

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** March 28, 2008
Thru: LaDonna Castañuela, Chief Clerk
Glenn Shankle, Executive Director
From: Dan Eden, Deputy Director
Office of Permitting, Remediation, and Registration
Docket No.: 2008-0307-RUL
Subject: Commission Approval for Proposed Rulemaking
Chapter 334, Underground and Aboveground Storage Tanks
HB 3554, HB 1956: Regulation, Remediation and Financial Assurance of ASTs and USTs
Rule Project No. 2007-037-334-PR

Reasons for the rule package:

The proposed rulemaking would implement House Bill (HB) 3554 and HB 1956, 80th Legislature, 2007, Regular Session. At the request of the commission, the preamble of this rule proposal also specifically requests comments on the question of whether Leaking Petroleum Storage Tank (LPST) sites should be removed from the Texas Risk Reduction Program (TRRP) requirements in 30 TAC Chapter 350.

HB 3554 was authored by Representative Carl Isett and was sponsored by Senator Robert Duncan. HB 1956 was authored by Representative Kelly Hancock and was sponsored by Senator Kim Brimer.

- **Under what authority are we proposing these changes?**

Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.011, which requires the commission to control the quality of water by rule. TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); and TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST).

- **Is this rulemaking required by federal rule or state statute? Which ones?**

This rulemaking proposes rule changes which ensure consistency between rule and statute. Specifically, the proposed rules comply with HB 3554's changes to TWC, §26.351, §26.3573, §26.3574, §26.358, §26.361, and HB 1956's changes to TWC, §26.352.

Requirements in federal law (The Energy Policy Act of 2005) pertaining to new UST system Secondary Containment are among the rule changes proposed in this rulemaking.

- **Are there any legal deadlines by which these rules must be proposed, adopted, or effective?**

Re: Docket No. 2008-0307-RUL

State statutory changes pertinent to this rulemaking were effective September 1, 2007. The proposed changes related to federal law pertain to UST secondary containment requirements which EPA has asked be implemented as soon as possible, because the implementation deadline of February 8, 2007 specified in federal law, has already passed.

- **What issue(s) or problem(s) are we trying to solve?**

The need to incorporate into rule, statutory changes effective September 1, 2007, which extend the PST reimbursement program (and related deadlines) for eligible LPST sites; the need to eliminate non-compliance with financial assurance requirements for USTs on the part of UST facility owners and operators; the need to comply with the secondary containment requirements of federal law; and the need to improve certain technical standards for UST systems related to federal requirements.

- **Why is it important that we do this rule package?**

To ensure consistency between 30 TAC Chapter 334 rules and the revisions to the TWC made in the last legislative session and to incorporate Federal Energy Policy Act of 2005 requirements and related technical requirements.

- **Other important background or historical information.**

In a letter to the Executive Director dated June 26, 2007, Representative Carl Isett clarified his intent in HB 3554, stating that the clean up of LPST sites should return to requirements in 30 TAC Chapter 334. At its November 7, 2007 agenda, the commission directed that this rule proposal contain language soliciting comments on this issue.

Scope of the rulemaking:

The rulemaking would extend the PST reimbursement program (and related remediation and reimbursement deadlines) for eligible LPST sites; eliminate annual registration fees for underground and aboveground storage tanks; address financial assurance requirements for USTs; incorporate UST secondary containment requirements in Federal law (The Energy Policy Act of 2005); and amend certain technical standards for UST systems related to Federal requirements.

- **Changes required by federal rule:**

There are no changes required by federal rule, however, requirements in federal law (The Energy Policy Act of 2005) pertaining to new UST system Secondary Containment are among the rule changes proposed in this rulemaking, as follows:

Proposed rule will require, on or after the effective date of the rule, monitored secondary containment in the form of double wall construction (or agency accepted alternative) for new UST system tanks and/or lines, and in the form of dispenser containment sumps for any new dispenser or existing dispenser served by new piping.

- **Changes required by state statute:**

Re: Docket No. 2008-0307-RUL

- 1) the requirement that proof of financial assurance be submitted with annual PST self-certifications;
 - 2) the removal of annual facility fees of \$50 per UST and \$25 per AST;
 - 3) the extension of the PST Reimbursement Program and related reimbursement and remediation deadlines for four years; and
 - 4) reference to changes pertaining to USTs which are being adopted in another rule package, 30 TAC Chapter 37, Financial Assurance, including the requirement that tanks be properly emptied within 90 days of termination of financial assurance.
- **Staff recommendations that are not expressly required by federal rule or state statute:**
 - 1) amendment of the definitions of “Motor fuel” and “Petroleum product” to update them to include biodiesel/petroleum diesel blends and any alcohol blended fuels;
 - 2) the requirement that temporarily out of service USTs are not exempt from self certification requirements if they are not properly emptied;
 - 3) the requirement that existing sumps (including dispenser sumps) and manways which are part of a UST release detection system and all overspill containers installed at any time be kept liquid tight and free of debris;
 - 4) the requirement that any sumps (including dispenser sumps) or manways, associated with new double wall UST systems meet certain minimum standards, including: ensuring liquid tightness through initial and periodic tightness testing and through periodic inspection performed by qualified personnel; installation of liquid sensing probes which will alert the owner/operator of the presence of 2 inches or more of liquid; removal of liquids within 48 hours of alert or discovery; and treatment of the discovery of 1/8 inch or more of free product in a sump as a suspected release;
 - 5) the allowance of the replacement of up to 10% of the total original length of an existing single wall line without triggering the double wall requirement and;
 - 6) the addition, for clarification at a number of locations in the proposed rule, of the term “or any other water” to the media from which isolation of metal tanks or metal UST components is a factor, and which interstitial spaces should be kept free of.

Impact on the regulated community:

- **Who will be affected?**

UST owners and operators, responsible parties for LPST sites, owners of affected properties, and UST installation and remediation contractors and/or consultants.

- **Does it create a group of affected persons who were not affected previously? How?**

Re: Docket No. 2008-0307-RUL

No.

- **Will there be a fiscal impact? Yes. If so, estimate.**

Regarding secondary containment requirements and associated technical requirements applicable to sumps, these costs can vary, depending on the equipment installed, facility locations, soil conditions and tank size and number. Staff estimates that although the specific cost of a new double wall tank is approximately one and one half times more than a new single wall tank of the same size, and the cost of double wall line is a little more than twice that of single wall line, the overall increase in cost to incorporate double wall tanks and lines and dispenser sumps with sensors at a large new UST facility under the proposed rules will likely be two percent or less of the total cost when the combined costs for land improvements, dispensers and paving are considered. At an existing UST site, note that a facility owner or operator will not be required to do an upgrade until they are already doing equipment replacement (e.g., new tanks, new lines, dispenser sumps with sensors). The total cost of such a construction project (including digging up the pavement, etc.) with a secondary containment upgrade versus a similar construction project without a secondary containment upgrade would only be about 11 percent more. Costs for initial and once per 3-year testing of sumps/manways cannot at this time be quantified, but are expected to be relatively minor. The related cost increases are expected to reduce the risk and the cost of any future remediation which might be needed at these facilities.

Impact on the public:

- **Who will be affected?**

There is no expected impact on the public. Indirect and remote effects may be that increased attention to financial assurance requirements and extension of the PST Reimbursement Program for cleanup of LPST sites, may mean that more LPST sites get cleaned up in an expeditious manner and therefore do not lie vacant (if and when they become vacant) as “brownfield” sites that buyers are reluctant to re-develop for useful purposes. Also the requirements for secondary containment should tend to decrease releases, thereby decreasing environmental impact and benefiting the public.

- **Does it create a group of affected persons who were not affected previously? How?**

No.

- **Will there be a fiscal impact? If so, estimate.**

Any fiscal impact on the public of this rule package will be indirect and cannot at this time be quantified. It will include continued protection of public health and safety through environmental cleanup of contaminated sites, and through enhanced technical requirements for release prevention.

Impact on agency programs:

No significant fiscal implications are anticipated for the agency. The agency expects to utilize current resources to modify existing databases to track additional self certifications of temporarily out of service USTs. Although fee revenues are reduced, the agency will utilize fund balances in Accounts 0549 and 0655 to perform compliance duties. Secondary containment requirements for

Re: Docket No. 2008-0307-RUL

new UST systems should result in a reduction in releases which could reduce the number of LPST sites which have to be addressed by the State Lead Remediation Program.

Stakeholder meetings:

- **Have any stakeholder meetings been held?**

Yes, a stakeholder meeting was held at TCEQ headquarters in Austin on February 11, 2008.

- **With whom?**

The PST Rule Stakeholder Group was invited. This group consists of individuals representing: the EPA, environmental groups, tank manufacturers, piping manufacturers, fuel retailers, training providers, UST installers, remediation contractors, release detection providers, environmental law firms, industry organizations, standard making organizations, environmental laboratories, and corrosion protection providers.

Retailers, tank manufacturers, remediation contractors, UST installers, industry organizations, EPA, environmental law firms, and corrosion protection providers attended.

- **What were the general sentiments?**

Some stakeholders objected to original requirements in proposed rule for regular inspection and testing of existing sumps, manways and all overspill containers. Some stakeholders also objected to a proposed requirement that testing of sumps and manways related to new UST systems had to be performed or supervised by a Texas licensed UST Installer. They maintained that these requirements were not practical and in some cases would be prohibitively expensive. Otherwise, stakeholders were in basic agreement with proposed changes.

- **Were any changes made in response to stakeholder concerns?**

Staff agreed with the reasoning provided by the stakeholders and removed the requirements to which they objected from proposed rule language.

Policy issues:

- **What policy issues are affected?**

None.

- **Are any policies that are not currently based on rule being made into a rule?**

None.

- **What are the consequences if this rulemaking is not approved to go forward?**

There would be inconsistencies between agency rules and the recent changes to the TWC, made by passage of HB 3554 and HB 1956. Additionally, the agency would not be showing progress towards implementing Energy Act requirements relating to secondary containment for UST systems.

Re: Docket No. 2008-0307-RUL

- **Are there alternatives?**

There are no practical alternatives.

Potentially controversial matters:

Please see the previous section of this summary, entitled "Other important background or historical information".

Key points in proposed rulemaking schedule:

- **Anticipated proposal date:** April 16, 2008
- **Anticipated Texas Register publication date:** May 2, 2008
- **Public hearing date (if any):** May 27, 2008
- **Public comment period:** May 2, 2008 – June 2, 2008
- **Anticipated adoption date:** September 3, 2008

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Attachments

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