

Information from the TCEQ Remediation Division on Application of TRRP to LPST Cases

July 2003

Applicability of 30 TAC 350 to LPST Cases:

The corrective action requirements for a release from a Leaking Petroleum Storage Tank (LPST) site must comply with the requirements of 30 TAC 350 (the Texas Risk Reduction Program rule) if the release is reported to the TCEQ on or after September 1, 2003. Such LPST cases must comply with Chapter 350 in order to have closure approved by the TCEQ. If an LPST release is reported prior to September 1, 2003, Chapter 350 is not applicable to that release and the corrective action must comply with the 30 TAC 334 rule.

LPST Cases Closed under Chapter 334: LPST cases closed in compliance with Chapter 334 will not be directed to reopen and take any additional actions to comply with Chapter 350.

Substantial Changes in Circumstance: In accordance with §350.35(d), if a *substantial change in circumstance* as defined in §334.302(6) occurs at a closed LPST case after a *No Further Action* letter is issued under Chapter 334, but no new release has occurred on or after September 1, 2003, then the LPST case will be re-evaluated under Chapter 334 and not Chapter 350.

New releases at closed LPST sites: If a new release occurs at a site where there is a closed LPST case, a new LPST case is initiated and Chapter 350 will be applicable if that new release is reported to TCEQ on September 1, 2003 or later. The former Chapter 334 rules or procedures will not modify or otherwise limit the Chapter 350 requirements.

Commingled Chapter 334 and Chapter 350 regulated releases: It is anticipated that some LPST releases that are regulated under Chapter 350 will be commingled with a release of the same chemical of concern (COC) type that is regulated under Chapter 334 (Figure 1). In these circumstances, TCEQ PST program staff will evaluate the extent of the commingling and will typically proceed as follows:

- Chapter 334 applies to the portion of the Chapter 334 plume that is not commingled.
- Chapter 350 applies to the portion of the Chapter 350 plume that is not commingled.
- Chapter 350 applies to the commingled portion of the two plumes.

For the commingled portion of the plumes, the TCEQ, at its discretion, may choose among the parties in the designation of responsible party. For example, TCEQ could name both of the parties jointly and severally responsible for the commingled portion and direct both to clean it up under Chapter 350.

In the instance on or after September 1, 2003 where a Chapter 334 plume from an LPST case is flowing into and commingling with a Chapter 350 plume of the same COC and at a COC concentration that exceeds the Chapter 350 protective concentration level (Figure 1), the person responsible for the down gradient portion can submit a technical demonstration in accordance with §350.71(k)(2)(E) that commingling is occurring. If that demonstration is made to the agency's satisfaction, then the TCEQ will allow protective concentration levels to be set equal to the concentration of the Chapter 334 plume immediately up gradient of the Chapter 350 plume. However, in situations where there is a high risk to human health, safety, and/or the environment, the agency may compel full application of the Chapter 350 standards [see §350.31(a), §350.75 and Texas Water Code §§26.341(b) and 26.011].

It is also anticipated that some LPST releases that are regulated under Chapter 350 will be commingled with a release of a different chemical of concern (COC) type that is regulated under Chapter 334 (Figure 2). In these circumstances, the Chapter 350 requirements must be fully met for the Chapter 350 applicable release/COCs.

The Chapter 334 applicable release/COCs are not required to meet Chapter 350 requirements.

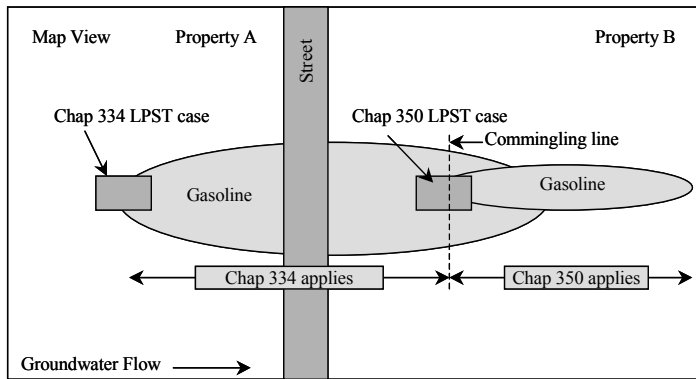


Figure 1. A commingled plume situation where a Chapter 334 regulated LPST release flows into a Chapter 350 regulated LPST with the same COC type.

PSTR Fund Implications: New releases also affect eligibility for the Petroleum Storage Tank Remediation (PSTR) Fund. Releases reported after December 22, 1998 are not eligible for reimbursement from the PSTR Fund [§334.301(b)(1)]. Therefore, if the new release that was reported on or after September 1, 2003 is commingled with an on-going Chapter 334 LPST case that is PSTR Fund eligible, then the TCEQ will only reimburse corrective actions for the pre-existing Chapter 334 case up to the amount pre-approved prior to the date the new release is reported to the TCEQ. For example, if \$25,000 had been pre-approved for the completion of a particular scope of work under Chapter 334 prior to the reporting of the new release, then the person can expect that reimbursement would be limited to that scope of work. No additional pre-approvals for purposes of reimbursement will be issued by the TCEQ. An exception will be if a demonstration is accepted by the TCEQ that costs for a portion of the Chapter 334 plume that is not commingled can be segregated from the costs for the commingled portion. In this case, pre-approval can be sought for the costs associated with the portion of the Chapter 334 plume that is not commingled with the Chapter 350 release.

Action Levels: Chapter 350 does not dictate action levels. Therefore, the Petroleum Storage Tank

program will issue new directives in another document that will be a basis for determining when Chapter 350 will be triggered for a reported release.

The March 2, 1993 *Action Levels* InterOffice Memorandum is not applicable for releases reported September 1, 2003 or after.

MTBE Implications: Chapter 350 does not dictate what chemicals of concern must be addressed at a leaking petroleum storage tank site. However, the Petroleum Storage Tank program will consider methyl tertiary butyl ether (MTBE) and other fuel oxygenates to be target COCs for petroleum fuels releases reported to TCEQ on or after September 1, 2003, and as such, must comply with Chapter 350 requirements.

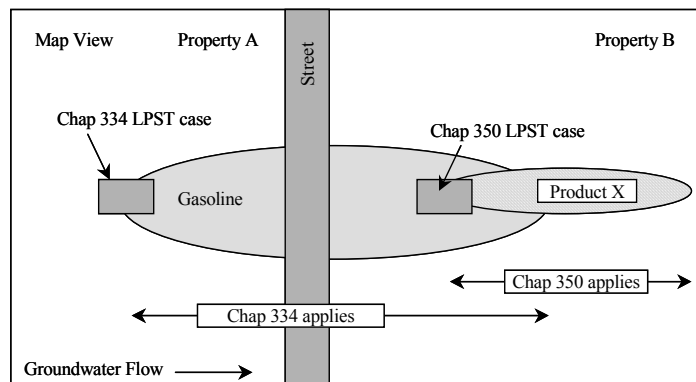


Figure 2. A commingled plume situation where a Chapter 334 regulated LPST release flows into a Chapter 350 regulated LPST release with a different COC type.