

## The Texas Risk Reduction Rule Amendments Chapter 350

Pat Fontenot, Manager  
Technical Support Section  
Remediation Division  
[pfonteno@tceq.state.tx.us](mailto:pfonteno@tceq.state.tx.us)  
512-239-2220

## Schedule for Publication in Texas Register

- Commissioners Adopted on 2/21/07 Agenda
- Publish in Texas Register on March 16 Effective March 19
- Only Changes Made Since Original Adoption in September 1999
- Mostly Clarification or Modification of Provisions for Effective Rule Application

## Examples - Clarify

- §350.4(a)(13) Change Com/Ind landuse definition to exclude NAICS code 814 – “private households”
- §350.34(l) Add cross-reference to other institutional control triggers in NFA requirements for Remedy Standard A such as non-standard exposure areas, occupational inhalation RBELs
- §350.71(k)(3) Screen nondetected COCs with higher n.d level
- §350.71(k)(4) For n.d. analytes, not identified as COCs, screen out

NFA – No Further Action; RBELs – Risk Based Exposure Limits; COC – Chemical of Concern

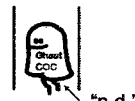
## Revised 71(k)(3) vs. New 71(k)(4)

§350.71(k)(3)  
COC is likely to be present at site based on current or historical usage. Screen out if:  
•Not detected (n.d.) in any sample in medium, and  
•All SDLs < RAL for medium



RAL – Residential Assessment Level

§350.71(k)(4)  
COC is not likely to be present at site based on current or historical usage. Screen out if:  
•Not detected (n.d.) in any sample in medium.  
•Note: No bar to get under.



SDL – Sample Detection Limit

## SUMMARY OF REVISIONS

- §350.4(a)(62) the definition of "Person" clarified to state that remediation projects conducted by a governmental entity are regulated by TRRP.
- §350.111(c) addresses institutional control requirements as they pertain to non-responsible party governmental entities that are conducting remediation.

## Continued ...

- §350.76(c) provides flexibility to establish a Tier 3 residential lead TotSoilComb PCL. The revision to the rule allows for the use of property specific inputs and models, as approved by executive director.

### §350.37 Human Health Points of Exposure

- §350.37 (i): POEs for surface water runoff or groundwater discharges to surface water apply at point of entry and to other water bodies that may be impacted by COCs
- §350.37 (k): Both sediment and surface soil POEs may apply to intermittent water bodies



### §350.74 (h) Surface Water RBEL (SWRBEL)

- Multiple changes; generally minor
- SWRBEL should be protective of down gradient water bodies. Consider water body use, water body type, water quality standards, & fate/transport characteristics.



### §350.74 (h) Surface Water RBEL (<sup>SW</sup>RBEL) – Cont.

- Added requirement to consider contact recreation
- Added TPDES General Permit limits as source of RBELs for releases of petroleum fuel
- Clarifies that chlorides, sulfates, TDS, and pH can be COCs & provides RBEL source



### Addition of Ecological Pathway for Surface Water PCL

- Figure §350.75 (b)(1): Surface water PCL is lesser of <sup>SW</sup>RBEL (hh and aq. life and ecological PCL (wildlife and fish)
- §350.75 (i)(4): Similarly, groundwater to surface water PCL based on lesser of both pathways. Smaller of <sup>SW</sup>RBEL &  $SW_{eco}$

$$SW_{GW} = SW_{SW/DF}$$

### Ecological Risk Assessment §350.77

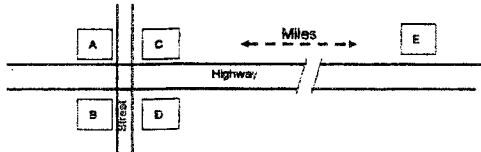
- Expands reasoned justification clause such that response actions not limited to human health pathways (early exit)
- Adds expedited stream evaluation to the rule (earlier exit)
- Minor clarification of Tier 2 requirements



### §350.2(g) Variance for TRRP Applicability for Qualifying UST Release Sites

- 350.2(g), allows certain Chapter 350 LPST sites, under site-specific conditions, to remediate using 30 TAC Chapter 334 risk-based criteria. Foster greater regulatory consistency among LPST sites with same situations.
- Normal TRRP: newly reported releases on or after 9/1/03
- Request for variance must be in writing to executive director
- Executive director will approve or deny request in writing

## Possible Scenarios



Site	Rules	Variance	Reason and Outcome
A, B, C	334	n/a	
D	350	Yes	Proximity* – Switch to 334
E	350	No	No proximity – Stay 350

\* All other conditions for a variance also met

## Conditions for Variance

### Variance request must contain:

- Documentation that UST system was permanently removed before 9/1/03
- Draft restrictive covenant prohibiting use of UST at property or future subdivisions of the property
- Comparison to other Ch. 334 UST sites in proximity to justify why TRRP compliance is a regulatory inequity
- Consider release, site, receptor conditions, other relevant factors



## Other Significant News

- §350.54(d), revises the laboratory accreditation requirements to comply with new 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification. Implementation is July 1, 2008.

## STATUTORY DEADLINE COMING UP!!!

Analytical data, generated after **June 30, 2008** and used in regulatory decisions by the TCEQ, must be generated by a laboratory NELAC accredited under the Texas Laboratory Accreditation Program

OR

As of July 1, 2008, the laboratory or the project must meet one of the statutory exemptions under the Water Code §5.134.



# TCEQ FACT SHEET

March 1, 2007

**The Texas Water Code places limits on the analytical data the TCEQ can use in regulatory decision making.**

In 2001, the 77<sup>th</sup> Legislature passed House Bill (HB) 2912, commonly referred to as the Sunset Bill. That bill, as amended in 2003 and codified in the Texas Water Code, requires the TCEQ to limit its acceptance of environmental data to only data generated by a laboratory NELAC accredited under the Texas Laboratory Accreditation Program; the bill lists few exceptions. "NELAC" is the National Environmental Laboratory Accreditation Conference. That requirement becomes effective three years from the date the TCEQ publishes in the Texas Register announcing the TCEQ is an accrediting authority under the NELAC. On Friday, July 1, 2005, the agency announced its status as a NELAC accrediting authority in the Texas Register (30 TexReg 3904-5). Thus, the countdown has begun toward the statutorily defined deadline of June 30, 2008.

**To all data generators and persons submitting analytical data to the TCEQ, please note:** Analytical data generated after June 30, 2008 must be generated by a laboratory NELAC accredited under the Texas Laboratory Accreditation Program unless the laboratory or the project meets one of the following exemptions:

1. The laboratory is an in-house laboratory and is:
  - a. periodically inspected by the TCEQ; or
  - b. located in another state and is accredited or inspected by that state; or
  - c. performing work for another company with a unit located on the same site; or
  - d. performing pro bono work for a governmental agency or charitable organization.
2. The laboratory is accredited under federal law.
3. The data are needed for emergency response activities, and a laboratory accredited under the Texas Laboratory Accreditation Program is not available.
4. The laboratory provides data for which the TCEQ does not offer accreditation.

**Beginning July 1, 2008, the TCEQ will reject, without review or consideration, data generated after June 30, 2008 by a non-NELAC accredited laboratory, regardless of the circumstances under which those data are generated, if none of the allowed exemptions listed above is met.**

Laboratories intending to be NELAC accredited under the Texas Laboratory Accreditation Program by July 1, 2008 should have an application on file with the TCEQ by April 1, 2007. For more information on the agency's accrediting authority, see the Office of Compliance and Enforcement website.

For the statutory requirements regarding data used by the agency, refer to the Texas Water Code Chapter 5, Sections 134 and 801 through 807.

For the agency rules implementing the statutory requirements, refer to the 30 Texas Administrative Code 25.

For more information about NELAC, go to the NELAC website.

## Q&A on Statutory Deadline for NELAC Accreditation

In 2001, the 77<sup>th</sup> Legislature passed House Bill (HB) 2912 (aka "the Sunset Bill"). That bill, as amended in 2003, requires the TCEQ to limit its acceptance of environmental data to only data generated by laboratories NELAC accredited under the Texas Laboratory Accreditation Program; the bill allows few exceptions. ("NELAC" is the National Environmental Laboratory Accreditation Conference.) That requirement becomes effective three years from the date the TCEQ announces in the Texas Register its status as a NELAC accrediting authority. On Friday, July 1, 2005, the agency published that announcement in the Texas Register (30 *TexReg* 3904-5). Thus, the countdown clock has begun toward the three-year deadline of June 30, 2008.

Please be aware of this upcoming June 30, 2008 deadline. Below are frequently asked questions with the corresponding answer.

**Q1: What is NELAC?**

**A1:** "NELAC" stands for the National Environmental Laboratory Accreditation Conference. NELAC is a voluntary association of state, tribal, and federal agencies dedicated to establishing and promoting mutually acceptable performance standards for environmental laboratories. In the late 1980s, regulators and laboratories recognized a need for controlling the quality of environmental data as well as a need to reduce the burden of multiple and sometimes conflicting accreditation requirements imposed by various regulatory agencies. A cooperative effort evolved resulting in the formation of NELAC and the development of NELAC accreditation standards. More information about NELAC is available at the [NELAC website](#).

**Q2: What are the NELAC accreditation standards?**

**A2:** The NELAC accreditation standards are performance standards for environmental laboratories established by a voluntary association of state, tribal, and federal agencies with input provided by stakeholders from the environmental industry and environmental community.

**Q3: What is the benefit of the NELAC program?**

**A3:** For the first time, persons responding to rule and regulators alike will know the laboratories submitting data for commission decisions meet recognized standards for laboratory analysis and operation. All of the states holding NELAC accrediting authority have agreed to recognize accreditations issued by other entities holding NELAC accrediting authority. States not holding accrediting authority themselves accept NELAC accreditations issued by other states. A benefit of the NELAC program for Texas laboratories is its broad acceptance of accreditations.

**Q4: I am a laboratory. What do I need to do?**

**A4:** For data generated on or after July 1, 2008 and with certain exceptions as allowed in the statute, the TCEQ will only accept data generated by a NELAC accredited laboratory. Consequently, all laboratories planning to generate analytical data on or after July 1, 2008, for submission to the TCEQ, will need to attain NELAC accreditation by June 30, 2008. TCEQ began accepting accreditation applications in the summer of 2005. The Remediation Division recommends to laboratories seeking accreditation under the Texas Laboratory Accreditation Program to have their application on file with the agency by April 2007. Laboratories may apply for accreditations in all media and for all types of analyses. Application information is available on the agency's web site at [http://www.tceq.state.tx.us/compliance/compliance\\_support/qa/env\\_lab\\_accreditation.html](http://www.tceq.state.tx.us/compliance/compliance_support/qa/env_lab_accreditation.html).

**Q5: I am currently collecting data for a project, and the APAR for the project will be submitted after July 1, 2008, what should I do?**

**A5:** Consult with your laboratory to determine if the laboratory currently holds primary or secondary NELAC accreditation under the Texas Laboratory Accreditation Program (TLAP) or if the laboratory is currently pursuing accreditation. If the laboratory is neither, advise your laboratory of this statutory requirement. **Note:** Beginning July 1, 2008, the TCEQ will reject, without review or consideration, all data generated after June 30, 2008 by non-NELAC accredited laboratories, regardless of the circumstances under which those data are generated when the person can not demonstrate one of the statutory exemptions is met.

**Q6: What are the exemptions allowed by the statute?**

**A6:** Per the TWC §5.134, the agency is allowed to accept data generated by a non-NELAC accredited laboratory when:

1. The laboratory is an in-house laboratory and is:
  - a. periodically inspected by the TCEQ; or
  - b. located in another state and is accredited or inspected by that state; or
  - c. performing work for another company with a unit located on the same site; or
  - d. performing pro bono work for a governmental agency or charitable organization.
2. The laboratory is accredited under federal law.
3. The data are needed for emergency response activities, and a laboratory accredited under the Texas Laboratory Accreditation Program is not available.
4. The laboratory provides data for which the TCEQ does not offer accreditation.

**Q7: June 30, 2008 has not passed, and I am currently collecting data generated by a laboratory not holding NELAC accreditation. I want to use those non-NELAC data in a report I will submit to the agency after July 1, 2008. Will the TCEQ accept those non-NELAC data?**

**A7:** The Remediation Division will accept non-NELAC data in a report submitted on or after July 1, 2008, provided those non-NELAC data were generated on or before June 30, 2008, and those data are of sufficient and documented quality to meet the project objectives. Regarding non-NELAC data generated prior to July 1, 2008:

- Under the TRRP rule (30 TAC 350) and per §350.54, the laboratory used to generate the data must be generally consistent with NELAC and/or the guidance in the International Organization for Standardization 17025 (ISO 17025), and the data quality must be of sufficient and documented to meet the project objectives, as discussed in the guidance *Review and Reporting of COC Concentration Data (RG-366/TRRP-13)*.
- Under the Risk Reduction Rules (30 TAC 335), the data must be of sufficient and documented quality to meet the project objectives. For the 30 TAC 335 rule, guidance is provided in the July 23, 1998 TCEQ memo (aka "the Consistency Memo").
- Under the Petroleum Storage Tank rules (30 TAC 334), the data must be of sufficient and documented quality to meet the project objectives. Guidance is provided in the document *Investigating and Reporting Releases from Petroleum Storage Tanks (PSTs) (RG-411)*.

**Q8: Is there a list of accredited laboratories and their fields of accreditation available?**

**A8:** Yes. The list of accredited laboratories and their fields of accreditation is available on the Texas

Laboratory Accreditation Program's webpage at  
[http://www.tceq.state.tx.us/assets/public/compliance/compliance\\_support/qa/txnelap\\_lab\\_list.pdf](http://www.tceq.state.tx.us/assets/public/compliance/compliance_support/qa/txnelap_lab_list.pdf)

**Q9: How can I find more about NELAC?**

**A9:** More information about NELAC is available on-line at <http://www.epa.gov/nelac>. Information regarding NELAC accreditation under the Texas Laboratory Accreditation Program can be accessed from [http://www.tceq.state.tx.us/compliance/compliance\\_support/qa/env\\_lab\\_accreditation.html](http://www.tceq.state.tx.us/compliance/compliance_support/qa/env_lab_accreditation.html).

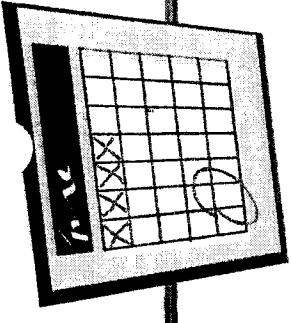
**For questions regarding requirements for the laboratories during the accreditation process, contact the Texas Laboratory Accreditation Program at 512-239-3754.**

**For questions regarding the Remediation Division's implementation of HB2912, contact the program area or the general call-in line at 512-239-2200.**



# **STATUTORY DEADLINE COMING UP!!**

---



Analytical data, generated after June 30, 2008 and used in regulatory decisions by the TCEQ, must be generated by a laboratory NELAC accredited under the Texas Laboratory Accreditation Program

**OR**

As of July 1, 2008, the laboratory or the project must meet one of the statutory exemptions under the Water Code §5.134.

**For info regarding the Remediation Division's implementation of HB2912, go to [www.tceq.state.tx.us/remediation/HB2912.html](http://www.tceq.state.tx.us/remediation/HB2912.html)**

Excerpt from the WATER CODE

§ 5.134. USE OF ENVIRONMENTAL TESTING LABORATORY DATA AND ANALYSIS.

(a) The commission may accept environmental testing laboratory data and analysis for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analysis is prepared by an environmental testing laboratory accredited by the commission under Subchapter R or an environmental testing laboratory described in Subsection (b) or (e).

(b) The commission may accept for use in commission decisions data and analysis prepared by:

(1) an on-site or in-house environmental testing laboratory if the laboratory:

(A) is periodically inspected by the commission;  
or

(B) is located in another state and is accredited or periodically inspected by that state;

(2) an environmental testing laboratory that is accredited under federal law; or

(3) if the data and analysis are necessary for emergency response activities and the required data and analysis are not otherwise available, an environmental testing laboratory that is not accredited by the commission under Subchapter R or under federal law.

(c) The commission by rule may require that data and analysis used in other commission decisions be obtained from an environmental testing laboratory accredited by the commission under Subchapter R.

(d) The commission shall periodically inspect on-site or in-house environmental testing laboratories described in Subsection (b).

(e) The commission may accept for use in commission decisions data from an on-site or in-house laboratory if the laboratory is performing the work:

(1) for another company with a unit located on the same site; or

(2) without compensation for a governmental agency or a charitable organization if the laboratory is periodically inspected by the commission.

Added by Acts 2001, 77th Leg., ch. 965, § 1.12, eff. Sept. 1, 2001. Renumbered from V.T.C.A., Water Code § 5.127 by Acts 2003, 78th Leg., ch. 1275, § 2(140), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 912, § 1, eff. Sept. 1, 2005.