

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** January 5, 2024

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

**From:** Craig Pritzlaff, Director  
Office of Compliance and Enforcement

**Docket No.:** 2023-0155-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
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 has become 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 will do:**

The rulemaking will 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 §334.50(d)(4) or 30 TAC §334.50(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.

Re: Docket No. 2023-0155-RUL

**Effect on the:**

**A.) Regulated community:**

The rulemaking will 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 will 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 was held during the comment period in Austin.

**Public Involvement Plan**

None.

**Alternative Language Requirements**

None.

**Public comment:**

The commission held a public hearing on October 19, 2023. The comment period closed on October 23, 2023. One comment, received from the Texas Food and Fuel Association (TFFA), was in support of the rule amendment.

**Significant changes from proposal:**

None.

**Potential controversial concerns and legislative interest:**

There are no known controversial concerns or legislative interest.

**Will 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 adoption rulemaking schedule:**

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

Anticipated *Texas Register* adoption publication date: February 9, 2024

Anticipated effective date: February 15, 2024

Six-month *Texas Register* filing deadline: March 22, 2024

Commissioners  
Page 3  
January 5, 2024

Re: Docket No. 2023-0155-RUL

**Agency contacts:**

Zachary King, Rule Project Manager, Program Support and Environmental Assistance Division,  
(512) 239-1931  
Erandi Ratnayake, Staff Attorney, Litigation Division, (512) 239-6515  
Cameron Puckett, Staff Attorney, Litigation Division, Remediation Section (512) 239-1636  
Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-2678

**Attachments:**

None.

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Keisha Townsend  
Krista Kyle  
Office of General Counsel  
Zachary King  
Erandi Ratnayake  
Cameron Puckett  
Gwen Ricco  
Elizabeth Vanderwerken  
Regan White