

AN ORDINANCE **83200**

AMENDING CHAPTER 34, ARTICLE VI, OF THE CITY CODE BY ADDING A NEW DIVISION 7 THEREUNDER ENTITLED "UNDERGROUND STORAGE TANK MANAGEMENT PROGRAM", CONTAINING NEW SECTIONS 34-1000 THROUGH 34-1099 REQUIRING THE PERMITTING OF AND REGULATING THE USE, MONITORING, AND TESTING OF CERTAIN UNDERGROUND STORAGE TANKS LOCATED WITHIN THE EDWARDS RECHARGE ZONE DISTRICT AND THE EDWARDS TRANSITION ZONE IN ORDER TO PREVENT THE POLLUTION OF WATER WITHIN THE EDWARDS AQUIFER; AUTHORIZING THE COLLECTION OF REGISTRATION, RENEWAL, AND INSPECTION FEES FOR UNDERGROUND STORAGE TANKS SUBJECT TO THESE REGULATIONS; PROVIDING FOR COLLECTION OF CIVIL PENALTIES FOR VIOLATION THEREOF; DECLARING THE VIOLATION THEREOF TO BE A CRIMINAL MISDEMEANOR PUNISHABLE UPON CONVICTION BY A FINE NOT TO EXCEED \$2,000.00; MAKING ASSOCIATED AMENDMENTS TO CHAPTER 34, ARTICLE I, DIVISION 8 OF THE CITY CODE RELATING TO THE WATER QUALITY AND ENVIRONMENTAL EDUCATION AND ENFORCEMENT ACCOUNT; AND DIRECTING PUBLICATION OF THIS ORDINANCE AFTER PASSAGE.

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Whereas, the Edwards Underground Aquifer (the Aquifer) is the only source of potable water for the City of San Antonio, and the San Antonio City Council is obligated to preserve and protect the public health, safety, and welfare by preventing the pollution of and maintaining the quality of water entering, held within, and pumped from the Aquifer; and

Whereas, the City of San Antonio expressed its intent to achieve non-degradation of the water within the Aquifer in resolution No. 87-47-72, which adopted a resolution by the City Council Committee on the Aquifer establishing a policy concerning the protection of groundwater quality in the Aquifer and setting forth measures to implement the policy; and

Whereas, the City of San Antonio reaffirmed and clarified its intent to achieve non-degradation of the Aquifer in resolution No. 94-26-29, which adopted a report entitled "*The Edwards Aquifer: San Antonio Mandates for Water Quality Protection*" (the Mandates Report), developed by the City Council and others sitting as a Committee of the Whole on Water Quality, and which directed the implementation of 33 recommendations; and

Whereas, based on task force recommendations, the City Council has directed the San Antonio Water System to establish a program for registering, permitting and inspecting underground storage tank systems (UST) located within the Edwards Recharge Zone District or the Edwards Transition Zone to preserve the water quality of the Edwards; and

Whereas, it is necessary to make modifications and amendments to Chapter 34 of the San Antonio City Code in order to establish the new regulations as recommended by the Task Force and directed by City Council; and

Whereas, City Council wishes to establish the new regulations for the UST registration, permitting and inspection program, and to require the payment of fees to fund the administration of the program by the San Antonio Water System (SAWS), and has instructed SAWS to return to Council with these regulations for consideration; and

Whereas, the amendments to Chapter 34 of the City Code proposed by this ordinance have been approved by the San Antonio Water System in Resolution No. 95-206, and now require action by the San Antonio City Council for implementation; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Article VI of Chapter 34 of the San Antonio City Code is hereby amended by adding a new Division 7, entitled "Underground Storage Tank Management Program". The new Division 7 shall contain new sections 34-1000 thru 34-1099 having the titles and containing the language set forth in the document attached hereto as "Appendix I", which is hereby adopted and approved as if fully set forth herein.

SECTION 2. Chapter 34, Article I, Division 8, Section 34-8.2 of of the San Antonio City Code, is hereby amended by adding the underlined text to, and deleting the lined-out text from, the existing language of that Section as follows:

"Section 34-8.2 Funding Source

(a) Civil Penalties: Certain Divisions of Chapter 34, specifically Article V, Division 2, Industrial Waste and Pre-treatment, and Division 3, Liquid Waste Transportation and Disposal Regulations, and Article VI, Division 2, Wells, Division 4, Prohibited Discharges Into the Municipal Separate Storm Sewer System, ~~and~~ Division 6, Aquifer Recharge Zone and Watershed Protection, and Division 7, Underground Storage Tank Management Program include sections imposing civil penalties in addition to criminal penalties. Civil penalties collected by the actions of SAWS and its attorneys pursuant to such sections shall be recorded in the Account created pursuant to Section 34-8.1

herein, unless expressly prohibited by law. Should any such civil penalties collected fail to be recorded in the Account, the SAWS personnel and attorneys responsible for the imposition and collection of such civil penalty shall be required to justify in writing to the President/CEO why such funds were not so recorded and shall state the disposition of same.

(b) Permit Fees: Certain Divisions of Chapter 34, specifically Article VI, Division 7, Underground Storage Tank Management Program, include sections requiring the payment of fees for the purpose of providing funding for the cost of administering and enforcing the related programs and regulations. Fees collected by the actions of SAWS pursuant to such sections shall be recorded in the Account created pursuant to Section 34-8.1 herein, unless expressly prohibited by law. Should any such fee collected fail to be recorded in the Account, the SAWS personnel responsible for the collection of such fees shall be required to justify in writing to the President/CEO why such funds were not so recorded and shall state the disposition of same."

SECTION 3. Chapter 34, Article I, Division 8, Section 34-8.3 of of the San Antonio City Code, is hereby amended by adding the underlined text to, and deleting the lined-out text from, the existing language of that Section as follows:

"Section 34-8.3 Use of Funds

(a) Civil Penalties: The funds collected from civil penalties in the Account shall be utilized solely to educate the public in the areas of water quality and pollution prevention and to enhance the enforcement of the Chapter divisions for which such civil penalties were imposed. Such enhanced enforcement may include increased enforcement personnel as needed, the acquisition of additional material and equipment, and other activities directly related to the enforcement of the divisions for which civil penalties are imposed. A minimum of 25% of the funds ~~from civil penalties~~ deposited in the Account shall be used for funding activities directed towards the educating school age children on topics of water quality, conservation, environmental awareness and pollution prevention

(b) Permit Fees: The funds collected from the payment of fees which are required to be recorded in this account shall be utilized solely for the purpose of funding the administration and enforcement of the programs and regulations under which they were collected."

SECTION 4. For the purpose of protecting the public health, safety, welfare, and the environment, the City of San Antonio City Council hereby accepts and authorizes the use of all enforcement powers conferred by Section 26.124 of the Texas Water Code, as amended, and specifically authorizes the City Attorney, on behalf of the City of San Antonio, and the San Antonio Water System's Environmental Counsel, on behalf of the San Antonio Water System, to take all actions as necessary to exercise such powers.

SECTION 5. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this Ordinance, or any appendix hereof, for any reason, be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be illegal, inoperative, unconstitutional, invalid or ineffective.

SECTION 6. The City Clerk for the City of San Antonio is hereby directed to publish notice of this Ordinance as required by the Charter of the City of San Antonio and the laws of the State of Texas.

SECTION 7. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Revised Civil Statutes Annotated as amended Title 5, Chapter 532, Government Code.

PASSED AND APPROVED this 16th day of November, 1995.


M A Y O R

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

APPENDIX I

CHAPTER 34

ARTICLE VI

Division 7. Underground Storage Tank Management Program

Subdivision A. General Provisions.

Sec. 34-1000. Purpose

The City Council of the City of San Antonio has adopted a policy that the installation of underground storage tanks and related systems (UST) within the Edwards Recharge Zone District (ERZD), as defined by Sec. 35-3102 of this Code, is inappropriate, and that the use of USTs within the Edwards Transition Zone shall only be allowed conditionally. Because there are UST sites which were installed before City Council banned USTs in the ERZD, it is important that a monitoring and enforcement program be put in place to ensure the maintenance of each such existing UST system and to monitor compliance with rules and regulations which are designed to protect the public health, safety, and welfare. The regulations contained in this Division provide a monitoring and enforcement program governing USTs within the ERZD and the Edwards Transition Zone. These regulations are the result of recommendations made by the Mayor's Water Quality Task Force for the purpose of protecting the water quality of the Edwards Aquifer and protecting the environment and are intended to be administered by the Watershed Protection and Management Department of the San Antonio Water System (hereinafter "WP&M Department").

Sec. 34-1001. Applicability

(a) The regulations contained in this Division shall apply to all new and existing "Underground Storage Tanks" and "Underground Storage Tank Systems" (USTs), as defined in Section 35-1041 of this Code, which are located within the ERZD or the Edwards Transition Zone and are within the jurisdiction of the City of San Antonio, and which store and/or convey hazardous materials, flammable liquids or combustible liquids, as those terms are defined in the City of San Antonio Uniform Fire Code. The owner and operator of all such UST facilities are subject to and shall comply with the requirements of this Division. This Division is intended to provide guidelines for owners/operators of such UST systems and to provide a UST management plan in accordance with the recommendations established by the City Council in Ordinance No. 81147.

(b) These regulations provide minimum specifications and guidelines to monitor and ensure compliance with existing city, state and federal regulations and future rules, regulations and ordinances consistent with nationally recognized good practices for safeguarding life, property and the environment by protecting the public water supply from contamination caused by sudden or gradual releases of hazardous materials from USTs.

Sec. 34-1002 through 34-1005 (Reserved).

Subdivision B. Underground Storage Tank System Permitting.

Sec. 34-1006. Permit Required

The operator of a facility which utilizes one or more USTs subject to regulation by this Division is required to obtain a permit for operation of the UST system. Permit application forms are available from and shall be submitted to the WP&M Department. Failure to provide information as requested in the application shall be grounds for refusal by the WP&M Department to issue the permit. If the facility operator is not responsible for the UST, then the operator shall notify the WP&M Department of the identity of the individual(s) responsible for the UST. Operation without a permit of a facility regulated by this Division shall constitute a violation of this Division.

Sec. 34-1007. Information Required

The following information, at a minimum, shall be required as part of the permit application process and shall be received by the WP&M Department prior to the issuance of a permit:

- (a) General information regarding the identity of the applicant and facility, including:
 - 1. the name and address of the applicant and facility;
 - 2. the applicant's business phone number;
 - 3. the name of the operator(s) of the facility;
 - 4. the name, address, title and phone number of person responsible for compliance and each primary emergency response person.;
 - 5. whether the facility is located on the Recharge Zone or Transition Zone;
 - 6. proof of insurance as required by 40 CFR 280.93.

- (b) Facility maps or site plans for the each regulated facility which identify the following:
 - 1. location of all underground hazardous materials storage and dispensing locations;
 - 2. routes of access to each regulated facility;
 - 3. emergency equipment related to each facility;
 - 4. location of stormwater runoff abatement facilities, if any.

- (c) Regulated Substance Inventory Sheet which provides the following:
 - 1. name of each regulated substance stored;
 - 2. capacity of each UST;
 - 3. material data safety sheet (MSDS);
 - 4. installation date(s) of each UST(s).

- (d) Monitoring and Testing Plan as defined by Sec. 34-1020 of this Division.

- (e) All other information related to compliance with this Division.

Sec. 34-1008 Permit Procedures

(a) Any facility regulated by this Division shall submit a completed Permit Application in accordance with Sec. 34-1006 and Sec. 34-1007 of this Division. The application shall be signed by the operator and/or UST owner; and the signed application, together with the appropriate fee as required by Sec 35-C401 of this Code, shall be submitted to the WP&M Department.

(b) After a complete and signed application has been received and the appropriate fee collected, the applicant's monitoring plan will be reviewed, and compliance with the regulations of this Division will be verified by an on-site inspection by a staff member of the WP&M Department. The initial inspection will be considered the first annual inspection for the purpose of administering this Division.

(c) Upon receipt of all required information, approval of the monitoring plan, and the return of a favorable inspection report by the staff inspector, the WP&M Department will issue a permit to the applicant. Each permit shall be valid for a period of three (3) years from the date it is issued.

(d) In the event a deficiency in the monitoring plan is found to exist, or in the event the facility is found to be non-compliant with the requirements of this Division during the application process and initial inspection, the applicant will be notified in writing and may correct any deficiencies in the application or the monitoring plan or at the regulated facility within thirty (30) days from the date of notification. If the corrections cannot be made within the 30-day period, the applicant may request an extension in writing from the WP&M Department. An extension of up to sixty (60) days may be granted upon a showing of good cause. Upon *the earlier of* notification by the applicant or expiration of the period for corrections, the application will be re-evaluated. If the required corrections have not been made at the time of the application is re-evaluated, the application will be denied.

Sec. 34-1009 Inspections By San Antonio Water System

Inspections performed by the WP&M Department personnel will be conducted during normal business hours. Every business applying for a permit will be inspected as prescribed in Sec. 34-1008 prior to issuance of a permit and at least annually thereafter. San Antonio Water System personnel shall have the right, upon reasonable notice, to enter any facility regulated by this Division for the purpose of performing periodic inspections and for the purpose of enforcing the requirements of this Division.

Sec. 34-1010 Permit Renewal

It is the responsibility of each permittee to apply for renewal for a permit issued under this Division not later than thirty (30) days before the existing permit expires. The application for renewal shall be accompanied by payment of the appropriate renewal fee as provided in Sec. 35-C401 of this code. Failure to apply for renewal within the 30-day period shall be considered a violation of this Division. the WP&M Department shall provide the permittee with notice of expiration of a permit at least 45 days prior to its expiration.

Sec. 34-1011 Permit Transfers

The transfer of a permit issued under this Division will require the completion of a permit transfer form. Permit transfer forms shall be available from the WP&M Department and shall be signed by both the seller and the buyer of the regulated facility. The transfer of a permit will result in the transfer of the original identification number and the issuance of a new permit. Permit transfer forms shall be submitted not later than thirty (30) days after transfer of ownership or operation of the business. All permit transfers are subject to the approval of the San Antonio Water System. Failure to submit a permit transfer form as required by this Section shall constitute a violation of this Division.

Sec. 34-1012 Amendments

- (a) In the event of a change in operations at a facility which does not transfer ownership or control of the facility, but which substantially affects information required in the permit application, the permittee shall amend or supplement the original permit application within 30 days of the change in operations.
- (b) An amendment is not required in situations where quantities or storage locations of regulated materials are temporarily modified for less than 45 days, unless the modification will affect the Fire Department's ability to safely respond to an emergency at the facility or unless the San Antonio Water System determines that the modification may severely increase the potential for pollution of the Edwards Aquifer.
- (c) Amendments or supplements to the permit application shall describe the reason for the amendment or supplementation of existing data, explain the addition or modification to each facility and provide any additional information as requested by the WP&M Department.
- (d) The WP&M Department shall inspect each amendment or supplement to evaluate its compliance with the requirements of this Division and shall notify the permittee of whether the amendment or supplement is approved within ten (10) days from the date of submission. In the event an amendment is not approved, the permittee may correct any deficiencies in the amendment or supplement and resubmit the same as corrected. Until an amendment or supplement is approved by the WP&M Department the permittee will be required to comply with the most recent application and monitoring plan which has been approved.

Sec. 34-1013 Maintenance of Records

Review by the WP&M Department of records held by the permittee shall be allowed at the time of inspection or as otherwise requested at the regulated facility or at such other location as may be identified. Copies of the permit application, the permit, inspection reports, monitoring logs and all other records required by this Division, by Chapter 35 of this Code, or by Article 79 of the Uniform Fire Code shall be provided by the permit holder (or a designee) and shall be made

available for review by WP&M Department personnel. All such records shall be kept and maintained by the permittee for a period of at least five (5) years.

Sec. 34-1014 Public Disclosure of Information

- (a) All information received as part of a permit application or otherwise submitted by the permittee to the San Antonio Water System pursuant to this Division shall be considered public records and shall be open to inspection by the public unless protected from disclosure under the Texas Public Information Act.
- (b) Requests to inspect or copy public documents which are received and maintained by the San Antonio Water System as a result of administering this Division shall be made in writing to the Legal Department of the San Antonio Water System. Each such request will be reviewed and responded to pursuant to the Texas Public Information Act.
- (c) Information submitted pursuant to this Division which the permittee or applicant believes to be confidential or privileged and subject to protection from disclosure as a registered trade secret or by some other exemption shall be so identified by being submitted on a separate form or forms and shall be clearly and conspicuously marked "Confidential" by the permittee or applicant. All confidential information will be protected by the San Antonio Water System Legal Department from disclosure in accordance with the Texas Public Information Act and this Code.

Sec. 34-1015 Fee Waiver

- (a) In the event an owner or operator of a facility regulated by this Division is unable to pay the permit fee required by this Division, the owner or operator may apply to the WP&M Department for a fee waiver.
- (b) The Manager of the WP&M Department may grant an application for fee waiver and reduce, modify, or waive the requirement for the payment of the permit fee only upon a showing by the applicant that payment of the fee would result in a severe hardship to the applicant's livelihood and that the applicant's income is insufficient to provide the applicant with the means for payment.
- (c) Each application for a waiver of fees shall, at a minimum, include an affidavit by the applicant of inability to pay, complete copies of the applicant's federal income tax statements for the two years preceding the filing of the application, and a current balance sheet and financial statement of the applicant's regulated business.
- (d) The Manager of the WP&M Department shall provide the applicant with a written decision on the application for fee waiver within five working days from the date the complete application for waiver is received.

Sec. 34-1016 through 34-1019 (Reserved).

Subdivision C. Monitoring and Testing Requirements

Sec. 34-1020 Monitoring Plan Requirements

(a) The owner or operator of each facility regulated by this Division shall submit to the WP&M Department an inventory of the equipment which makes up the UST system and a plan for monitoring the integrity of the UST system and surrounding site (Monitoring Plan). The Monitoring Plan shall be sufficient to ensure that each UST system operates in a safe manner according to all federal, state, and local regulations, and to ensure the UST system will not pose a present or future threat to the water quality of the Edwards Aquifer or affect the public health, safety or the environment.

(b) Each Monitoring Plan shall provide the method and frequency of monitoring and an inventory of the monitoring equipment which will be installed and maintained [see Sec. 34-1007(d)(1)]. This inventory shall include, at a minimum, the following information for each of the following categories:

1. UNDERGROUND STORAGE TANKS
 - (a) Number
 - (b) Size
 - (c) Material constructed from
 - (d) Number of layers
 - (e) Manufacturer and model type if applicable
2. PIPING
 - (a) Primary Piping
 - (i) Material constructed from
 - (ii) Diameter
 - (iii) Manufacturer
 - (b) Secondary Piping
 - (i) Material constructed from
 - (ii) Diameter
 - (iii) Manufacturer
3. OVERFILL PREVENTION MANHOLE
 - (a) Manufacturer and model type
 - (b) Capacity
4. OVERFILL PREVENTION DEVICE
 - (a) Manufacturer and model type
5. SUBMERSIBLE PUMP
 - (a) Manufacturer and Model Type
6. LEAK DETECTOR FOR PIPING SYSTEM

- (a) Manufacturer and model type

7. SHEAR VALVE

- (a) Manufacturer and model type

8. ELECTRONIC LEAK DETECTION SYSTEM

- (a) Automatic Tank Gauging
 - (i) Manufacturer and model type
 - (ii) Whether continuous tank testing and pipe testing used
- (b) Interstitial Monitor
 - (i) Manufacturer and model type
 - (ii) Liquid or vapor

9. OTHER SENSORS

- (a) Tank sump sensor
- (b) Dispenser sump sensor
- (c) Other

10. MONITORING WELLS

- (a) Number of wells
- (b) Vapor monitoring in wells
- (c) Groundwater monitoring in wells

11. EXCAVATION LINER

- (a) Manufacturer and type
- (b) Material constructed from
- (c) Thickness (mil)
- (d) Permeability

12. VAULT

- (a) Manufacturer and type
- (b) Material constructed from
- (c) Sealant
- (d) Whether Pre-Stressed

13. ANY OTHER EQUIPMENT WHICH OPERATES AS PART OF THE SYSTEM

14. THIRD-PARTY CERTIFICATIONS FOR EQUIPMENT, as applicable.

(c) The Monitoring Plan shall incorporate sufficient requirements to ensure that the UST system is in good operating condition and that all protective measures are functioning properly. Each Monitoring Plan should describe everything done by the owner or operator to ensure that no leaks or spills of regulated materials occur at the facility, and how a leak or spill would be detected if it should occur.

(d) If any of the information contained in a Monitoring Plan becomes outdated, the owner or operator shall update the plan pursuant to Sec. 34-1010 of this Division and shall be required only to follow the procedures described in the most recent version of the approved Monitoring Plan.

(e) Each Monitoring Plan shall provide a description of storage and dispensing systems in sufficient detail to show that the proposed monitoring and/or testing methods are appropriate and

shall describe the methods and materials use in construction of the UST tanks and piping, type of backfill, any manifolding of tanks or lines, type of delivery system (e.g., suction or submerged pump, metered or non-metered), vapor recovery systems, and any other pertinent information.

(f) Each Monitoring Plan shall clearly indicate the monitoring method which will be used (e.g., tank system testing, monitoring wells) and the policies, including responsibilities and frequency of inspecting monitoring equipment, to ensure the plan is followed.

(g) Identification and explanation of the inventory control systems of regulated substances shall be provided as a part of the Monitoring Plan. All inventory control methods used shall meet 40 CFR 280.43, which requires product inventory control to be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis. A blank copy of the inventory record forms used should be submitted with a description of how and when reconciliations are performed.

(h) Each Monitoring Plan shall include policies which allow the permittee or its designee to demonstrate, when inspected, that inventory volume measurements were recorded each day, that product dispensing was metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn, and that the water level in the bottom of the tank was measured to the nearest one-eighth of an inch at least once a month.

(i) If applicable, the Leaking Petroleum Storage Tank Site Number shall be listed in the Monitoring Plan and an indication given whether a closure letter has been issued for the site or if the site is still being remediated.

(j) A maintenance plan for structural and Best Management Practices which has been used to abate stormwater runoff shall be incorporated into the Monitoring Plan. Maintenance should be performed as outlined in the Texas Natural Resource Conservation Commission (TNRCC) document, "The Edwards Aquifer Technical Guidance Manual".

Sec. 34-1021 UST Testing Requirements

(a) Each permittee shall perform precision testing of UST systems regulated by this Division on a periodic basis as required by subsection (b) of this Section unless the permitted facility is exempt from such testing pursuant to Section 34-1022 of this Division.

(b) Each regulated facility shall perform precision tank testing of each permitted UST on a periodic basis according to the age and condition of each UST and the requirements of 30 TAC Chapter 334, *Underground and Aboveground Storage Tanks*.

(c) Each permittee shall provide as part of the Monitoring Plan the name and address of the tank testing company which will be used to perform required testing, the type of test that will be performed, and the date and times when the tests will be performed. The precision tank test shall be performed on each tank by a competent, trained independent agent, who has filed a statement

of operation procedures and qualifications, including third-party certifications as applicable, with the WP&M Department.

(d) For the purpose of complying with this Division, a "precision tank test" is defined as a tank test which can measure leak rates of at least 0.10 gallon per hour (g.p.h.), can accurately correct measurements for tank wall deflections due to the increased hydrostatic pressure in the tank, can accurately correct measurements for changes in the specific volume of the liquid due to temperature gradients, and can detect any changes in temperature during the tank test, as identified in the National Fire Protection Association National Fire Codes, Section 329, entitled "Recommended Practices".

(e) Each UST tested pursuant to this Division shall be tested using an approved **underfill** method and each test shall exceed a minimum of one hour in duration. Each tank which fails a tank test shall be immediately taken out of service until proper repairs or replacement have been completed. The WP&M Department shall be notified immediately of any failed tank test.

(f) Each precision tank test shall also detect leaks in the product piping in the system. Piping shall be tested using a precision test method capable of detecting both pressure and volume changes during the test.

(g) Release detection methods for piping should meet or exceed all requirements of 40 CFR. 280.40, 280.41, and 280.44 or equivalent TNRCC requirements as provided in 30 TAC 334. The test method shall also be capable of performing the required operational test of all Mechanical Line Leak Detectors. The test method operator shall have an up to date validation document for test method. The line leak detector used in each test shall be capable of detecting a ± 0.010 g.p.h. release from pressurized piping at one and one half times operating pressure or a ± 0.025 g.p.h. release from suction piping at a minimum test pressure of 5 p.s.i.g. Additionally, the line leak detector shall be capable of determining a bleed back for each line test as a quality control function. Bleed back test tolerance is that defined by the line test equipment manufacturer. Hydrostatic tests of suction and pressurized piping shall exceed a minimum of one hour duration. Line leak detector operators shall have a valid certification from the manufacturer for operation of the line leak detector equipment.

(h) Failure to perform UST testing as required by this Section, or use of a UST system which has failed a tank or piping test before repair and reinspection shall constitute a violation of this Division.

Sec. 34-1022 Tank Observation and Leak Detection Systems

As allowed under federal, state, and local regulations, tank observation wells may be used as an alternative to precision tank testing for leak detection in existing facilities (see API Bulletin 1635). Where tank observation well systems are used in lieu of precision tank testing, the detection limits of the leak detection system, the number, location and depth of the proposed tank observation wells and the depth of the water table at the sites, the water table gradient flow direction, surrounding soil

permeability information, and the type and local characteristics of geologic material the wells are placed in, shall be submitted to the WP&M Department as part of the monitoring plan and are subject to approval by the WP&M Department.

Sec. 34-1023 Test Results

The results of any UST system tests, even if inconclusive, shall be properly recorded by the permittee. The permittee shall notify the WP&M Department within twenty (20) working days after the date of each test. If a UST system fails a test, the permittee shall notify the WP&M Department by telephone [currently (210)704-7303 or (210)704-7800] within three (3) hours *and* in writing within three (3) days after the test results are received by the permittee. Failure to provide notification as required by this section shall constitute a violation of this Division.

Sec 34-1024 Alternate Testing Methods

For existing facilities, leak detection monitoring by alternate methods (e.g., tracer analyses, surface geophysical methods such as ground penetrating radar, electromagnetic induction, resistivity, magnetometers and X-ray fluorescence) may be permitted only on specific approval in each instance by the City of San Antonio Fire Department, and written proof of such approval shall be provided prior to testing to the WP&M Department as a part of the Monitoring Plan

Sec 34-1025 Overfill and Overspill Prevention Devices

Each UST system subject to regulation by this Division shall have overfill and overspill prevention devices that meet all federal, state, and local fire code regulations. The overfill prevention device shall be able to shut off fuel delivery at 95% capacity. The overspill prevention device shall be able to capture three to five gallons of the stored regulated material in the case of a spill during the materials transfer.

Sec. 34-1026 Single-Wall UST Removal

Any single-walled USTs which are located on the ERZD or the Edwards Transition Zone shall be removed and upgraded as required by Sec. 35-3106 of this Code. Failure to remove and upgrade a single-wall tank which is subject to regulation by this Division shall constitute a violation of this Division and shall subject the violating permittee to enforcement by the WP&M Department.

Sec. 34-1027 Insurance Requirements

In accordance with 40 CFR 280.90 owners and operators of petroleum USTs shall be able to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum storage tanks. The federal regulations describe various methods by which such financial responsibility may be achieved. Documentation showing compliance with these requirements shall be submitted as part of the requirements for the permit and shall be demonstrated at each annual

inspection.

Sec. 34-1028 through 34-1029 (Reserved)

Subdivision D. Violations and Enforcement

Sec. 34-1030 Failure to Perform

Failure by a permittee or the permittee's employee or agent to perform any act identified in the permittee's Monitoring Program as submitted to and approved by the WP&M Department shall constitute a violation of this Division.

Sec. 34-1031 Enforcement

(a) The San Antonio Water System Legal Department is hereby granted the authority to seek legal and/or equitable remedies for violations of this Division, including the filing of criminal charges. For the purpose of enforcing this Division the San Antonio Water System's Environmental Counsel shall represent the City of San Antonio in civil enforcement actions, by and through the San Antonio Water System, and is hereby authorized to seek legal and/or equitable remedies against any person or entity which is reasonably believed to be violating or to have violated this Division. A legal proceeding pursued under this division does not constitute a waiver by the San Antonio Water System of any right the City of San Antonio may have to join in a legal action originating from an alternative source of law. The San Antonio Water System may commence such actions for appropriate legal and/or equitable relief in courts having proper jurisdiction and may seek civil penalties and any other legal or equitable relief available under common law, Chapter 54 of the Texas Local Government Code, under Section 26.124 of the Texas Water Code, or any other applicable local, state, or federal code or statute.

(b) Penalties

(1) Criminal - A conviction for violation of this Division shall constitute a "Class C" misdemeanor. A person convicted of a violation of this division shall be fined not less than \$200.00 nor more than \$2000.00 per violation. Each violation of a particular section of this division shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this division.

(2) Civil - A civil penalty in an amount not to exceed \$1,000.00 per violation of this division may be imposed. However, a civil penalty in an amount not to exceed \$5,000.00 per violation may be imposed for violations which cause pollution of waters flowing into a channel, stream or other conveyance which drains into or is a part of the stormwater sewer system owned or controlled by the City of San Antonio. Each violation of a particular section of this division shall constitute a separate offense, and each day such an offense continues shall be considered a

new violation for purposes of assessing civil penalties and otherwise enforcing this division. All civil penalties collected by reason of enforcing this Division shall be deposited in the Water Quality and Environmental Education and Enforcement Account as established by Division 8 of this Chapter.

(c) Authority of City Attorney to Enforce.

The grant of the authority set out this Section shall in no way diminish the authority and responsibility of the office of the City Attorney to ensure that this Division is properly and diligently enforced, to prosecute violations of this Division, and to defend the legality of this Division if challenged.

Sec. 34-1032 Through 34-1039 (Reserved).

Subdivision E. Variance Procedure

Section 34-1040 Variance Procedure

(a) Variance from one or more of terms and requirements of this Division, other than the fee requirements, may be granted by the San Antonio Water System WP&M Department, where a literal enforcement of the provisions of this Division will result in an unnecessary hardship. Any variance granted shall be limited in scope of relief to that which is necessary to relieve the hardship condition. No variance may be granted unless:

- (i) Such variance will not be contrary to public interest;
- (ii) Such variance will not substantially increase the potential for pollution of the public water supply;
- (iii) Such variance will be in harmony with the spirit and purpose of this Division;
- (iv) The plight of the applicant for variance is due to unique circumstances, and the unique circumstances were not created by the owner/operator of the UST system, are not merely financial, and are not due to or the result of general conditions affecting each member of the regulated community;
- (v) The variance will not substantially weaken the general purposes of this Division or the regulations herein established for the regulated area of the recharge zone; and
- (vi) The variance will not cause a conflict with a more stringent state or

federal regulation, or with any provision of Chapter 35 of this Code.

(b) Request for Variance. All requests for variance shall be made in writing to the WP&M Department and shall include the subject of the requested variance and a justification for granting the variance.

(c) Burden. The party requesting a variance to application of this Division has the burden of demonstrating that sufficient cause exists for the granting of the variance, and the WP&M Department shall consider and provide a written response to the request for variance within twenty (20) working days from the date a valid request for variance is received. The WP&M Department shall serve its response by certified mail, return receipt requested, or by hand delivery.

(d) If Granted. If a variance is granted, whether as requested or with modification, the recipient of the variance shall be subject to all applicable provisions of this Division to the extent such provisions have not been specifically waived or modified by the variance.

(e) Term. A variance granted under this section shall have a term of three (3) years from the date of issuance. Any activity which would otherwise be prohibited by this division but for the existence of the variance shall not be allowed to continue after the expiration of the specified term.

(f) Appeal. Any person who has properly requested a variance pursuant to this section and subsequently objects to a decision of the WP&M Department denying all or part of the relief requested, may appeal such denial by filing a Request for Appeal, in writing, with the President/CEO of the San Antonio Water System, within ten (10) working days from the date the requesting party receives the notice of denial. The Request for Appeal shall include all pertinent information which the person requesting the appeal wishes to be considered. The President/CEO may require additional information from, or request a meeting with, the person making the appeal. The written decision of the President/CEO or his designee on the appeal shall be rendered within fifteen (15) working days from the date the appeal is received by the President/CEO, and shall be delivered to the appealing party by certified mail, return receipt requested, or by hand delivery. If the President/CEO, or his Designee fails to render an opinion on the appeal within the fifteen-day period, the relief requested in the appeal shall be considered to have been wholly denied. The decision of the President/CEO on the issuance of a variance shall be considered final.

Sec. 34-1041 Through 34-1099 (Reserved).