



Remediation Division Regulatory Notice

March 1, 2005

Re: May 2005 Deadline for Risk Reduction Standard 1 or 2 Final Reports

TCEQ

The TRRP rule established criteria in §350.2(m) that allowed remediations and closures started under previous rules to continue without being subject to TRRP so long as certain criteria and deadlines are met. This suspension of TRRP applicability is commonly referred to as “grandfathered” status. Although several deadlines have already passed to establish grandfathered status for continued use of the Risk Reduction Rules of Chapter 335, the following series of TRRP Questions and Answers (Q&A) has been prepared in anticipation of the May 1, 2005 deadline for completion of Risk Reduction Standard 1 or 2 projects. Also, numerous documents have been submitted in response to the lapsed deadlines and are pending review. This guidance will aid users and staff reviewers in determining compliance with those deadlines.

Additional topics on grandfathered status, primarily regarding Risk Reduction Standard 3, were made available in the March 2004 TRRP Q&A update. Questions 4 through 7 of this regulatory notice were first released in that update but are included in this document for their relevancy to the May 1, 2005 deadline. Use this link to access the March 2004 TRRP Q&A update:

<http://www.tnrcc.state.tx.us/permitting/remed/techsupp/update033104.pdf>.

TRRP Q&A
May 2005 Deadline for Risk Reduction Standard 1 or 2 Final Reports

§350.2(m) Applicability

Q1. Which Risk Reduction Rule projects are affected by the May 1, 2005 deadline?

A. This deadline applies only to projects (e.g., remediations, closures, etc.) begun under the Risk Reduction Rules prior to May 1, 2000 that qualified for grandfathered status to attain Risk Reduction Standard 1 or 2 by May 1, 2005. This deadline will impact self-implemented projects and those following voluntarily submitted workplans. In contrast, projects directed by a permit or order to comply with the Risk Reduction Rules must continue to do so and are not affected by this deadline. Projects that qualify for grandfathered status under Risk Reduction Standard 3 likewise are not affected by this deadline. See TCEQ guidance document *TRRP Applicability and Grandfathering* (RG-366/TRRP-2 Revised) for more detail regarding the effect of a permit or order on your grandfathered status or consult your program area to verify your status.

Q2. What documentation is required by May 1, 2005 to satisfy the deadline?

A. As specified in §350.2(m)(1), the five years of grandfathered status for Risk Reduction Standard 1 or 2 projects will end on May 1, 2005. Persons who have attained Standard 1 or 2 and submit the final report documenting attainment by that date can request that the TCEQ review the report under the Risk Reduction Rules instead of the TRRP rule. The final report shall include but is not limited to the information specified in §335.553(a) and it must satisfactorily demonstrate with appropriate documentation the attainment of the Risk Reduction Standard in accordance with §335.554 for Standard 1 or §335.555-559 for Standard 2. The TCEQ's expectation for a final report is that it will fully satisfy these rule citations. Deficiencies should be few in number and minor in scope and no additional reports should be needed to demonstrate attainment of the Risk Reduction Rule standard. If it is evident that you will not attain Risk Reduction Standard 1 or 2 by the deadline, there is no need to submit the final report as grandfathered status will end.

Q3. What if I submit the final Risk Reduction Standard 1 or 2 report by May 1, 2005, but I don't get TCEQ concurrence before that date?

A. Receipt of TCEQ approval is not required by the deadline. Meeting the deadline for submission of the final report will preserve your grandfathered status during the review period at the TCEQ. Possible outcomes of the review can include an approval, a notice of deficiency, or a denial with directions to switch to the TRRP rule. Consistent with the approach described in the adoption preamble of the TRRP rule (*24 TexReg 7503*, Sept. 17, 1999) for report reviews, the TCEQ review letter will be sent in as timely a manner as possible. In the event the TCEQ review identifies minor deficiencies, you will be afforded at least one opportunity to respond to a Notice of Deficiency (NOD) letter, in keeping with normal TCEQ practice, before the final report is approved or, if it is denied, you would then be directed to switch to TRRP. If a final report has not been filed by the deadline or it clearly fails to make the required demonstrations (e.g., assessment of contaminants is incomplete, cleanup levels are not met, etc.), you may be directed to switch to TRRP without NOD response opportunity.

Q4. Does the Notice of Intent or VCP application require the person to make a commitment to a particular grandfathered RRR standards or is it just a RRR vs TRRP decision?

A. By various mechanisms, the person had to provide notice to the agency prior to May 1, 2000, of the person's intent with regard to continuing actions started under previous rules. Prior to the TRRP implementation date, the notice of any act of closure or remediation under the Risk Reduction Rules was required by §335.8(c)(1). That rule specified that the person indicate as part of the initial notice which Risk Reduction Standard(s) is to be attained. The rule allows for more than one standard to be reported in a single notice to the agency to address multiple actions at the facility or area. For purposes of establishing grandfathered status, the deadlines and types of reports specified in §350.2(m) depend on the person's stated intent to attain Risk Reduction Standard 1 or 2 (handled together because of self-implementation) as opposed to Risk Reduction Standard 3. So whether the notice required by §335.8(c)(1) was sent to the agency in a letter, a VCP application or a Notice of Intent form, the requirements for retaining grandfathered status depend on the risk reduction standard to be attained. As discussed in the following questions, the person has some limited options if he changes the remediation objective from one Risk Reduction Rule standard to another after May 2000.

Q5. Can a person who has properly established grandfathered status for a closure or remediation under Risk Reduction Standard 1 or 2 switch to Risk Reduction Standard 3 at some later date?

A. Conceptually, yes, but the window of opportunity to switch from Risk Reduction Standard 1 or 2 to Risk Reduction Standard 3 largely was closed as of May 1, 2001, the date by which the final remedial investigation report (i.e., assessment report) which satisfies §335.553(b)(1) should have been submitted.

Q6. If the person can make the switch from Risk Reduction Standard 2 to Risk Reduction Standard 3, then can they make that switch any time between now and May 2005?

A. Conceivably, yes, if the conditions of Question 5 are met. It is advisable to make the switch sooner than later. One of the concepts of grandfathered status was that progress toward risk reduction would continue to be made under previous rules. If it is evident that continued efforts with a particular remedy will not achieve Risk Reduction Standard 2 by May 1, 2005, the person can either change technologies (e.g., apply a more aggressive treatment technique) or change objectives. The staff will be alert to persons who have not demonstrated progress toward risk reduction under Risk Reduction Standard 2 and then late in the game elect to switch to Risk Reduction Standard 3. Relevant text from the adoption preamble (*24 TexReg 7502*, Sept. 17, 1999) is presented below.

“... The commission is imposing some limits on time or performance for response actions to remain under Chapter 335 for another reason. The commission does not intend to maintain indefinitely two sets of risk reduction regulations. This situation would be contrary to the commission's guiding principle of eliminating whenever possible unnecessary, inefficient, or redundant regulations and processes. The commission will accept projects completed under Chapter 335 as being protective of human health and the environment, unless a substantial change in circumstances determines otherwise, and will allow partially completed projects to continue under Chapter 335 to the extent described herein. The

commission is therefore promulgating a grandfathering provision that strikes a balance between maintaining progress toward risk reduction at release sites and eliminating redundant regulations.”

Q7. Can the person make the switch to Risk Reduction Standard 3 after May 1, 2005?

A. No. The intent of the TRRP rule, as discussed in the preamble, is to terminate grandfathered status for Risk Reduction Standard 1 or 2 projects that fail to attain the intended standard by May 1, 2005. Such projects would then have to comply with the TRRP rule. Relevant text from the adoption preamble (24 *TexReg* 7502, Sept. 17, 1999) is presented below.

The other requirement to secure grandfathered status is the completion of the response action within five years of the implementation date (May 1, 2000) of this rule. This can be demonstrated by submission of a final report that addresses the information requirements of §335.553(a). Implementation experience has shown that many Standard 1 and 2 actions have been completed in far less than five years. Commentors questioned this requirement by noting that natural attenuation remedies will generally take longer than five years and should not be forced into the TRRP rule on this arbitrary basis. The commission is requiring this cutoff because the TRRP rule addresses some implementation issues for long-term remedies such as monitored natural attenuation that the Chapter 335 rules do not, namely notification and status reports. Remedies continuing after the five year cutoff will enter the TRRP process with response action effectiveness reporting and an affected property assessment report if an equivalent report had not been submitted under §335.553. Notification requirements of §350.55 could also apply.

Q8. If I lose grandfathered status for Risk Reduction Standard 1 or 2 and cannot transition to Risk Reduction Standard 3 (see Questions 4 - 7 above), what must I do to make the transition to TRRP?

A. The transition is not intended to disrupt progress being made toward achieving risk reduction. Don't stop the removal or decontamination activities. Technologies that work for the Risk Reduction Rules will also work for TRRP. Do determine the critical Protective Concentration Levels (PCLs) and PCL exceedance zones as these could change as a result of the transition. Also consider whether to pursue Remedy Standard A or B.

The content, format, and frequency of reports will differ after making the transition to TRRP. Essentially, pick up where you would be in the TRRP process based on what has been completed under the Risk Reduction Rules as of May 1, 2005. In all cases, however, your first report must be the Notice of Intent to Switch to TRRP form (Form 10337/NOIST). This simple form will give us current information on the project. In the box labeled "Description of Project History" include an explanation of activity at the site, risk reduction standard attempted (1 or 2), intended TRRP remedy standard (A or B (also see Q10 about changing your initial selection)), and date(s) of the most recent Risk Reduction Rule report(s) submitted to the agency. Also, indicate the approximate date by which the next TRRP report will be submitted, based on the following table. Submit the NOIST form by June 1, 2005 to the appropriate TCEQ program. Use this link to access the TRRP Guidance and Forms web page for the guidance documents and forms referenced below:

<http://www.tnrcc.state.tx.us/permitting/remed/techsupp/guidance.htm>.

Risk Reduction Rules	TRRP Rule
In all cases	NOIST by June 1, 2005, plus...
If the last report submitted before May 1, 2005 was...	The next report due for TRRP is...
<p>Notice that satisfied §335.8(c)(1).</p> <p>For purposes of switching to Remedy Standard A, this notice is equated to the Self-Implementation Notice (Form 10323/SIN).</p>	<p>Affected Property Assessment Report (Form 10325/APAR).</p> <hr/> <p><u>Option</u> - self-implemented Remedy Standard A: submit APAR and Response Action Completion Report (Form 10328/RACR) together when response action is completed. Figure: 30 TAC §350.3(4).</p> <hr/> <p><u>Option</u> - work plan for Remedy Standard A or B: submit Response Action Plan (Form 10326/RAP), and APAR if not already submitted.</p>
Assessment report that satisfies §335.8(c)(2) and §335.553(a) - assessment requirements only.	RAP, or RACR if self-implementing, plus additional information if needed (See Q11).
Status report for remediation activities (optional per program).	Response Action Effectiveness Report (Form 10327/RAER) (See Q9).

Q9. Once I've determined what the next TRRP report will be, when is it due?

A. Other than the NOIST form required above, the submission of the subsequent TRRP reports will largely depend on the progress of the response action, unless some other timeframe is imposed or accepted (e.g., VCP agreement). For example, if the only report submitted under previous rules was the Notice, the APAR would be due next when the affected property assessment is completed. Options are indicated in the table in Q8 for submitting the APAR with other TRRP reports. A RAER will be due in a maximum of 3 years (by May 1, 2008) if no other TRRP report has been submitted since the NOIST. Long-term remedies such as monitored natural attenuation that take years to attain could result in RAERs due every 3 years, or more frequently if required by the TCEQ program area. The RACR would be due when the response objectives are attained.

Q10. If I started under Risk Reduction Standard 2, am I limited to Remedy Standard A?

A. No, you are not restricted to a particular TRRP remedy standard as a result of making the switch. This transition is a good time to assess your progress and determine whether Remedy Standard A or B is the better match for your situation and objectives. Even later in the remediation process you can still change remedy standards (A to B, or B to A) if you determine the need to do so. Refer to TCEQ guidance *Application of Remedy Standards A and B* (RG-366/TRRP-28) for a thorough description of the two TRRP remedy standards.

Q11. Must I revise and resubmit reports previously submitted under the Risk Reduction Rules solely to conform to the TRRP report formats?

A. No, reformatting of previously submitted reports into the TRRP standardized reports is not a standard requirement. The transition to TRRP is not intended to be applied retroactively. However, in some situations it may be advantageous to prepare the APAR, such as assessments that are clearly incomplete or previous assessment reports, submitted in phases, are too fragmented to draw the necessary conclusions. If it looks as though you will have to fill many information gaps anyway (see next question), consider pulling all the information together in the APAR format, otherwise the TCEQ program area may direct you to re-submit information in a TRRP report out of necessity.

Q12. Must I go back and “fill in the gaps” for TRRP requirements that don’t have an equivalent in the Risk Reduction Rules?

A. The answer to this one depends on the information gap. In general, assessments under the Risk Reduction Rules utilized background or detection limits as assessment levels. It is not necessary to calculate TRRP assessment levels if this is the case. In some cases, assessments were based on Standard 2 MSCs, such as for the Voluntary Cleanup Program, in which case the assessment results should be checked against the TRRP assessment levels. The Risk Reduction Rules do not have a groundwater classification scheme as specific as that in TRRP. For assessment purposes this difference might not matter but the final cleanup levels (critical PCLs) and response action objectives under TRRP are affected by the groundwater classification. Either assume Class 1 groundwater or demonstrate that Class 2 or 3 applies. The new information should be reported in TRRP format in the APAR (if equivalent report was not submitted under the previous rules) or the appropriate APAR worksheets can be appended to the next TRRP report due as shown in the table in Q7 above.

Q13. Do all sample results, even those analyzed over the years, have to meet TRRP data quality requirements?

A. Analytical results used for making decisions with the Risk Reduction Rules have to be of a quality appropriate for the intended use of the data. At a minimum, results obtained since July 1998 should conform to the data quality guidelines provided in the July 23, 1998 memorandum *Implementation of the Existing Risk Reduction Rule*, accessible from this link: (<http://tnrcc.state.tx.us/permitting/remed/techsupp/confin2.exe>). Depending on case specific circumstances, it may be necessary to confirm earlier results or fill data gaps with additional samples. Any laboratory analyses performed after switching to TRRP must comply with the data quality requirements of TRRP. For example, you must have analytical results reported at levels sufficient to demonstrate compliance with critical PCLs.

Q14. What if I am following workplans reviewed and approved under the Risk Reduction Rules for conducting the assessment or remedy in lieu of self-implementation?

A. Assess whether that work is still warranted or sufficient under TRRP. If so, continue activities in accordance with the approved workplan but anticipate submitting the report generated by the workplan in TRRP format. For example, the results of an assessment workplan should be submitted as an APAR or the results of implementing a remedy workplan should be submitted as a RACR. Regarding information gaps between the workplan and the TRRP requirements, you have some options. Either propose a revision to the approved workplan that will address applicable TRRP requirements or pro-actively “fill the gaps” before submitting the TRRP report. Self-implementation remains an option when switching to TRRP.

Q15. What if I submitted a workplan for Risk Reduction Standard 1 or 2 activities but it hasn't been approved yet?

A. Unless you were directed by a permit or order to submit a workplan, the deadline for demonstrating attainment of Risk Reduction Standard 1 or 2 by May 1, 2005 will apply, just as for self-implemented actions. Follow the instructions provided in the preceding questions to guide your transition to the TRRP rule.

