TCEQ REGULATORY GUIDANCE
Remediation Division
RG-366/TRRP-2 ● January 2010

TRRP Applicability and Grandfathering

Objective of this Document

Objectives: This document will help the user determine whether TRRP applies to a situation by describing applicability requirements of various regulatory programs, exclusions and grandfathering possibilities.

Audience: Regulated Community and Environmental Professionals

References: The Texas Risk Reduction Program (TRRP) rule, together with conforming changes to related rules, is contained in 30 Texas Administrative Code (TAC) Chapter 350. The TRRP rule was initially published in the September 17, 1999 Texas Register (24 TexReg 7413-7944). The rule was amended in 2007 (effective March 19, 2007; 32 TexReg 1526-1579) and 2009 (effective March 19, 2009; 34 TexReg 1861-1872).

Find links for the TRRP rule and preamble, Tier 1 PCL tables, and other TRRP information at: www.tceq.state.tx.us/remediation/trrp/.

TRRP guidance documents undergo periodic revision and are subject to change. Referenced TRRP guidance documents may be in development. Links to current versions are at: www.tceq.state.tx.us/remediation/trrp/guidance.html.

Contact: TCEQ Remediation Division Technical Support Section - 512-239-2200, or techsup@tceq.state.tx.us

For mailing addresses, refer to: www.tceq.state.tx.us/about/directory/

I. Introduction

What does TRRP require?

TRRP specifies the assessment, monitoring, cleanup, reporting, post-response action care and financial assurance requirements that certain response actions and waste management unit closures must meet.

When did TRRP begin?

TRRP began to apply on May 1, 2000. However, persons could have voluntarily complied with TRRP prior to that date.

The TCEQ is an equal opportunity employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation, or veteran status. In compliance with the Americans with Disabilities Act, this document may be requested in alternate formats by contacting the TCEQ at 512-239-0028, fax 512-239-4488, or 1-800-RELAY-TX (TDD), or by writing PO Box 13087, Austin TX 78711-3087. We authorize you to use or reproduce any original material contained in this publication — that is, any material we did not obtain from other sources. Please acknowledge the TCEQ as your source. Printed on recycled paper.

What does TRRP not require?

TRRP does not establish the requirement or criteria for reporting a release to the TCEQ. TRRP is only triggered once another rule, permit, order or statute, as implemented by a Texas Commission on Environmental Quality (TCEQ) program, requires cleanup or closure. TRRP does not determine the chemicals of concern (COC) that must be selected for assessment and remediation; this decision is left to individual TCEQ programs. See TCEQ guidance document *Selecting Target COCs* (RG-366/TRRP-10).

Does TRRP apply to me?

Generally, TRRP has been applicable since May 1, 2000 unless you meet exclusion or "grandfathering" conditions which allow you to remain under the rule that had been applicable before TRRP. See Section IV below for details on exclusions and Section V below for conditions for grandfathering.

II. How to determine TRRP applicability

To determine if TRRP applies, follow these three basic steps.

Step 1. - Determine if TRRP potentially applies: Does a permit, enforcement order or rule other than TRRP require a response to a release or a closure of a waste management unit?

Step 2. - Determine if your site is excluded from TRRP. TRRP applies unless an exclusion from TRRP exists.

Step 3. - Determine if your site is eligible to grandfather. If your site is not excluded, then you may still be able to remain under pre-TRRP requirements (grandfathering) if certain steps are taken. In most cases these steps must have been taken before May 1, 2001.

Figure 1 presents a simplified overview of the steps that need to be followed to determine applicability. For detailed guidance on each of these steps, consult the sections referenced in the figure. Figure 2, located at the end of this document, is a detailed flowchart relating TRRP applicability to specific events.

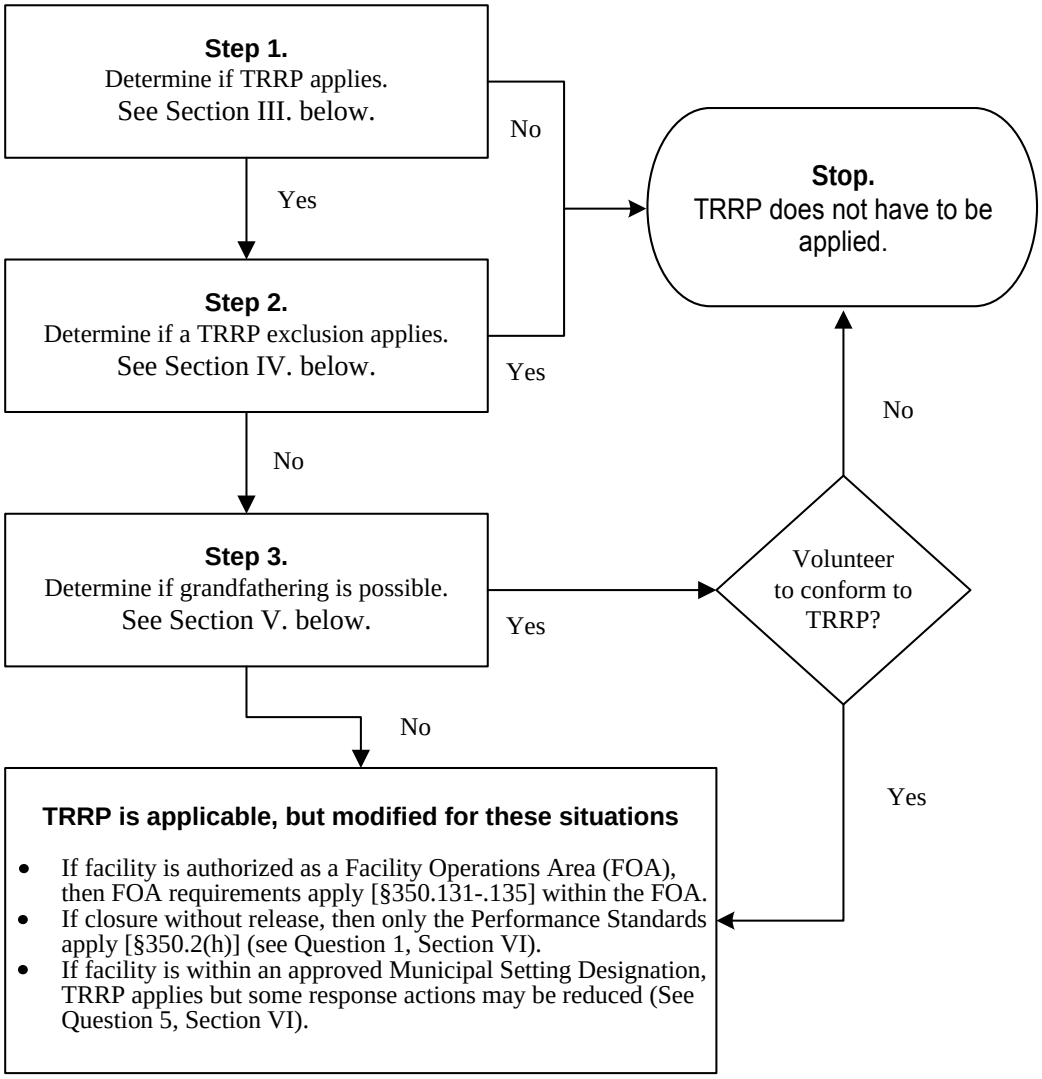


Figure 1. Determining whether TRRP applies

III. Determine if TRRP applies

TRRP applies when any of the events listed in Table 1 exist at a site in any of the program areas on or after May 1, 2000, unless a TRRP exclusion (Section IV) applies or grandfathering (Section V) is possible. Persons could have voluntarily applied TRRP prior to May 1, 2000.

Table 1. Summary of TCEQ Regulatory Program Rules and TRRP Applicability

Program Rules	Events	TRRP Citation [1]
Spill Prevention and Control [30 TAC §327.3 & 327.5]	Spill reported pursuant to §327.3 • Choose to use TRRP in lieu of Chapter 327, or • Spill response will take longer than 6 months.	30 TAC §350.2(b)
Municipal Solid Waste [30 TAC §330 and 40 CFR §257, 258]	Release from solid waste facilities including old or abandoned solid waste sites, transfer stations, waste incinerator, etc. Release from landfills regulated by 40 CFR Parts 257 and/or 258 are not generally subject to TRRP unless the TCEQ authorizes use of the TRRP to establish an alternative health-based groundwater protection standard.	30 TAC §350.2(c)
Underground Injection Control [30 TAC §330]	Unauthorized release of COCs from associated tankage and equipment.	30 TAC §350.2(d)
Composting [30 TAC §332]	Conducting assessments, response actions or post-response action care for a release of non-biologic COCs at compost, or mulching facilities or land application property. That is, TRRP does not apply to the release of biological organisms such as salmonella.	30 TAC §350.2(e)
Voluntary Cleanup Program [30 TAC §333]	Persons who entered the VCP program after May 1, 2000. Effective March 19, 2009, comply with Chapter 334 instead of Chapter 350 for completion of the assessment, response action, and post-response action care for any releases from underground or aboveground storage tanks regulated under Ch. 334 on the site. If necessary, revise the VCP application and agreement to reflect that those tank releases will comply with Ch. 334 requirements.	30 TAC §350.2(f) [2]
Petroleum Storage Tanks [30 TAC §334]	Release reported to the TCEQ on or after September 1, 2003 from regulated underground or aboveground storage tanks was subject to TRRP. Effective March 19, 2009, comply with Chapter 334 instead of Chapter 350 for completion of the assessment, response action, and post-response action care.	30 TAC §350.2(g)[2]
Industrial Solid Waste and Municipal Hazardous Waste [30 TAC §335]	Undertaking the remediation of affected property used for storage, processing or disposal. Remediation of environmental media containing COCs resulting from releases from the waste management facility components, at closure, before closure, after closure. Waste management facility components undergoing closure.	30 TAC §350.2(h)
State Superfund [30 TAC §335, Subchapter K]	Responding to a release under the State Superfund program.	30 TAC §350.2(i)
Radioactive Substance Rules [30 TAC §336]	Remediation of non-radioactive materials that may be associated with releases in media containing radioactive material.	30 TAC §350.2(j)
Sludge Use, Disposal and Transportation [30 TAC §312]	Closure of municipal wastewater treatment facilities that have releases from facility units.	30 TAC §350.2(k)

1 See also the Preamble published September 17, 1999 in the *Texas Register*, Vol. 24, pp. 7441-7442 for discussion.

2 See also the Preamble published March 13, 2009 in the *Texas Register*, Vol. 34, pp. 1861-1872 for discussion.

TRRP also applies, beginning May 1, 2000, in either of the events listed in Table 2 unless either a TRRP exclusion (Section IV) applies or grandfathering (Section V) is possible.

Table 2. Other Events and TRRP Applicability

Other	Events	TRRP Citation
Other Releases subject to Texas Water Code Chapter 26	Release subject to the Texas Water Code, but only if specifically required by the TCEQ.	30 TAC §350.2(l) See also the Preamble published September 17, 1999 in the Texas Register, Vol. 24, page 7500.
Substantial Change in Circumstances	If substantial change in circumstances (e.g., evidence of new contamination, selected remedy is not effective) at sites closed under pre-TRRP or TRRP requirements results in an unacceptable risk to human health or the environment. Leaking Petroleum Storage Tank sites closed under 30 TAC 350 that are reopened will be evaluated under 30 TAC 334 standards after March 19, 2009.	30 TAC 350.35 See also the Preamble published in the Texas Register, September 17, 1999 Vol. 24, pp. 7551-7553, and March 13, 2009, Vol. 34, pp. 1861-1872.

IV. Determine if a TRRP exclusion applies

To determine if your site is excluded from TRRP, review these exclusions. If any exclusion applies to your situation, then TRRP does not apply. Complete the cleanup or closure under the rules that were applicable before TRRP. If no exclusions apply, proceed to Section V to determine if your site meets the conditions for grandfathering under pre-TRRP requirements.

- Injection Wells. Unauthorized releases below the lower - most underground source of drinking water as defined in 30 TAC §331.2 are not subject to TRRP [§350.2(d)]. For example, solution mining reclamation and Class I disposal well excursions below the underground source of drinking water are regulated by permit and would not be subject to TRRP.
- Composting. Releases of biologic contaminants into environmental media are not subject to TRRP [§350.2(e)].
- Radioactive Substances. TRRP does not apply to the radioactive constituents at a site [§350.2(j)].
- Reportable spills subject to the spill rules [30 TAC §327] that are remediated in less than 180 days are not subject to TRRP [§350.2(b)]. Cleanup standards for spills remediated in less than 180 days are to be set by the TCEQ Regional Office.
- Municipal Landfills. Landfills regulated under 40 CFR §257/258 are not subject to TRRP, except in limited circumstances if authorized by the TCEQ [§350.2(c)].

- Petroleum Storage Tank Sites. Releases from all underground and aboveground storage tanks regulated under 30 TAC §334, though once subject to TRRP, are no longer subject to TRRP effective March 19, 2009. See the preamble published March 13, 2009 in the *Texas Register*, Vol. 34, pages 1861-1872.
- Industrial Hazardous and Non-Hazardous Waste/Municipal Hazardous Waste. Facility closures are not required to comply with TRRP if an existing permit or order of the commission for that facility specifies the use of another rule or other performance criteria [§350.2(h)(1)], unless the person obtains authorization from the TCEQ via the appropriate administrative process to apply TRRP.
- Municipal Waste Water Treatment Facility Closures. These closures are not subject to TRRP unless the permit requires the TRRP rules to apply [§350.2(k)]. The TCEQ will continue to allow municipal facilities to choose between closing under TRRP or undertaking a site-specific closure approved by the Water Quality Program.
- State Superfund Sites. In the event of a conflict between TRRP and 30 TAC 335 Subchapter K, TRRP does not apply, to the extent of the conflict [§350.2(l)].
- VCP sites. If conflicts exist between TRRP and VCP regulations, the TRRP does not apply to the extent of the conflict [§350.2(f)]. Petroleum Storage Tank (PST) program sites (30 TAC §334) coordinated under the VCP meet the PST exceptions listed above in this section for the Petroleum Storage Tank Sites.

V. Determine if grandfathering is possible

Even if TRRP would otherwise be applicable, 30 TAC §350.2(m) of TRRP allows persons several ways to remain under existing pre-TRRP requirements after the applicability date of May 1, 2000. See TCEQ regulatory guidance *Comparison of 30 TAC 335 and 30 TAC 350: Points to Consider in Making the Shift* (RG-366/TRRP-4) for insight into the key differences between TRRP and the 1993 Risk Reduction Rule that may aid in your decision to grandfather or not. Please review the following five questions to determine if you are eligible to grandfather under pre-TRRP requirements. Please note that even if you initially choose to grandfather and later change your mind, you typically will be able to switch to TRRP at that later time. However, once you switch to TRRP, you cannot switch back to the previous rules.

Note: The deadlines to establish grandfathering status have passed. This information is being retained to aid users in evaluating whether grandfathering status was established in a timely and compliant manner.

Did you start a response action under Risk Reduction Rule Remedy Standard 1 or 2 before May 1, 2000?

If you started a response action under previous commission rules (i.e., Title 30, Chapter 335, Subchapters A and S, relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Risk Reduction Standards, respectively) before May 1, 2000, and intend to conduct a Risk Reduction Rule Remedy Standard 1 or 2 response action, (§335.8(c)(1) and (2)) relating to closures and remediation (if directed by permit, see the later question concerning TCEQ permits), then you may grandfather and continue under Remedy Standard 1 or 2 provided you meet the following conditions:

- Provided notification to TCEQ of the person's intent to proceed under Risk Reduction Rule Remedy Standard 1 or 2 prior to May 1, 2000, [30 TAC §335.8(c) and §350.2(m)] and
- Either received a written confirmation of receipt of such notice from TCEQ, or, if no TCEQ confirmation was received, submitted evidence of such proper and timely notice filing to TCEQ by May 1, 2001. An entry of the notice in a TCEQ tracking system or copy of the notice, together with a copy of the postal meter date or the dated telefax transmittal sheet showing a date prior to May 1, 2000 is sufficient evidence. Alternatively, persons may have submitted the Notice of Intent (Grandfathering) [TCEQ Form 10324/NOI; no longer available] to TCEQ postmarked by April 30, 2000, and
- Submitted the final report documenting attainment of Remedy Standard 1 or 2 to the TCEQ by May 1, 2005.

Did you start a response action under the Risk Reduction Rule before May 1, 2000 and now intend to achieve Risk Reduction Rule Remedy Standard 3?

If you provided notification of your intent to proceed under the Risk Reduction Rule as required by §335.8(c) to the agency and started a response action before May 1, 2000, then you can grandfather under Risk Reduction Rule Remedy Standard 3 to either close or remediate a release (if directed by permit, see the later question concerning TCEQ permits), provided that you submitted a remedial investigation report that fully complied with 30 TAC §335.553(b)(1) prior to May 1, 2001. The TCEQ will provide some leeway in judging whether a report fully complies with this section; for example, the agency will allow the person to respond to at least one notice of deficiency letter after May 1, 2001 (24 Tex. Reg. 7503). Persons may have sent an optional *Notice of Intent (Grandfathering)* form

to TCEQ to confirm continuation of response using Risk Reduction Rule Remedy Standard 3.

Are you under a TCEQ order?

If you are continuing a closure or release response under a pre-existing order, the TCEQ will generally grandfather remediation or closures that are being carried out pursuant to a pre-existing order, although excessive delays on the person's part in carrying out the order's provisions could result in enforcement action and a possible loss of the grandfathering status.

Are you under a TCEQ permit?

If you are continuing a closure under a permit that hasn't been renewed to conform to TRRP, then follow the closure plans adopted as part of a permit issued prior to May 1, 2000 until permit renewal. At the time of permit renewal, closure plans that are in process of implementation according to the closure schedule will be grandfathered automatically; they do not need to submit the notices or meet the remedial investigation requirements noted above for Risk Reduction Rule Remedy Standard 1, 2 or 3 grandfathering. Closure plans that have not yet been initiated upon permit renewal will be conformed to TRRP.

Are you closing a RCRA less than 90-day accumulation unit?

A person can conduct a closure of units not subject to permitting, with or without associated releases under pre-TRRP rules if the provisions of 30 TAC §350.2(m) are met. These include, for Risk Reduction Rule Remedy Standard 1 or 2 closures, having filed a notice of intent prior to May 1, 2000 (and confirmed by May 1, 2001 that the TCEQ received the notice in a timely manner) that the closure proceeded under Risk Reduction Rule Remedy Standard 1 or 2 and completing the closure prior to May 1, 2005. For closures under Risk Reduction Rule Remedy Standard 3, the person must have submitted a fully compliant Remedial Investigation Report prior to May 1, 2001.

VI. Frequently Asked Questions

Question 1: *I have a waste management unit that doesn't require a permit (e.g., a <90 day hazardous waste generator accumulation tank or an on-site non-hazardous landfill). How does TRRP impact me?*

Answer 1: After May 1, 2000, unless exclusions or grandfathering applies, TRRP supplies the closure performance standards for closure of these units. These standards are contained in 30 TAC §350.2(h).

1. For units that don't have a release, TRRP only requires compliance with the following requirements:
   a. Close the unit in a manner to minimize or eliminate, to the extent necessary to protect human health and the environment, the post closure escape of waste, contaminants, leachate, run-off or decomposition products to the surrounding environmental media, and
   b. The removal, decontamination or control requirements for waste specified in Subchapter B of the TRRP rule (detailing the requirements for what constitutes removal, decontamination or controls and requiring post closure requirements in the event controls are used).
   c. Other requirements of TRRP (e.g., property assessment requirements) will not apply. Also, note that TRRP does not define when a release has occurred or how a release is to be detected--that is left to each program area. Finally, remember that any additional requirements that may be different or more stringent than the applicable requirements for TRRP also will apply (e.g., RCRA hazardous waste requirements).
2. For units with a release, the full provisions of TRRP will apply to the release, either as part of closure or at any time before or after closure.

Question 2: *If I submitted my remedial investigation report under Remedy Standard 3 of the existing Risk Reduction Rules prior to May 1, 2001, but received notices of deficiency after that date, have I triggered the application of TRRP to my project?*

Answer 2: Possibly not. The TCEQ may allow persons to respond to at least one set of notice of deficiencies after the May 1, 2001 grandfather deadline without triggering TRRP. However, the intent is to work with those sites where the remedial investigation is complete, but some information is lacking. The intent is not to extend the grandfathering to those sites where the remedial investigation report is substantially incomplete.

Question 3: *If I have a permitted waste management unit with an associated closure plan, will TRRP need to be followed when I close my units?*

Answer 3: The intent of the TCEQ is to allow facilities with permitted units to close according to the closure plans that were approved as part of the permit. As a result, if a unit begins closure under a pre-TRRP closure plan, the TCEQ will allow the unit to continue to close under that closure plan and pre-TRRP requirements. However, the TCEQ also intends to

incorporate TRRP requirements into permit closure plans during the permit renewal process. Therefore, any closure plans that have not yet been initiated before the permit is renewed must be revised to conform to TRRP. As a result, owners and operators of facilities with permits up for renewal should anticipate that TRRP will be applicable to units for which a closure has not yet been initiated.

Question 4: If I have a facility with different releases in different areas being addressed under the old rule, can I grandfather some releases under the old rule and switch some to TRRP?

Answer 4: Yes, each release area or separate problem is judged on its own merit regarding grandfathering and switching to TRRP.

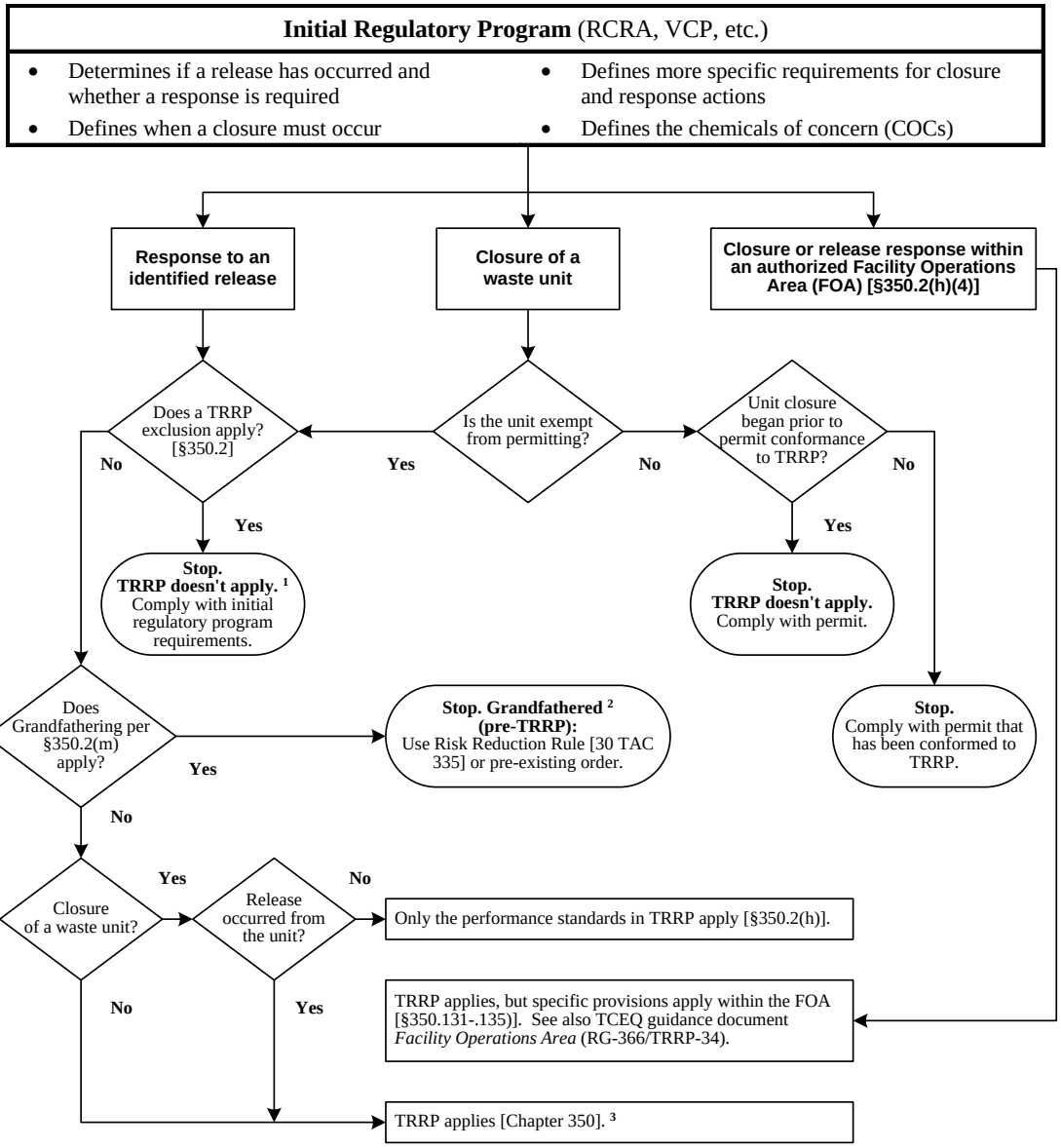
Question 5: *What effect does a Municipal Setting Designation (MSD) have on TRRP applicability?*

Answer 5: Essentially, the existence of an MSD will not alter the answer one gets by following the procedures of this document, that is, TRRP still applies to the release. The MSD can, however, alter the extent of the assessment and remediation by eliminating certain exposure pathways from the TRRP evaluation. The MSD recognizes that the local municipality has restricted the use of the designated groundwater and it will not be used as a current or future drinking water source. Consequently the overlying soils do not need to be protective of the groundwater for ingestion purposes. The resulting modifications to the cleanup levels for groundwater and soil can in many cases substantially reduce the extent of assessment and remediation at a release site. See www.tceq.state.tx.us/remediation/msd.html for more information.

Question 6: *Does TRRP apply to me if I determine that a release which I did not cause has migrated on to my property from elsewhere?*

Answer 6: This document helps to determine applicability of TRRP to the release; it does not identify the "person" (see definition at §350.4(a)(62)) who will comply with TRRP. Typically, the person is the one who is or will be responsible for the release as determined by the regulatory programs in Table 1. An exception to this generalization involves a landowner or operator (leaseholder or tenant) who has a release coming on to his property from elsewhere, possibly from an unknown source, and meets the criteria of an innocent owner or operator as specified in Texas Health and Safety Code §361.751-754. This statute entitles the innocent owner or operator to immunity from liability for assessment and remediation. While such person is not responsible for the TRRP response action for the entire release, he must grant reasonable access to the person who is designated by the TCEQ to address the contamination. The innocent owner or operator can also request a certificate from the TCEQ confirming that status. In some cases, the TCEQ may direct the innocent owner or operator to take some measures that are reasonably necessary to protect the public health, such as a deed restriction prohibiting the use of

contaminated groundwater beneath the property. See TCEQ document *The Innocent Owner/Operator Program* (RG-382) and www.tceq.state.tx.us/remediation/iop/iop.html for more information.



Notes:
1. Effective March 19, 2009, releases from all underground and aboveground storage tanks regulated under 30 TAC 334 are excluded from TRRP (See Section IV above).

2. Deadlines to establish grandfathered status have passed, unless the unit is under a permit or order predating TRRP (See Section V above). Even if grandfathering criteria are met, persons may choose to comply with TRRP. Additionally, if a permit or order does not reference TRRP, persons can seek authorization via the appropriate administrative process to proceed under TRRP. Infrequently, the Executive Director may require specific releases subject to the Texas Water Code Chapter 26 to comply with TRRP.

3. Even though TRRP applies to the release, the assessment and response action may be limited in situations involving a Municipal Setting Designation or an Innocent Owner/Operator (See Section VI above).

Figure 2. Flowchart of TRRP Applicability