is discovered, except when the corrective action has been ordered by the commission;

(13) costs of compiling and storing records relating to costs of corrective action;

(14) costs of corrective action taken in response to the release of a substance which is not a petroleum product as defined in §334.322 of this title (relating to Subchapter H Definitions);

(15) costs of tank integrity testing when it is not specifically required by this chapter, requested by the agency staff, or ordered by the commission;

(16) costs of any corrective action incurred by an owner or operator on or after the date that the executive director commences corrective action at the owner's or the operator's facility under §334.84 of this title (relating to Corrective Action by the Agency), unless authorized in writing by the agency;

(17) costs incurred as a result of a release from a storage tank system owned, operated, or maintained by a common-carrier railroad;

(18) any activities, including those required by this chapter, which are not conducted in compliance with applicable state and federal environmental laws or laws relating to the transport and disposal of waste;

(19) interest on monies;

(20) excluding releases identified under subsections (d) and (e) of this section, the cost of abatement or corrective action taken in response to a release of:

(A) a regulated substance, which is not a petroleum product; and

(B) a release of a petroleum product that has commingled with a regulated substance, that is not a petroleum product;

(21) the costs of the installation or construction of on-site equipment, structures, or systems used in the extraction or management of wastes, except soil excavation, landfill disposal, well sampling, or monitoring, unless:

(A) the plans and specification for such equipment, structures, or systems are properly sealed by a licensed professional engineer; and

(B) the construction and installation of such equipment, structures, or systems are performed under the supervision of a licensed professional engineer;

(22) work not pre-approved under §334.310(f) of this title (relating to Requirements for Eligibility) or pre-approved work performed incorrectly and rejected by the agency; or

(23) costs attributable to fraud.

Adopted October 27, 2004

Effective November 18, 2004

§334.309. Reimbursable Costs.

(a) The agency will utilize the reimbursable cost specifications, as outlined in §334.560 of this title (relating to Reimbursable Cost Specifications), to evaluate the reimbursability of claims related to the cleanup of leaking petroleum storage tank sites.

(b) No cost shall be reimbursed unless it is also an allowable cost under §334.308 of this title (relating to Allowable Costs and Restrictions on Allowable Costs).

(c) For reimbursements appropriate to be made under this subchapter, the amount reimbursed will be the lower of the invoiced amount or the line-item amount (adjusted for scope of work) for that activity specified in Subchapter M of this chapter (relating to Reimbursable Cost Specifications for the Petroleum Storage Tank Reimbursement Program). An exception to this subsection is made for items under Subchapter M of this chapter requiring bidding, where reimbursements requests are processed as described in Subchapter M of this chapter. For those activities that require pre-approval under §334.310(f) of this title (relating to Requirements for Eligibility), the agency may also, at its discretion, limit the amount reimbursed to the pre-approved amount.

(d) A cost is not reimbursable if a contractor fails to pay its subcontractors for subcontracted work or if there is a failure to perform the work claimed as technically required. The audit of reimbursable costs is addressed in §§334.530 - 334.535 of this title (relating to Purpose and Applicability of the Subchapter, Cooperation with Audit; False Submittals, Payments, Audits, Notice of Overpayment, and Objections to the Notice of Overpayment and Formal Petition for Hearing).

Adopted October 27, 2004

Effective November 18, 2004

§334.310. Requirements for Eligibility.

(a) For a person to be an eligible owner or operator under this subchapter, each of the following requirements must be met.

(1) The person must meet the other requirements of this chapter (including, but not limited to, the restrictions under §334.302 of this title (relating to General Conditions and Limitations Regarding Reimbursement; Assignments)) and must be:

(A) an owner or an operator of a petroleum storage tank, hydraulic lift system, or a spent oil tank which is subject to the requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(B) any past owner or operator of a tank described in subparagraph (A) of this paragraph who performed corrective action on or after September 1, 1987 in response to a release of petroleum products from such tank;

(C) an owner of land who can clearly prove that the land has been contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph which is or was located on said land and who performed corrective action in response to a release of petroleum products from such tank;

(D) a lender who has a bona fide security or lienhold interest in or mortgage lien on any property where a tank described in subparagraph (A) of this paragraph is or was located and who performed corrective action in response to a release of petroleum products from such tank;

(E) a lender who forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of property contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph, and who performed corrective action in response to a release of petroleum products from such tank; or

(F) an adjacent landowner who can clearly prove that the land has been contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph which is not located on said land, and who performed corrective action in response to a release of petroleum products from such tank, and either:

(i) performed emergency abatement actions by completing all the following:

(I) notifying the agency within 24 hours of discovery that the emergency condition exists;

(II) notifying the local fire marshall (or state fire marshall if no local authority is available) within 24 hours;

(III) taking actions necessary to protect against imminent danger to human health and safety by mitigating fire, explosion, and vapor hazards, by removing phase-separated product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the executive director. Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and remediation are not considered part of emergency abatement activities. Any expenses incurred after 72 hours from commencement of the action must be approved by the agency in writing; and

(IV) having the release and threat ultimately confirmed by the agency; or

(ii) committed to undertake the entire cleanup of the leak and contamination from the tank on his property and on all other property by:

(I) obtaining prior approval in writing from the agency;

(II) performing a site assessment to define the extent of the vertical and horizontal contamination at the time of the agreement;

(III) entering into a legal agreement with the owner of the tank whereby the adjacent landowner agrees to indemnify and hold harmless the owner, operator, and other affected landowners for any corrective action or third-party liability effective from the date of the agreement; and

(IV) performing all corrective action in conformance with this chapter, and all other applicable rules and regulations. The applicable deductible for reimbursement under §334.312 of this title (relating to Owner/Operator Contribution) for cleanups undertaken by adjacent landowners under this subsection shall be the same as that applicable to the registered owner of the tank.

(2) An underground and aboveground storage tank installed prior to December 1, 1995, which is required to be registered under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems) or §334.127 of this title (relating to Registration for Aboveground Storage Tanks (ASTs)) must be registered with the agency on or before December 31, 1995, or the owner or operator is not eligible to receive reimbursement for that tank, except for:

(A) an owner or operator of a registered facility who discovers an unregistered tank while removing, upgrading, or replacing a tank or while performing a site assessment;

(B) a state or local governmental agency that discovers an unregistered storage tank in a right-of-way during construction; or

(C) a property owner who reasonably could not have known that a tank was located on the property because a title search or the previous use of the property does not indicate a tank on the property.

(3) The owner or operator of an underground and aboveground storage tank installed on or after December 1, 1995, must be registered with the agency under §334.7 or §334.127 of this title no later than the 30th day after the date the installation is completed to be eligible for reimbursement for such tank.

(4) All annual facility fees due since September 1, 1987, under §334.21 of this title (relating to Fee Assessment), and since September 1, 1989, under §334.128 of this title (relating to Annual Facility Fees for Aboveground Storage Tanks (ASTs)) for all underground and aboveground storage tanks which they own or operate must be paid to the agency, except for those tanks which the owner or operator, upon reasonable inquiry, could not have known existed. All fees which come due up until the time that reimbursement funds are released to the claimant must be paid.

(5) Any release on which a claim under this subchapter is based must be discovered and reported to the agency on or before December 22, 1998, and must subsequently be confirmed by the agency.

(b) If an otherwise eligible owner or operator misses a deadline under §334.71(b) of this title (relating to Applicability and Deadlines), and that missed deadline is the fault of that person or his agent or contractor, then that person shall no longer be eligible for reimbursement for those or future corrective action expenses at that site.

(c) Agency eligibility determinations must be done in accordance with the standards of Texas Water Code, §26.3571.

(d) Compliance with Texas Water Code, Chapter 26, Subchapter I, for the purposes of determining eligibility under this subchapter and Texas Water Code, §26.3571, does not mean that an eligible owner or operator has not violated a statute or a rule or order of the commission. Eligibility of an owner or operator under this subchapter does not preclude the issuance of an enforcement order or the assessment of administrative penalties against an eligible owner or operator.

(e) In no case will reimbursement be made under subsection (a)(1)(F) of this section for duplication of assessment and remediation activities involving the same contamination plume. There will be no reimbursement for adjacent landowner cleanup allowed under subsection (a)(1)(F) of this section for activities at a site which occur after the site has been designated for state lead cleanup under §334.84 of this title (relating to Corrective Action by the Agency).

(f) Unless otherwise approved by the executive director and except as provided in §334.301(h)(2) and §334.313(d) of this title (relating to Applicability of this Subchapter and Review of Application), all corrective action activities, including activities proposed in corrective action plans, must be approved in writing by the executive director prior to implementation. Pre-approval of proposed corrective action activities and costs does not create an entitlement to reimbursement for any corrective action task, at the amount pre-approved or a different amount. For reimbursement of emergency, initial abatement measures and phase-separated product recovery as required by §334.77 of this title (relating to Initial Abatement Measures and Site Check), approval by the executive director is not required prior to implementation, unless the emergency action extends beyond 72 hours, then written approval will be required for all activities.

Adopted October 18, 2006

Effective November 9, 2006

§334.311. Determining the Number of Occurrences.

(a) All releases at a facility which are discovered before or during the following phases of corrective action will be considered part of one release, subject to subsection (d) of this section:

- (1) the initial abatement measures and emergency action phase; and
- (2) preliminary site assessment phase.

(b) Releases discovered at a facility after the preliminary site assessment and remediation planning phase will be considered as separate occurrences from the releases detected earlier at the facility, subject to subsection (d) of this section.

(c) Regardless of when discovered, if the contamination within a facility is located in two or more areas and remediation of any area could be performed under separate and distinct corrective action plans, each distinct area within the facility will be considered as a separate occurrence, subject to subsection (d) of this section.

(d) In any situation, releases at a facility may be considered either as single or separate occurrences when doing either would:

- (1) make the most efficient use of the petroleum storage tank remediation fund; or
- (2) provide the most effective protection to the environment or best provide for public health and safety.

Adopted October 11, 1995

Effective November 8, 1995

§334.312. Owner/Operator Contribution.

(a) The agency shall deduct from any amount claimed for reimbursement an amount of allowable costs equal to the greater amount applicable for the owner/operator contribution as described in this section.

(b) The owner/operator contribution for each occurrence shall be as follows:

- (1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, \$10,000;
- (2) for a person who owns or operates a total of 100 - 999 petroleum storage tanks, \$5,000;
- (3) for a person who owns or operates a total of 13 - 99 petroleum storage tanks, \$2,500;
and
- (4) for a person who owns or operates a total of less than 13 petroleum storage tanks, \$1,000.

(c) If an owner or operator does not submit a site assessment in accordance with §334.78 of this title (relating to Site Assessment) before December 23, 1996, the owner/operator contribution for each occurrence shall be as follows:

- (1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, \$20,000;
- (2) for a person who owns or operates a total of 100 - 999 petroleum storage tanks, \$10,000;

(3) for a person who owns or operates a total of 13 - 99 petroleum storage tanks, \$5,000;
and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks,
\$2,000.

(d) If an owner or operator's corrective action plan as required by §334.81 of this title (relating to Corrective Action Plan) is not approved by the agency before June 23, 1998, the owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, \$40,000;

(2) for a person who owns or operates a total of 100 - 999 petroleum storage tanks,
\$20,000;

(3) for a person who owns or operates a total of 13 - 99 petroleum storage tanks,
\$10,000; and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks,
\$4,000.

(e) If an owner or operator's corrective action plan as required by §334.81 of this title is not approved by the agency before December 23, 1999, and if the owner or operator has not met the goals specified in the plan to be met by December 23, 1999, the owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, \$80,000;

(2) for a person who owns or operates a total of 100 - 999 petroleum storage tanks,
\$40,000;

(3) for a person who owns or operates a total of 13 - 99 petroleum storage tanks,
\$20,000; and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks,
\$8,000.

(f) An owner or operator of a site for which a closure letter has been issued on or after September 1, 1995, the owner/operator contribution for each subsequent release occurrence shall be \$50,000.

(g) It shall be presumed for purposes of this section that a person owns:

(1) the number of tanks for which he is registered as the owner in the records of the agency on the date that an administratively complete application is filed with the agency; or

(2) the number of tanks actually owned by the eligible owner or operator on the date that an administratively complete application is filed with the agency, whichever is greater.

Adopted November 1, 2000

Effective November 23, 2000

§334.313. Review of Application.

(a) An application for reimbursement or supplemented application filed under this subchapter shall be subject to review by the agency:

(1) to determine if the information which is required to be submitted under this subchapter has been filed with the agency, utilizing the following procedure:

(A) an application submitted will be reviewed by the staff for completeness. To be considered complete, an application must contain the following information:

(i) a completed application form, which has been provided or approved by the agency, containing the information required under §334.306(a) and (b)(1) - (4) of this title (relating to Form and Contents of Application);

(ii) legible copies as required under §334.306(b)(6) of this title and by certification of payment as required under §334.306(b)(7) of this title;

(iii) copies of pre-approval documentation and technical information requested in the application form, provided or approved by the agency, under §334.306(b)(5) of this title and §334.307(a) of this title (relating to Technical Information Required); and

(iv) an Application Checklist, provided with the application form, verifying that the applicant and application preparer have reviewed the application for completeness;

(B) if it is determined that an otherwise complete application contains any costs which required prior agency approval prior to implementation as required by §334.310(f) of this title (relating to Requirements for Eligibility), and such prior approval was not obtained, the applicant will be notified in a fund payment report that those costs will not be forwarded for further review until such time as the agency completes reviews of applications with pre-approved costs as allowed under subsection (d) of this section;

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

(D) the received date of the application is considered to be the date which the complete application was received by the agency, or the date which the required additional information was received by the agency; and

(2) to examine the substance of the application, including, without limitation:

(A) the cost effectiveness and fiscal merits of the corrective action taken at the facility; and

(B) the technical merits of the corrective action taken at the facility.

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

(1) require the applicant to provide such additional information. Further review of the application will be postponed until such information is received by the agency. The received date for the complete claim will be considered the date on which the agency received such additional required information; or

(2) issue the fund payment report, but withhold payment of those portions of the claim for which additional information has been requested.

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

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

Adopted October 18, 2006

Effective November 9, 2006

§334.314. Fund Payment Report.

(a) Upon completion of the review of an application, the agency shall prepare a fund payment report, indicating which of the applicant's claims the executive director believes should be reimbursed and which claims should not be reimbursed. If the executive director finds that any claim should not be paid or not paid to the full amount claimed, he shall briefly state the reasons in his report. The executive director shall submit a copy of his report to the applicant.

(b) The applicant shall review the fund payment report and shall file a written response with the agency within 60 days of the date on the report. The response shall be on a form provided or approved by the agency. The applicant may consent or object to all or any part of the report. If the agency has not received a response from the applicant within 60 days from the date of the report, the following shall occur:

(1) all claims approved for reimbursement in the fund payment report shall be eligible for payment;

(2) any claim addressed in the fund payment report shall be deemed satisfied in full; and

(3) the applicant will have waived his right to object to any item addressed in the fund payment report.

(c) Any item recommended for payment in the fund payment report to which the applicant objects shall not be eligible for payment until the agency and the applicant agree on an amount for payment or until the commission orders payment in a prescribed amount, whichever occurs first.

(d) Any item recommended for payment in the fund payment report to which the applicant consents by filing a timely response to the fund payment report shall be eligible for reimbursement when the agency receives the applicant's consent form. The consent of the applicant to any item recommended for payment shall mean that any claim covered by that item is considered satisfied in full.

(e) The agency may in its discretion pay claims which it has approved for payment by sending payment with the fund payment report.

(f) In cases where there are two or more applicants filing claims for one occurrence, the executive director may make an equitable apportionment of the owner/operator contribution described in §334.312 of this title (relating to Owner/Operator Contribution).

Adopted October 27, 2004

Effective November 18, 2004

§334.315. Protest of Fund Payment Report.

(a) If the applicant disagrees with any conclusion in the fund payment report, the applicant may file a protest with the executive director within 60 days of the date on the fund payment report.

(b) The protest must be in writing and signed by the applicant. It must be on a form prescribed or approved by the agency. It must contain the following:

(1) the name and address of the applicant;

(2) the address of the facility in question and the Texas Commission on Environmental Quality facility number, if any;

(3) a copy of the fund payment report which is the subject of the protest, or the application number which appears on the fund payment report; and

(4) a clear statement of each item which the applicant disputes on the fund payment report and any other documentation necessary to support the protest.

(c) The protest shall be filed with the executive director by sending or delivering it to the office indicated in the fund payment report materials.

(d) The applicant and the staff of the executive director shall attempt to resolve informally any disputes over the fund payment report. If no resolution is reached by the staff and the applicant, the applicant may file a petition requesting the commission to grant relief. Within 60 days of receipt of written notification from the agency that informal negotiations have ceased and the final informal fund protest meeting has been held, the applicant shall file a petition as specified in §334.316 of this title (relating to Formal Petition).

Adopted October 27, 2004

Effective November 18, 2004

§334.316. Formal Petition.

(a) The applicant shall file the petition with the chief clerk in the manner prescribed generally by this title for filing petitions with the commission and he shall serve a copy of the petition on the executive director.

(b) The petition shall set forth the relief which the applicant requests and shall contain the same information required for the protest, as prescribed in of §334.315(b) of this title (relating to Protest of Fund Payment Report).

Adopted October 11, 1995

Effective November 8, 1995

§334.317. Hearing by the Commission.

Following receipt of a petition, the commission shall conduct a hearing on the petition. The proceedings shall be governed by the rules of the commission.

Adopted October 11, 1995

Effective November 8, 1995

§334.318. Recovery of Costs.

The agency may initiate proceedings against any owner or operator of a petroleum storage tank for recovery of costs, as provided by the Texas Water Code, §26.355.

Adopted November 1, 2000

Effective November 23, 2000

§334.319. Administrative Penalties and Other Actions.

Nothing in this subchapter precludes the commission from issuing orders, assessing administrative penalties, or taking any other action permitted by law against any person for violation of any statute, any rule of the commission or any order of the commission.

Adopted October 11, 1995

Effective November 8, 1995

§334.320. Responsibilities of Owners, Operators, and Others.

(a) Nothing in this subchapter changes the responsibilities of an owner or operator of an underground or aboveground storage tank to respond to a release of regulated substances or to comply with any other requirements of statutes or the rules or orders of the commission.

(b) The owner and operator are obligated to pursue whatever actions are necessary to minimize any immediate impacts of threats to human health and safety and the environment and to stabilize the conditions caused by the release. When financially unable to pursue immediate abatement actions, the owner or operator shall notify the agency immediately.

(c) No person shall knowingly submit false information to the agency as part of any materials required to be submitted under this subchapter.

Adopted November 1, 2000

Effective November 23, 2000

§334.321. Corrective Action by the Agency.

No costs of corrective action incurred by an owner or operator at a facility on or after the date that the agency commences corrective action at the owner's or the operator's facility are allowable for reimbursement under this subchapter, unless authorized and the estimated costs preapproved in writing by the agency in accordance with this subchapter.

Adopted November 1, 2000

Effective November 23, 2000

§334.322. Subchapter H Definitions.

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

(1) **Adjacent landowner** - A person who owns legal title to land which is within reasonably close proximity to property where a regulated underground storage tank (UST) or aboveground storage tank is located whether or not the land is contiguous to the property containing the tank.

(2) **Application preparer** - Any person responsible for preparing the application for reimbursement.

(3) **Commingled** - See definition in §334.2 of this title (relating to Definitions).

(4) **Confirmed** - In the context of a release being confirmed by the agency under this subchapter, means that the executive director has determined that sufficient evidence exists to prove that a release of petroleum products has occurred from a petroleum storage tank subject to regulation under this chapter.

(5) **Eligible aboveground storage tank** - A non-vehicular device with a capacity of more than 1,100 gallons, and all connecting piping both above and below ground, that is made of non-earthen materials; located on or above the surface of the ground or on or above the surface of the floor of

a structure below ground, such as a mineworking basement, or vault; and designed to contain an accumulation of petroleum.

(6) **Eligible operator** - Any person in control of or having the responsibility for the daily operation of a petroleum storage tank who meets the eligibility requirements prescribed in §334.310 of this title (relating to Requirements for Eligibility).

(7) **Eligible owner** - Any person who meets the eligibility requirements prescribed in §334.310 of this title (relating to Requirements for Eligibility) and who held or currently holds legal possession or ownership of an interest in a petroleum storage tank. For the purposes of this subchapter, if the actual ownership of the petroleum storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the petroleum storage tank is located is considered the petroleum storage tank 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 petroleum storage tank is owned by another person. A person who has registered as an owner of a petroleum storage tank 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 petroleum storage tank owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the petroleum storage tank 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.

(8) **Emergency** - Any existing or potential fire, explosion, or vapor hazards which pose an imminent threat to human health and safety, or any imminent threat at the point of actual use to drinking water supplies actually being used.

(9) **Emergency abatement** - Taking mitigating actions necessary in an emergency to protect against imminent danger to human health and safety by removing phase-separated product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the agency. Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and remediation are not considered part of emergency abatement activities.

(10) **Initial abatement measures** - The mitigation of all existing or potential fire, explosion, or vapor hazards, including the removal of phase-separated product, to provide adequate protection of human health, safety, and the environment in emergency situations or other situations where emergency actions must be implemented to prevent further impacts to the environment. Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and remediation are not considered part of initial abatement measures.

(11) **Petroleum product** - See definition in §334.2 of this title (relating to Definitions).

(12) **Petroleum storage tank** - See definition in §334.2 of this title (relating to Definitions).

(13) **Phase-separated product** - See Free-product as defined in §334.2 (relating to Definitions) of this title.

(14) **Prime contractor** - Any natural person, firm, or any entity responsible for the contracting of any corrective action services.

(15) **Prime corrective action specialist** - A natural person, consulting firm, or any entity engaging in corrective action services, or acting as coordinator of others engaged in corrective action services.

(16) **Related parties** - An eligible owner, an eligible operator, a prime corrective action specialist, or a subcontractor (collectively "parties" or individually "party" in this definition) are related parties to the extent that any one of them holds any legal or beneficial ownership in another party, or is owned in whole or in part, legally or beneficially, by any person or entity who also owns all or part of the legal or beneficial interest in another party, or is party to an exclusive dealing agreement with another party regarding the performance of corrective action at leaking petroleum storage tank sites in Texas. Ownership by one member of a family shall be attributed to all those within the second degree by consanguinity or affinity. In addition, any of the parties listed in this paragraph are related parties if they share common employees, common offices, or centralized accounting; if they operate under a common business name; or if one party pays the wages of another party's employees, makes undocumented transfers of funds to the other party, or allows its employees to render services on behalf of another party.

(17) **Spent oil** - A regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

(18) **Tank removal** - The physical removal of a petroleum storage tank from the subsurface. Tank removals include removal and replacement of surface material, excavation and disposal of backfill material, petroleum storage tank removal and disposal, backfilling and compaction of backfilled material, and any other activities typically associated with the tank removal process.

(19) **Vehicle service and fueling facility** - A facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.