

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Diane Coker

DATE: October 17, 2003
rev. for web 12-2-03 ADM

FROM: Dwight Martin *ADM*

SUBJECT: Are RCASs and CAPMs still needed on LPST cleanups under TRRP, after September 1, 2003, and on other non-state-funded LPST cleanups?

Short Answer: "Yes."

RCASs AND CAPMs STILL NEEDED ON ALL LPST CLEANUPS, STATE-FUNDED OR NOT, INCLUDING CLEANUPS DONE UNDER THE TRRP RULES

Water Code § 37.003 forbids a person from engaging in the *occupations described by* Water Code § 26.3573 without "the appropriate license or registration issued by the commission.". Water Code § 26.3573(t) provides:

(t) The commission may prohibit the use of the petroleum storage tank remediation account to pay for corrective action if the action is taken by:

(1) a contractor [RCAS] who is not registered under Section 26.364; or;

(2) a supervisor [CAPM] who is not licensed under Section 26.366.

Water Code §§ 26.364 and 26.366 also allow the commission to adopt rules requiring persons performing corrective action under Water Code ch. 26 Subchapter I to register as RCASs and CAPMs. The commission has done so in 30 TAC § 30.171:

(a) The purpose of this section is to establish qualifications for issuing and renewing licenses to individuals who supervise leaking petroleum storage tank (LPST) corrective actions. This subchapter also establishes qualifications for issuing and renewing registrations to persons that contract to perform LPST corrective actions.

(b) An individual who performs or supervises regulated corrective action services as a project manager on LPST sites

must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.195 of this title (relating to Exemptions).

(c) A person that contracts or performs regulated corrective action services on LPST sites as a corrective action specialist must meet the qualifications of this subchapter and be registered according to Subchapter A of this chapter.

The definitions of “corrective action,” “corrective action services,” and other relevant terms found in 30 TAC § 30.177, do not depend on the use of state funds, and do not differentiate between LPST cleanups performed under TRRP rules and those performed under PST rules:

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

(1) Corrective action - Any assessment (with the exception of an initial site assessment), monitoring, or remedial activities undertaken to investigate the extent of, and to remediate contamination.

(2) Corrective action services - Activities required to accomplish regulated corrective action at a leaking petroleum storage tank (LPST) site.

(3) Corrective action specialist - A person that is registered to perform regulated corrective action services on LPST sites.

(4) Leaking petroleum storage tank (LPST) - An aboveground or underground storage tank which has a confirmed release of a petroleum substance.

(5) Project manager - An individual who is licensed to perform or supervise regulated corrective action services on LPST sites.

Registration as RCAS or CAPM is also required by another commission rule in Chapter 334, 30 TAC §334.451, which provides:

(a) When referring to corrective action project managers within this chapter, the terms "registered" and "licensed" have the same meaning.

(b) All corrective action services covered by this chapter must be performed by or be coordinated by a person or entity registered as a corrective action specialist.

(c) All corrective action services covered by this chapter must be supervised by a licensed corrective action project manager according to Subchapter E of Chapter 30 of this title (relating to Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists).

Finally, the TRRP rules themselves, at 30 TAC § 350.2(g), plainly require the continued use of RCASs and CAPMs for LPST site cleanups:

(g) Additional corrective action requirements for these facilities are found in Chapter 334, Subchapters D, J, and K of this title (relating to Release Reporting and Corrective Action; Registration of Corrective Action Specialists and Project Managers . . .)

EXEMPTIONS

Personal exemptions from registration requirements exist for registered professional engineers, 30 TAC § 30.195(a), and professional geoscientists, 30 TAC § 30.195(b). And certain LPST sites are “exempt” or “excluded” from the RCAS and CAPM requirements under 30 TAC § 30.195(d):

(d) A person does not have to have a license to perform corrective action services if the person claiming the exemption can show the corrective action was performed or offered to be performed at leaking petroleum storage tank (LPST) sites which are:

(1) completely exempt from regulation under §334.3(a) of this title (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems) or §334.123 of this title (relating to Exemptions for Aboveground Storage Tanks (ASTs)); or

(2) completely excluded from regulation under §334.4(a) of this title (relating to Exclusions for Underground Storage Tanks (USTs) and UST Systems) or §334.124 of this title (relating to Exclusions for Aboveground Storage Tanks (ASTs)).

END