

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 18, 2023

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

From: Craig Pritzlaff, Director
Office of Compliance and Enforcement

Docket No.: 2023-0155-RUL

Subject: Commission Approval for Proposed Rulemaking
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 is 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 would do:

The rulemaking would 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 §334.48(d)(4) or 30 TAC §334.48(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.

Effect on the:

A.) Regulated community:

The rulemaking would 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 would 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 will be held during the comment period in Austin.

Public Involvement Plan

None

Alternative Language Requirements

No

Potential controversial concerns and legislative interest:

There are no known controversial concerns or legislative interest.

Would 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 proposal rulemaking schedule:

Anticipated proposal date: September 6, 2023

Anticipated *Texas Register* publication date: September 22, 2023

Anticipated public hearing date: October 19, 2023

Anticipated public comment period: September 22, 2023 - October 23, 2023

Anticipated adoption date: Jan. 2024

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Attachments:

None

cc: Chief Clerk, 2 copies
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