

ADOPTED CHANGES TO CHAPTER 334 OF TCEQ RULES, EFFECTIVE 10/30/08,  
IMPLEMENTING HB 3554, HB 1956, AND THE SECONDARY CONTAINMENT  
REQUIREMENTS OF THE FEDERAL ENERGY POLICY ACT OF 2005

*Deletions in [bracketed] ~~strikeout~~. Additions underlined.*

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**SUBCHAPTER A: GENERAL PROVISIONS**

**§334.2. Definitions.**

(59) **Motor fuel**--A petroleum substance which is typically used for the operation of internal combustion engines (including stationary engines and engines used in motor vehicles, aircraft, and marine vessels), and which is one of the following types of fuels: motor gasoline, aviation gasoline, Number 1 diesel fuel, Number 2 diesel fuel, biodiesel blended with Number 1 or Number 2 diesel, ~~or~~ gasohol or other alcohol blended fuels.

(79) **Petroleum product**--A petroleum substance obtained from distilling and processing crude oil that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including, but not limited to, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, ~~and~~ Number 1 and Number 2 diesel and biodiesel blended with Number 1 or Number 2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

**§334.8. Certification for Underground Storage Tanks (USTs) and UST Systems.**

(c) UST compliance self-certification requirements.

(1) Applicability. Except as provided in this paragraph, the requirements of this subsection are applicable to the owners and operators of USTs regulated under this chapter.

(A) The requirements of this subsection are not applicable to the following USTs:

(v) USTs temporarily out-of-service under §334.54 of this title (relating to Temporary Removal from Service) which are empty by definition.

(3) Conditions and limitations.

(D) The administrative requirements and technical standards that are the subject of the compliance self-certification shall include:

(iii) financial assurance, as described in Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems) (Copies of financial assurance documents are required to be submitted as part of self-certification, as specified in paragraph (4)(A)(viii) of this subsection); and

(4) UST registration and self-certification form.

(A) Requirements for completion of the form.

(viii) The owner or operator must submit annually, proof of current financial assurance, in accordance with Chapter 37, Section 37.870(b) of this title (relating to "Reporting, Registration, and Certification").

## **SUBCHAPTER B: UNDERGROUND STORAGE TANK FEES**

### **§334.21. Fee Assessment.**

(a) Annual facility fees shall cease to be assessed, effective September 1, 2007, and shall not be assessed until such time as reinstated by the commission at an amount determined appropriate by the commission, however prior owing tank fees are still due as further described. Except as provided in subsection (e) of this section, an annual facility fee of \$50 is assessed for each underground storage tank (UST) subject to the registration provisions of §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems). The fees shall be billed to and paid by the owner of the tank.

## **SUBCHAPTER C: TECHNICAL STANDARDS**

### **§334.42. General Standards.**

(h) any new tank or line or dispenser installed as part of a UST system on or after January 1, 2009, shall incorporate secondary containment meeting the applicable requirements of §334.45(d) of this title (relating to Technical Standards for New Underground Storage Tank Systems).

(i) Any sumps (including dispenser sumps) or manways installed prior to January 1, 2009, which are utilized as an integral part of a UST release detection system, and any overspill containers or catchment basins installed at any time, which are associated with a UST system must be inspected at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight. Any liquids or debris found in them during an inspection must be removed and properly disposed of within 72 hours of discovery.

### **§334.45. Technical Standards for New Underground Storage Tank Systems.**

(b) Technical standards for new tanks.

(4) Other new tank components.

(A) Fittings. All metallic tank fittings (e.g., bung hole plugs) shall be protected from corrosion and shall be either:

(i) isolated from the backfill material and groundwater or any other water;

(d) Secondary containment for UST systems.

(1) Applicability.

(E) Requirements applicable to new tanks, lines and or dispensers (including related sumps or manways) installed on or after January 1, 2009:

- (i) Any new tank or line installed as part of a UST system must incorporate secondary containment in accordance with the applicable requirements of this subchapter, except that external liners will not be allowed as a secondary containment method.
- (ii) Up to 20% of the total original length of an existing single wall line can be replaced with new single wall line in accordance with the applicable requirements of this subchapter without triggering the secondary containment requirement for that line, unless the new line segment connects the existing line to a new dispenser. If more than 20% of the total original length of an existing single wall line is to be replaced, or the new line segment connects the existing line to a new dispenser, that line must be replaced in its entirety with one which incorporates secondary containment.
- (iii) The interstice of the secondarily contained tank and/or line must be monitored in accordance with the requirements of §334.50(d)(7) of this title.
- (iv) Any sumps or manways included in a new secondarily contained UST system which are utilized as an integral part of a UST release detection system must be compatible with the stored substance(s), must be installed and maintained in a manner that assures that their sides, bottoms, and any penetration points are liquid tight, and must be inspected for tightness annually and tested for tightness immediately after installation and at least once every 3 years thereafter.
- (v) Under dispenser containment in the form of a dispenser sump is required for any new dispenser. A new dispenser is defined as: (I) any dispenser which is installed where none previously existed; or (II) any existing dispenser which is removed and replaced with another dispenser and transitional piping components beneath the replacement dispenser (e.g., flexible

connectors or piping risers) which serve to connect the dispenser to the underground piping are replaced. Each new dispenser must employ a dispenser sump which is compatible with the stored substance, is installed and maintained in a manner that assures that its sides, bottoms, and any penetration points are liquid tight, and must be inspected for tightness annually and tested for tightness, immediately after installation and at least once every 3 years thereafter.

- (vi) All sumps (including dispenser sumps) and/or manways must be must equipped with a liquid sensing probe/s which will alert the UST system owner or operator if more than two inches of liquid collects in any sump or manway.
- (vii) Liquids in sumps or manways must be removed and properly disposed of within 72 hours of alert or discovery.
- (viii) Inspections and testing: (I) inspections must be performed by a qualified person who is competent to conduct the inspection in accordance with recognized industry practices and in accordance with industry standards, if applicable. (II) Testing of tanks and/or lines shall be performed in accordance with the applicable requirements of this chapter. Testing of sumps or manways (including dispenser sumps) must be performed by a qualified person who is competent to conduct the inspection in accordance with recognized industry practices and in accordance with industry standards, if applicable.

#### **§334.47. Technical Standards for Existing Underground Storage Tank Systems.**

(b) Minimum upgrading requirements for all existing UST systems.

(1) Tank integrity assessment and UST system cathodic protection. No later than December 22, 1998, all tanks in an existing UST system shall be assessed for structural integrity, and all underground metallic components of an existing UST system shall be equipped with a cathodic protection system, as provided in the following subparagraphs.

(A) Tank integrity assessment. The tank shall be assessed for structural integrity and for the presence of corrosion holes by one or more of the following methods.

(ii) The tank may be tested by conducting at least two tank tightness tests meeting the requirements of §334.50(d)(1)(A) of this title. The first tightness test shall be conducted prior to installing the cathodic protection system, and the second test shall be conducted between three and six months after the cathodic protection system is placed into operation. For tanks constructed of non-corrodible material, or metal tanks clad or jacketed with

noncorrodible material which are electrically isolated from surrounding soil, backfill or groundwater or any other water, the tank may be tested by conducting at least one tightness test meeting the requirements of §334.50(d)(1)(A) of this title, within the 12 month period prior to December 22, 1998.

(C) Field-installed cathodic protection system. After confirmation or restoration of the structural integrity of the tank, all underground metal components of the UST system, which are not isolated from the surrounding soil, backfill, and groundwater or any other water, and which either do or could convey, contain, or store regulated substances, shall be equipped with a field-installed cathodic protection system meeting the requirements of §334.49(c)(2) of this title (relating to Corrosion Protection).

### **§334.49. Corrosion Protection.**

(b) Allowable corrosion protection methods. All components of an UST system which are designed to convey, contain, or store regulated substances shall be protected from corrosion by one or more of the following methods.

(2) The component may be electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components by installing the component in an open area (e.g., manway, sump, vault, pit, etc.) where periodic visual inspection of all parts of the component for the presence of corrosion or released substances is practicable.

(3) The component may be electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components by completely enclosing the component in a secondary containment device (e.g., wall, jacket, or liner), provided that:

(B) the interstitial space between the protected component and the secondary containment device shall be free of any soil, backfill material, groundwater or any other water, or other substances, and the protected component shall be regularly inspected and tested for electrical isolation in accordance with the provisions in subsection (d)(1) of this section.

(c) Cathodic protection systems.

(1) Factory-installed cathodic protection systems.

(B) At a minimum, the factory-installed cathodic protection system shall include the following components:

(i) a suitable dielectric external coating or laminate, which shall thoroughly cover all exterior surfaces exposed to the soil, backfill, or groundwater or any other water, and which shall consist of materials which are compatible with the stored regulated substances;

(d) Requirements for other corrosion protection methods.

(1) Electrically isolated components.

(A) Except for jacketed tanks meeting the requirements of §334.45(b)(1)(F) of this title, any metal component of an UST system which is protected from corrosion by one of the electrical isolation methods described in subsection (b)(2) and (3) of this section, and which is not equipped with a cathodic protection system, shall be periodically inspected and tested to ensure that the metal component remains electrically isolated from the surrounding soil, backfill, groundwater or any other water, and from other metal components in accordance with one or more of the following procedures.

(C) If the tests required in subparagraph (A) of this paragraph indicate that the metal component is no longer electrically isolated from the surrounding soil, backfill, groundwater or any other water, or from other metal components, a qualified corrosion specialist shall review the test results and thoroughly inspect the area of the metal component to ascertain the extent of electrical isolation and corrosion protection for the component.

#### **§334.50. Release Detection.**

(d) Allowable methods of release detection. Tanks in a UST system may be monitored for releases using one or more of the methods included in paragraphs (2) - (10) of this subsection. Piping in a UST system may be monitored for releases using one or more of the methods included in paragraphs (5) - (10) of this subsection. Any method of release detection for tanks and/or piping in this section shall be allowable only when installed (or applied), operated, calibrated, and maintained in accordance with the particular requirements specified for such method in this subsection.

(7) Interstitial monitoring for double-wall UST systems. Equipment designed to test or monitor for the presence of regulated substance vapors or liquids in the interstitial space between the inner (primary) and outer (secondary) walls of a double-wall UST system may be used, subject to the following conditions and requirements.

(C) The sampling, testing, or monitoring method shall be capable of detecting a breach or failure in the primary wall and the entrance of groundwater or any other water into the interstitial space due to a breach in the secondary wall of the double-wall tank or piping system within one month (not to exceed 35 days) of such breach or failure (whether or not a stored regulated substance has been released into the environment).

#### **§334.54. Temporary Removal from Service.**

(e) Other requirements.

(5) Financial assurance requirements for tanks temporarily removed from service. Note that §37.885 of this title (relating to Release from the Requirements) addresses release from financial assurance requirements, and that Texas Water Code §26.352 (e-2)

and §37.867 of this title (relating to Duty to Empty Tanks after Termination of Financial Assurance) address the duty to empty tanks after termination of financial assurance.

## **SUBCHAPTER D: RELEASE REPORTING AND CORRECTIVE ACTION**

### **§334.71. Applicability and Deadlines.**

(b) If the release was reported to the agency on or before December 22, 1998, the person performing the corrective action shall meet the following deadlines:

(6) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to the executive director no later than September 1, 2011 ~~2007~~. The request must be complete, as judged by the executive director.

### **§334.84. Corrective Action by the Agency.**

(a) The agency may undertake corrective action in response to a release or a threatened release if:

(4) the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571; has been granted such extension by the executive director; has applied to the agency in writing on an agency application form not later than July 1, 2011 ~~2007~~, to have an eligible corrective action site placed in the Petroleum Storage Tank State Lead Program administered by the commission; and has agreed on the application form to allow access to that site to state personnel and state contractors. Once the executive director places such a site in the state lead program, the eligible owner or operator of that site is not liable to the commission for any corrective action costs incurred by the state lead program with regard to the site, unless the statutorily allowable maximum cost per site is exceeded; or

## **SUBCHAPTER F: ABOVEGROUND STORAGE TANKS**

### **§334.128. Annual Facility Fees for Aboveground Storage Tanks (ASTs).**

(a) Fee assessments.

(1) Except as provided in subsection (e) of this section, an annual facility fee of \$25 will be assessed by the agency for each aboveground storage tank (AST) subject to the registration provisions of §334.127 of this title (relating to Registration for Aboveground Storage Tanks (ASTs)).

(e) Exception. An annual facility fee shall cease to be assessed, effective September 1, 2007, and shall not be assessed until such time as reinstated by the commission at an amount determined appropriate by the commission, however, prior owing tank fees are still due as previously described. In addition, at such time as the annual facility fee is reinstated by the commission, it will not be assessed for an AST which is owned by a common carrier railroad, as provided in the TWC, §26.344(g).

## **SUBCHAPTER H: REIMBURSEMENT PROGRAM**

### **§334.301. Applicability of this Subchapter.**

(c) Expenses considered for payment--time frame in which corrective action performed. Subject to the other requirements of this subchapter, the expenses which may be considered for payment from the petroleum storage tank remediation fund are limited to expenses of corrective action which was performed for the owner or operator on or after September 1, 1987, and conducted in response to a confirmed release that was initially discovered and reported to the agency on or before December 22, 1998. Expenses for corrective action performed prior to September 1, 1987, are not subject to reimbursement or payment. No expenses for corrective action performed after September 1, 2005 will be reimbursed unless the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571 and has been granted such an extension by the executive director. The Petroleum Storage Tank Remediation (PSTR) Account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, ~~2011~~ 2007. No reimbursements will be made for corrective action expenses sought in claims submitted to the agency after March 1, ~~2012~~ 2008. Under no circumstances will any reimbursements be made on or after September 1, ~~2012~~ 2008.

### **§334.302. General Conditions and Limitations Regarding Reimbursement; Assignment**

(c) No payments shall be made by the agency under this subchapter for:

(5) any expenses related to corrective action performed after September 1, 2005, unless the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571 and has been granted such an extension by the executive director. The Petroleum Storage Tank Remediation (PSTR) Account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, ~~2011~~ 2007;

(6) any expenses related to corrective action contained in a reimbursement claim filed with the agency after March 1, ~~2012~~ 2008;

(7) any expenses on or after September 1, ~~2012~~ 2008; or

### **§334.303. When to File Application.**

(a) An application for reimbursement under this subchapter must be filed on or after January 17, 1990, but not after March 1, ~~2012~~ 2008.

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