

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 Girtten 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 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](mailto: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\\_NDVmMDFIMmMtN2O5Yy00OGU0LTkxNWMtMGY0MW01YzczNzZj%40thead.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](https://www.tceq.texas.gov/19%3ameeting_NDVmMDFIMmMtN2O5Yy00OGU0LTkxNWMtMGY0MW01YzczNzZj%40thead.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](mailto: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](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](mailto:zachary.king@tceq.texas.gov) or (512) 239-1931.

## SUCHAPTER C: TECHNICAL STANDARDS

### §334.48

#### **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 overflow prevention equipment.

(1) Owners and operators of UST systems with spill and overflow 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)(III) 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 overflow 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.