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.