TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: January 24, 2024

DATE OF REQUEST: January 5, 2024

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2023-0155-RUL. Consideration of the adoption of amendments to 30 TAC Chapter 334, Underground and Aboveground Storage Tanks.

The adoption will amend 30 TAC Section 334.48(c) to remove the requirement for all retail service stations to conduct inventory control procedures. Inventory control shall be performed as part of a combined method under 30 TAC Section 334.50(d)(4) and (d)(9) (i.e. combination of inventory control plus automatic tank gauging or a combination of inventory control plus Statistical Inventory Reconciliation). The proposed rules were published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5528). (Zachary King, Erandi Ratnayake, and Cameron Puckett; Rule Project No. 2023-115-334-CE).

Craig Pritzlaff
Director

Andy Gardner
Division Deputy Director

Gwen Ricco
Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** January 5, 2024

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: Craig Pritzlaff, Director
Office of Compliance and Enforcement

Docket No.: 2023-0155-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 334, Underground and Aboveground Storage Tanks
Amendment of the Underground Storage Tank (UST) Rule to Remove Required Inventory Control Procedures at all Retail Service Stations
Rule Project No. 2023-115-334-CE

Background and reason(s) for the rulemaking:
Since the beginning of Texas' UST program in 1989, the commission's rules have required that effective manual or automatic inventory control procedures be conducted for all underground storage tank systems at "retail service stations," defined in 30 Texas Administrative Code (TAC) §334.2(102). This requirement applies regardless of which release detection method is selected by an owner or operator under 30 TAC §334.50. Because newer technologies have been developed, and interstitial monitoring is required for all UST systems installed after January 1, 2009, it has become unnecessary for all retail service stations to employ both inventory control procedures and the selected release detection method.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:
The rulemaking will amend 30 TAC §334.48(c) to remove the requirement for all retail service stations to conduct inventory control procedures. If the release detection method selected has inventory control noted as a component, such as 30 TAC §334.50(d)(4) or 30 TAC §334.50(d)(9), inventory control must be performed.

B.) Scope required by federal regulations or state statutes:
The rulemaking is not required by federal regulations or state statute. Rather, it removes a Texas rule that is more stringent than federal regulations. The resulting rule will be at least as stringent as federal regulations.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.

Statutory authority:
- 30 TAC §20.15, which describes petitions for rulemaking and provides such procedures specific to the commission;
- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §§5.103 and 5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC §5.013; and
- TWC, §7.002, which authorizes the commission to enforce provisions of the TWC.

Re: Docket No. 2023-0155-RUL

Effect on the:

A.) Regulated community:
The rulemaking will allow for cost and time savings for retail service stations that currently use other acceptable release detection methods under 30 TAC §334.50, which do not require inventory control procedures as a component. It will not require any additional costs or investments in new equipment for the regulated community.

B.) Public:
Because retail service stations are still required to employ an acceptable method of release detection, no direct effect on the public is anticipated.

C.) Agency programs:
By adopting these revisions, the State can reduce regulatory redundancy and pursue consistency with emerging technology within the industry.

Stakeholder meetings:
Staff have not held any stakeholder meetings related to this rulemaking; however, a public hearing on this rulemaking proposal was held during the comment period in Austin.

Public Involvement Plan
None.

Alternative Language Requirements
None.

Public comment:
The commission held a public hearing on October 19, 2023. The comment period closed on October 23, 2023. One comment, received from the Texas Food and Fuel Association (TFFA), was in support of the rule amendment.

Significant changes from proposal:
None.

Potential controversial concerns and legislative interest:
There are no known controversial concerns or legislative interest.

Will this rulemaking affect any current policies or require development of new policies?
No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
If this rulemaking does not go forward, regulated entities would continue with operations as they do now. This would require certain retail facilities to use outdated or redundant processes when more current technology is available.

Key points in the adoption rulemaking schedule:
Texas Register **proposal publication date:** September 22, 2023
Anticipated ***Texas Register*** **adoption publication date:** February 9, 2024
Anticipated effective date: February 15, 2024
Six-month ***Texas Register*** **filing deadline:** March 22, 2024

Re: Docket No. 2023-0155-RUL

Agency contacts:
Zachary King, Rule Project Manager, Program Support and Environmental Assistance Division, (512) 239-1931
Erandi Ratnayake, Staff Attorney, Litigation Division, (512) 239-6515
Cameron Puckett, Staff Attorney, Litigation Division, Remediation Section (512) 239-1636
Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-2678

Attachments:
None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Keisha Townsend
Krista Kyle
Office of General Counsel
Zachary King
Erandi Ratnayake
Cameron Puckett
Gwen Ricco
Elizabeth Vanderwerken
Regan White

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §334.48.

Amended §334.48 is adopted *without change* to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5528) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

Since the beginning of Texas' underground storage tank (UST) program in 1989, the commission's rules have required that effective manual or automatic inventory control procedures be conducted for all underground storage tank systems at "retail service stations," as defined in 30 Texas Administrative Code (TAC) §334.2(102). This requirement applies regardless of which release detection method is selected by an owner or operator under 30 TAC §334.50. Because newer technologies have been developed, and interstitial monitoring is required for all UST systems installed after January 1, 2009, it has become unnecessary for all retail service stations to employ both inventory control procedures and the selected release detection method.

Section by Section Discussion

§*334.48(c), Inventory Control.*

The commission adopts to amend §334.48(c) to remove the requirement for all retail service stations to conduct inventory control procedures. Inventory control must still be performed, where applicable, as a necessary component of a release detection method under 30 TAC §334.50(d)(4) and (d)(9) (*i.e.*, combination of inventory control plus automatic tank gauging or a

combination of inventory control plus statistical inventory reconciliation).

Final Regulatory Impact Analysis

The commission reviewed the rulemaking adoption in light of the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking adoption does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirements to prepare a Regulatory Impact Analysis.

A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted amendment to §334.48(c) is to remove a duplicate requirement of inventory control where USTs are utilizing another release detection method.

Due to the development of newer technologies, and the requirement of utilizing interstitial monitoring for all UST systems installed after January 1, 2009, the requirement that all retail service stations employ inventory control procedures in addition to a selected release detection method has become unnecessary. Inventory control must still be performed as a component of a release detection method under 30 TAC §334.50(d)(4) and (d)(9). The rulemaking adoption remains consistent with federal regulations, as it removes a Texas rule that is more stringent than federal regulations with the result being just as stringent as federal regulations.

Because the amendment places no involuntary requirements on the regulated community, the

rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, the amendment does not place additional financial burdens on the regulated community beyond what is already required by state regulations relating to release detection.

In addition, a regulatory impact analysis is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state or federal program.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an analysis of whether the adopted rule constitute a taking under Texas Government Code, Chapter 2007. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply. Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The specific purpose of the rulemaking adoption is to amend 30 TAC §334.48(c) to remove the requirement for all retail service stations to conduct inventory control procedures. Inventory control must still be performed at facilities who conduct release detection under 30 TAC §334.50(d)(4) or (d)(9).

Promulgation and enforcement of the adopted rule will not be a statutory or a constitutional taking of private real property. This rule is not burdensome, restrictive, or limiting of rights to

private real property because the adopted rule does not affect a landowner's rights in private real property. This rule does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the adopted rule will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies.

The CMP goals applicable to this rulemaking are: to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests. (31 TAC §26.12(1), (2), (4), (5)).

The CMP policy applicable to this rulemaking adoption is the Nonpoint Source Water Pollution which requires under Texas Water Code, Chapter 26, Subchapter I (governing underground

storage tanks) that underground storage tanks be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters (31 TAC §26.22(c)). The rulemaking adoption is consistent with federal regulations relating to release detection and will be just as stringent. Retail service stations will continue to utilize a release detection method in accordance with 30 TAC §334.50. Therefore, in accordance with 31 TAC §29.22(a), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with these CMP goals and policies, and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on October 19, 2023. The comment period closed on October 23, 2023. The commission received one comment from the Texas Food and Fuel Association (TFFA) in support of the amendment. No comments were received in opposition to the amendment, and no comments were received that suggested changes to the amendment.

Response to Comments

Comment

Commenter expressed support of the rule amendment and referenced the impact of improved

UST technology on release detection.

Response

TCEQ appreciates the support. No change to the rule was made in response to this comment.

SUCHAPTER C: TECHNICAL STANDARDS

§334.48

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amended section is also adopted under TWC, §26.348, which provides the commission authority to develop standards and methods of leak detection.

The adopted amendment implements TWC, §26.348.

§334.48. General Operating and Management Requirements

(a) Prevention of releases. All owners and operators of underground storage tank (UST) systems shall ensure that the systems are operated, maintained, and managed in a manner that will prevent releases of regulated substances from such systems.

(b) UST system management. UST systems shall be operated, maintained, and managed in accordance with accepted industry practices.

(c) Inventory control. [On or after September 29, 1989, regardless of which method of release detection is used for compliance with §334.50 of this title (relating to Release Detection), effective manual or automatic inventory control procedures shall be conducted for all UST systems at retail service stations as defined in §334.2 of this title (relating to Definitions). Such] Inventory [inventory] control procedures shall be in accordance with §334.50(d)(1)(B) of this title. Complete and accurate inventory records shall be maintained in accordance with §334.10 of this title (relating to Reporting and Recordkeeping).

(d) Spill and overfill control. All owners and operators shall ensure that spills and overfills of regulated substances do not occur and that all spill and overfill prevention equipment is properly operated and maintained in accordance with §334.51 of this title (relating to Spill and Overfill Prevention and Control).

(e) Operational requirements for release detection equipment. Owners and operators of all new and existing UST systems shall ensure that all release detection equipment installed as part of a UST system pursuant to §334.50 of this title is maintained in good operating condition and electronic and mechanical components are tested for proper operation in accordance with one of the following: manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or requirements determined by the executive director to be no less protective of human health and the environment than listed in this subsection.

(1) Beginning on January 1, 2021, a test of the proper operation of release detection equipment must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

(A) automatic tank gauge and other controllers: test alarm, verify system configuration, and test battery backup;

(B) probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged; ensure cables are free of kinks and breaks, and test alarm operability and communication with controller;

(C) automatic line leak detector: test operation to meet criteria in §334.50(b)(2)(A)(i) of this title by simulating a leak;

(D) vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

(E) hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

(2) The code of practice that may be used to comply with paragraph (1) of this subsection is: Petroleum Equipment Institute (PEI) Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

(f) Operation requirements for corrosion protection systems. All owners and operators of UST systems shall ensure that all required UST system components are continuously protected from corrosion, and that all corrosion protection systems are inspected and tested, in

accordance with the applicable provisions of §334.49 of this title (relating to Corrosion Protection).

(g) Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.

(1) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(A) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

(i) The equipment is double-walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in subsection (h) of this section. Owners and operators must begin meeting the requirements in clause (ii) of this subparagraph and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

(ii) The spill prevention equipment and containment sumps used for interstitial monitoring of piping (when interstitial monitoring is the primary release detection method) are tested at least once every three years to ensure the equipment is liquid

tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(I) requirements developed by the manufacturer;

(II) code of practice developed by a nationally recognized association or independent testing laboratory; or

(III) low liquid level test method - the sump may be tested by filling the sump with liquid to a level that is three inches higher than the activation point of the sensor provided the following conditions are met:

(-a-) the sensor is mounted and maintained at the lowest point of the sump in accordance with the requirements in §334.45(d)(1)(E)(vi) of this title (relating to Technical Standards for New Underground Storage Tank Systems);

(-b-) the sensor is annually tested for functionality in accordance with the requirements in subsection (e)(1)(B) of this section;

(-c-) the sensor will trigger a positive shutdown of:

(-1-) the individual dispenser associated with that sump; or

(-2-) submersible turbine pump associated with that sump; and

(-d-) all on-site operators are trained to immediately notify the appropriate A or B level operator of the shutdown; or

(IV) requirements determined by the executive director to be no less protective of human health and the environment than the requirements listed in subclauses (I) - (III) of this clause.

(iii) Liquids that are used for testing as described in clause (ii) of this subparagraph may be reused for further liquid testing in other sumps, either at the same facility or at other facilities. The discharge must be made in compliance with the applicable wastewater discharge requirements or be disposed of in accordance with Chapters 330 or 335 of this title (relating to Municipal Solid Waste and Industrial Solid Waste and Municipal Hazardous Waste).

(B) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in §334.51(b)(2)(C) of this title and will activate when a regulated substance reaches that level.

(C) Codes of practice. The following code of practice may be used to comply with subparagraphs (A)(ii)(II) and (B) of this paragraph: PEI Publication RP1200,

"Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

(2) Implementation dates. Owners and operators shall meet these requirements:

(A) UST systems in use before September 1, 2018:

(i) The requirements listed in paragraph (1) of this subsection shall apply on January 1, 2021.

(ii) Initial spill prevention equipment and containment sump testing, and overfill prevention inspections (relating to the requirements in paragraph (1) of this subsection) shall be conducted by January 1, 2021.

(B) UST systems brought into use on or after September 1, 2018.

(i) The requirements listed in paragraph (1) of this subsection shall apply on the date the UST system was brought into use.

(ii) Initial spill prevention equipment and containment sump testing, and overfill prevention inspections shall be conducted by the date the UST system was brought into use.

(3) Owners and operators shall maintain records as follows (in accordance with §334.10(b)(2)(B) of this title) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment.

(A) All records of testing and inspection must be maintained for five years.

(B) For spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double-walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

(h) Periodic operation and maintenance walkthrough inspections. To properly operate and maintain UST systems, not later than January 1, 2021, owners and operators must meet one of the following.

(1) Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified in the following subparagraphs.

(A) Every 30 days.

(i) Spill prevention equipment. Visually check for damage; remove any liquid or debris found within 96 hours and properly dispose of the liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and, for double-walled spill prevention equipment with interstitial monitoring, check for leaks in the interstitial area. For purposes of this requirement, UST systems receiving

deliveries at intervals greater than every 30 days may check spill prevention equipment prior to each delivery.

(ii) Release detection equipment. Check to make sure the release detection equipment is operating with no release detection alarms or other unusual operating conditions (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or the unexplained presence of water in the tank) and ensure records of release detection testing are reviewed and current.

(B) Annually.

(i) Any containment sump installed on or after January 1, 2009, and any containment sump used for interstitial monitoring. Visually check for damage, leaks to the containment area, or releases to the environment; remove liquid or debris found in the containment sump within 96 hours of discovery and properly dispose of the liquid or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area.

(ii) Containment sumps installed before January 1, 2009, and are not used for interstitial monitoring of piping. Visually check for damage to equipment within the sump, visually check for regulated substance releases in the containment sump and to the environment, visually check for the presence of cathodic protection if the sump contains water that is in contact with metal components that routinely contain product, and remove any debris.

(iii) Submersible turbine pump and under dispenser areas that do not have containment sumps. Visually check for damage to the equipment within the area, visually check for regulated substance releases to the environment, visually check for the presence of cathodic protection if any metal components that routinely contain product are in contact with soil or water, and remove any debris.

(iv) Hand held release detection equipment. Check devices, such as tank gauge sticks or groundwater bailers, for operability and serviceability.

(2) Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment in the same manner and frequency as requirements in paragraph (1) of this subsection. The following code of practice may be used to comply with this subsection: PEI Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems."

(i) Airport hydrant systems. In addition to the periodic walkthrough inspection requirements in subsection (h) of this section, owners and operators must inspect the following areas at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 Code of Federal Regulations §1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection in accordance with §334.10(b) of this title.

(1) Hydrant pits. Visually check for any damage, remove any liquid or debris, and check for any leaks; and

(2) Hydrant piping vaults. Check for any hydrant piping leaks.

(3) Implementation dates. Owners and operators shall meet these requirements:

(A) Airport hydrant systems in use before September 1, 2018. The requirements listed in paragraphs (1) and (2) of this subsection shall apply on January 1, 2021.

(B) Airport hydrant systems brought into use on or after September 1, 2018. The requirements listed in paragraph (1) of this subsection shall apply on the date the airport hydrant system was brought into use.

(j) Operation and maintenance records. Owners and operators shall maintain records relating to the operation and maintenance of a UST system (including records related to inspection, servicing, testing, and inventory control) as prescribed in this section for at least five years, and such records shall be maintained in accordance with §334.10(b) of this title. Inspection records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

(3) NAIC--National Association of Insurance Commissioners.

(4) Prepaid funeral benefits--As defined in [~~the~~] Finance Code §154.002(9), concerning Definitions.

(5) Prepaid funeral benefits contract--A contract or agreement for prepaid funeral benefits subject to the requirements of [~~the~~] Finance Code Chapter 154, concerning Prepaid Funeral Services.

(6) Preneed life insurance--A life insurance policy or certificate that is approved by the department, issued by an insurance company licensed by the department, issued in conjunction with an insurance-funded prepaid funeral benefits contract, and that [~~which~~], whether by assignment or otherwise, has the purpose of funding prepaid funeral benefits to be provided at the time of, or immediately following, the death of the insured. For purposes of this subchapter, the definition of preneed life insurance does not include an annuity contract or policy.

(7) Ultimate 1980 CSO--The Commissioners 1980 Standard Ordinary Mortality Table without 10-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983.

§4.2833. Minimum Valuation Mortality Standards.

Except as provided by §4.2836 [~~§3.9606~~] of this title [~~subchapter~~] (relating to Transitional Use of the 2001 CSO Mortality Table), the Ultimate 1980 CSO is [~~shall be~~] the minimum mortality standard for determining reserve liabilities and nonforfeiture values for both male and female insureds for preneed life insurance policies issued on or after January 1, 2009.

§4.2834. Minimum Valuation Interest Rate Standards.

(a) The interest rates used in determining the minimum standard for valuation of preneed life insurance are [~~shall be~~] the calendar year statutory valuation rates as defined in [~~the~~] Insurance Code Chapter 425, Subchapter B, concerning [~~(~~]Standard Valuation Law[~~)~~].

(b) The interest rates used in determining the minimum standard for nonforfeiture values for preneed life insurance are [~~shall be~~] the calendar year statutory nonforfeiture interest rates as defined in [~~the~~] Insurance Code Chapter 1105, concerning [~~(~~]Standard Nonforfeiture Law for Life Insurance[~~)~~].

§4.2835. Minimum Valuation Method Standards.

(a) The method used in determining the standard for the minimum valuation of reserves for preneed life insurance is [~~shall be~~] the method defined in [~~the~~] Insurance Code Chapter 425, Subchapter B, concerning [~~(~~]Standard Valuation Law[~~)~~].

(b) The method used in determining the standard for the minimum nonforfeiture values for preneed life insurance is [~~shall be~~] be the method defined in [~~the~~] Insurance Code Chapter 1105, concerning [~~(~~]Standard Nonforfeiture Law for Life Insurance[~~)~~].

§4.2836. Transitional Use of the 2001 CSO Mortality Table.

(a) For preneed life insurance policies or certificates issued on or after January 1, 2009, and before January 1, 2012, the 2001 CSO Mortality Table may be used as the minimum standard for reserves and minimum standard for nonforfeiture benefits for both male and female insureds in accordance with the requirements of Subchapter AA, Division 3, [~~§§3.9101 - 3.9106~~] of this chapter (relating to 2001 CSO Mortality Table).

(b) If a company elects to use the 2001 CSO Mortality Table as a minimum standard for any preneed life insurance policy or certificate issued on or after the effective date of this subsection and before January 1, 2012, the company must [~~shall~~] provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy analysis, an annual written notification to the domiciliary commissioner. The notification must [~~shall~~] include:

(1) a complete list of all preneed life insurance policy and certificate forms that use the 2001 CSO Mortality Table as a minimum standard;

(2) a certification signed by the appointed actuary stating that the reserve methodology, employed by the company in determining reserves for the preneed life insurance policies or certificates issued after the effective date of this subchapter and using the 2001 CSO Mortality Table as a minimum standard, develops adequate reserves (for the purposes of this certification, the preneed life insurance policies or certificates using the 2001 CSO Mortality Table as a minimum standard cannot be aggregated with any other policies); and

(3) supporting information regarding the adequacy of reserves for preneed life insurance policies or certificates issued after the effective date of this subchapter and using the 2001 CSO Mortality Table as a minimum standard for reserves.

(c) Preneed life insurance policies or certificates issued on or after January 1, 2012, must use the Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2023.

TRD-202303294
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 22, 2023
For further information, please call: (512) 676-6555

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

SUBCHAPTER C. TECHNICAL STANDARDS

30 TAC §334.48

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §334.48.

Background and Summary of the Factual Basis for the Proposed Rules

Since the beginning of Texas' underground storage tank (UST) program in 1989, the commission's rules have required that effective manual or automatic inventory control procedures be conducted for all underground storage tank systems at "retail service stations," as defined in 30 Texas Administrative Code (TAC) §334.2(102). This requirement applies regardless of which release detection method is selected by an owner or operator under 30 TAC §334.50. Because newer technologies have been

developed, and interstitial monitoring is required for all UST systems installed after January 1, 2009, it is unnecessary for all retail service stations to employ both inventory control procedures and the selected release detection method.

Section by Section Discussion

§334.48(c), Inventory Control.

The commission proposes to amend §334.48(c) to remove the requirement for all retail service stations to conduct inventory control procedures. Inventory control must still be performed as a necessary component of a release detection method under 30 TAC §334.50(d)(4) and (d)(9) (*i.e.,* combination of inventory control plus automatic tank gauging or a combination of inventory control plus statistical inventory reconciliation).

Fiscal Note: Costs to State and Local Government

Kyle Girten of the Budget and Planning Division has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the benefit is a reduction of redundancy within commission rules and increased consistency with current technologies used by regulated entities. The proposed rulemaking is not anticipated to result in adverse fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirements to prepare a Regulatory Impact Analysis.

A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed amendment to §334.48(c) is to remove a duplicate requirement of inventory control where USTs are utilizing another release detection method.

Due to the development of newer technologies, and the requirement of utilizing interstitial monitoring for all UST systems installed after January 1, 2009, the requirement that all retail service stations employ inventory control procedures in addition to the selected release detection method, has become unnecessary. Inventory control must still be performed as a component of a release detection method under 30 TAC §334.50(d)(4) and (d)(9). The proposed rulemaking remains consistent with federal regulations, as it removes a Texas rule that is more stringent than federal regulations with the result being just as stringent as federal regulations.

Because the amendment places no involuntary requirements on the regulated community, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, the amendment does not place additional financial burdens on the regulated community beyond what is already required by state regulations relating to release detection.

In addition, a regulatory impact analysis is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally,

this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state or federal program.

The commission will receive public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rules and performed an analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The specific purpose of the proposed rulemaking is to amend 30 TAC §334.48(c) to remove the requirement for all retail service stations to conduct inventory control procedures.

Inventory control must still be performed at facilities who conduct release detection under 30 TAC §334.50(d)(4) or (d)(9).

Promulgation and enforcement of the proposed rules would not be a statutory or a constitutional taking of private real property. These rules are not burdensome, restrictive, or limiting of rights to private real property because the proposed rules do not affect a landowner's rights in private real property. These rules do not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goals applicable to this rulemaking are: to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests. (31 TAC §26.12(1), (2), (4), (5)).

The CMP policy applicable to this proposed rulemaking is the Nonpoint Source Water Pollution which requires under Texas Water Code, Chapter 26, Subchapter I (governing underground storage tanks) that underground storage tanks be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters (31 TAC §26.22(c)). The proposed rulemaking is consistent with federal regulations relating to release detection and will be just as stringent. Retail service stations will continue to utilize a release detection method in accordance with 30 TAC §334.50. Therefore, in accordance with 31 TAC §29.22(a), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies, and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on Thursday, October 19, 2023, at 10:00 a.m. in Building F, Room 2210A at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal in the 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, October 17, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, October 18, 2023, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDVmMDFlMmMtN2Q5Yy00OGU0LTkxN-WMtMGY0MWQ1YzczNzZj%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Candice Slater, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-115-334-CE. The comment period closes on October 23, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Zachary King, Program Support and Environmental Assistance Division, at zachary.king@tceq.texas.gov or (512) 239-1931.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC) §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amended section is also proposed under TWC §26.348, which provides the commission authority to develop standards and methods of leak detection.

The proposed amendment implements TWC §26.348.

§334.48. General Operating and Management Requirements.

(a) Prevention of releases. All owners and operators of underground storage tank (UST) systems shall ensure that the systems are operated, maintained, and managed in a manner that will prevent releases of regulated substances from such systems.

(b) UST system management. UST systems shall be operated, maintained, and managed in accordance with accepted industry practices.

(c) Inventory control. [~~On or after September 29, 1989, regardless of which method of release detection is used for compliance with §334.50 of this title (relating to Release Detection), effective manual or automatic inventory control procedures shall be conducted for all UST systems at retail service stations as defined in §334.2 of this title (relating to Definitions). Such inventory~~] Inventory control procedures shall be in accordance with §334.50(d)(1)(B) of this title. Complete and accurate inventory records shall be maintained in accordance with §334.10 of this title (relating to Reporting and Recordkeeping).

(d) Spill and overfill control. All owners and operators shall ensure that spills and overfills of regulated substances do not occur and that all spill and overfill prevention equipment is properly operated and maintained in accordance with §334.51 of this title (relating to Spill and Overfill Prevention and Control).

(e) Operational requirements for release detection equipment. Owners and operators of all new and existing UST systems shall ensure that all release detection equipment installed as part of a UST system pursuant to §334.50 of this title is maintained in good operating condition and electronic and mechanical components are tested for proper operation in accordance with one of the following: manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or requirements determined by the executive director to be no less protective of human health and the environment than listed in this subsection.

(1) Beginning on January 1, 2021, a test of the proper operation of release detection equipment must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

(A) automatic tank gauge and other controllers: test alarm, verify system configuration, and test battery backup;

(B) probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged; ensure cables are free of kinks and breaks, and test alarm operability and communication with controller;

(C) automatic line leak detector: test operation to meet criteria in §334.50(b)(2)(A)(i) of this title by simulating a leak;

(D) vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

(E) hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

(2) The code of practice that may be used to comply with paragraph (1) of this subsection is: Petroleum Equipment Institute (PEI) Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

(f) Operation requirements for corrosion protection systems. All owners and operators of UST systems shall ensure that all required UST system components are continuously protected from corrosion, and that all corrosion protection systems are inspected and tested, in accordance with the applicable provisions of §334.49 of this title (relating to Corrosion Protection).

(g) Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.

(1) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(A) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

(i) The equipment is double-walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in subsection (h) of this section. Owners and operators must begin meeting the requirements in clause (ii) of this subparagraph and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

(ii) The spill prevention equipment and containment sumps used for interstitial monitoring of piping (when interstitial monitoring is the primary release detection method) are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(I) requirements developed by the manufacturer;

(II) code of practice developed by a nationally recognized association or independent testing laboratory; or

(III) low liquid level test method - the sump may be tested by filling the sump with liquid to a level that is three inches higher than the activation point of the sensor provided the following conditions are met:

(-a-) the sensor is mounted and maintained at the lowest point of the sump in accordance with the requirements in §334.45(d)(1)(E)(vi) of this title (relating to Technical Standards for New Underground Storage Tank Systems);

(-b-) the sensor is annually tested for functionality in accordance with the requirements in subsection (e)(1)(B) of this section;

(-c-) the sensor will trigger a positive shutdown of:

(-1-) the individual dispenser associated with that sump; or

(-2-) submersible turbine pump associated with that sump; and

(-d-) all on-site operators are trained to immediately notify the appropriate A or B level operator of the shutdown; or

(IV) requirements determined by the executive director to be no less protective of human health and the environment than the requirements listed in subclauses (I) - (III) of this clause.

(iii) Liquids that are used for testing as described in clause (ii) of this subparagraph may be reused for further liquid testing in other sumps, either at the same facility or at other facilities. The discharge must be made in compliance with the applicable wastewater discharge requirements or be disposed of in accordance with Chapters 330 or 335 of this title (relating to Municipal Solid Waste and Industrial Solid Waste and Municipal Hazardous Waste).

(B) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in §334.51(b)(2)(C) of this title and will activate when a regulated substance reaches that level.

(C) Codes of practice. The following code of practice may be used to comply with subparagraphs (A)(ii)(II) and (B) of this paragraph: PEI Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

(2) Implementation dates. Owners and operators shall meet these requirements:

(A) UST systems in use before September 1, 2018:

(i) The requirements listed in paragraph (1) of this subsection shall apply on January 1, 2021.

(ii) Initial spill prevention equipment and containment sump testing, and overfill prevention inspections (relating to the requirements in paragraph (1) of this subsection) shall be conducted by January 1, 2021.

(B) UST systems brought into use on or after September 1, 2018.

(i) The requirements listed in paragraph (1) of this subsection shall apply on the date the UST system was brought into use.

(ii) Initial spill prevention equipment and containment sump testing, and overfill prevention inspections shall be conducted by the date the UST system was brought into use.

(3) Owners and operators shall maintain records as follows (in accordance with §334.10(b)(2)(B) of this title) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment.

(A) All records of testing and inspection must be maintained for five years.

(B) For spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double-walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

(h) Periodic operation and maintenance walkthrough inspections. To properly operate and maintain UST systems, not later than January 1, 2021, owners and operators must meet one of the following.

(1) Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified in the following subparagraphs.

(A) Every 30 days.

(i) Spill prevention equipment. Visually check for damage; remove any liquid or debris found within 96 hours and properly dispose of the liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and, for double-walled spill prevention equipment with interstitial monitoring, check for leaks in the interstitial area. For purposes of this requirement, UST systems receiving deliveries at intervals greater than every 30 days may check spill prevention equipment prior to each delivery.

(ii) Release detection equipment. Check to make sure the release detection equipment is operating with no release detection alarms or other unusual operating conditions (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or the unexplained presence of water in the tank) and ensure records of release detection testing are reviewed and current.

(B) Annually.

(i) Any containment sump installed on or after January 1, 2009, and any containment sump used for interstitial monitoring. Visually check for damage, leaks to the containment area, or releases to the environment; remove liquid or debris found in the containment sump within 96 hours of discovery and properly dispose of the liquid or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area.

(ii) Containment sumps installed before January 1, 2009, and are not used for interstitial monitoring of piping. Visually check for damage to equipment within the sump, visually check for regulated substance releases in the containment sump and to the environment, visually check for the presence of cathodic protection if the sump contains water that is in contact with metal components that routinely contain product, and remove any debris.

(iii) Submersible turbine pump and under dispenser areas that do not have containment sumps. Visually check for damage to the equipment within the area, visually check for regulated substance releases to the environment, visually check for the presence of cathodic

protection if any metal components that routinely contain product are in contact with soil or water, and remove any debris.

(iv) Hand held release detection equipment. Check devices, such as tank gauge sticks or groundwater bailers, for operability and serviceability.

(2) Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment in the same manner and frequency as requirements in paragraph (1) of this subsection. The following code of practice may be used to comply with this subsection: PEI Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems."

(i) Airport hydrant systems. In addition to the periodic walkthrough inspection requirements in subsection (h) of this section, owners and operators must inspect the following areas at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 Code of Federal Regulations §1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection in accordance with §334.10(b) of this title.

(1) Hydrant pits. Visually check for any damage, remove any liquid or debris, and check for any leaks; and

(2) Hydrant piping vaults. Check for any hydrant piping leaks.

(3) Implementation dates. Owners and operators shall meet these requirements:

(A) Airport hydrant systems in use before September 1, 2018. The requirements listed in paragraphs (1) and (2) of this subsection shall apply on January 1, 2021.

(B) Airport hydrant systems brought into use on or after September 1, 2018. The requirements listed in paragraph (1) of this subsection shall apply on the date the airport hydrant system was brought into use.

(j) Operation and maintenance records. Owners and operators shall maintain records relating to the operation and maintenance of a UST system (including records related to inspection, servicing, testing, and inventory control) as prescribed in this section for at least five years, and such records shall be maintained in accordance with §334.10(b) of this title. Inspection records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2023.

TRD-202303287
Gitanjali Yadav
Deputy Director, Litigation Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 22, 2023
For further information, please call: (512) 239-2678

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 147. HEARINGS

SUBCHAPTER A. GENERAL RULES FOR HEARINGS

37 TAC §§147.1 , 147.3, 147.5, 147.6

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 147, Subchapter A, §§147.1, 147.3, 147.5, and 147.6 concerning general rules for hearings. The amendments are proposed to provide edits for uniformity and consistency throughout the rules, correct grammatical errors, delineate prohibited acts in ex parte communications, and clarify the hearing officer's responsibility regarding written testimony.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the parole process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 relates to the board member and parole commissioners release and revocation duties. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

Texas Commission on Environmental Quality

ORDER ADOPTING AMENDED RULES

Docket No. 2023-0155-RUL

Rule Project No. 2023-115-334-CE

On January 24, 2024, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code Chapter 334, Underground and Aboveground Storage Tanks. The proposed rules were published for comment in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5528).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

_____

Jon Niermann, Chairman

_____

Date Signed