



TNRCC Regulatory Guidance

Remediation

RG-366/TRRP-2 March 2000 DRAFT

SUBJECT: TRRP Applicability and Grandfathering

- Objectives:** This informational pamphlet provides:
- How to determine TRRP applicability
 - What are the exclusions from TRRP?
 - What are the potential Grandfathering possibilities?
 - Frequently asked questions
 - Flowchart of TRRP applicability

Audience: General Public, Regulated Community, and Environmental Professionals

References: The regulatory citation for Texas Risk Reduction Program (TRRP) Rule applicability is 30 TAC §350.2.

The TRRP Rule and Preamble is on-line at
<http://www.tnrcc.state.tx.us/oprd/rules/indxpdf5.html>.

The TRRP Rule, together with conforming changes to related rules, is contained in 30 Texas Administrative Code Chapter 350, and was published in the September 17, 1999 Texas Register (24 TexReg 7413-7944). Download Tier 1 PCL Tables, toxicity factors and other TRRP information at <http://www.tnrcc.state.tx.us/permitting/trrp.htm>.

Contact: Technical Support Section at 512/239-0310; Corrective Action Section 512/239-2343; Responsible Party Remediation Section 512/239-2200; Site Assessment & Management Section 512/239-2509; Superfund Cleanup Section 512/239-2425; Voluntary Cleanup Program Section 512/239-5891.

I. Introduction

What does TRRP require?

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

When does TRRP begin?

TRRP begins to apply on May 1, 2000. However, persons can generally choose to have TRRP apply prior to this date.

What does TRRP not require?

TRRP is only triggered once another rule, permit, order or statute, as implemented by a Texas Natural Resource Conservation Commission (TNRCC) 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 TNRCC programs.

TRRP does not establish the requirement or criteria for reporting a release to the TNRCC.

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Does TRRP apply to me?

Generally, TRRP is applicable beginning 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, three basic steps must be completed.

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 If 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 some cases these steps need to be taken before May 1, 2000.

The following diagram 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 each step of the diagram.

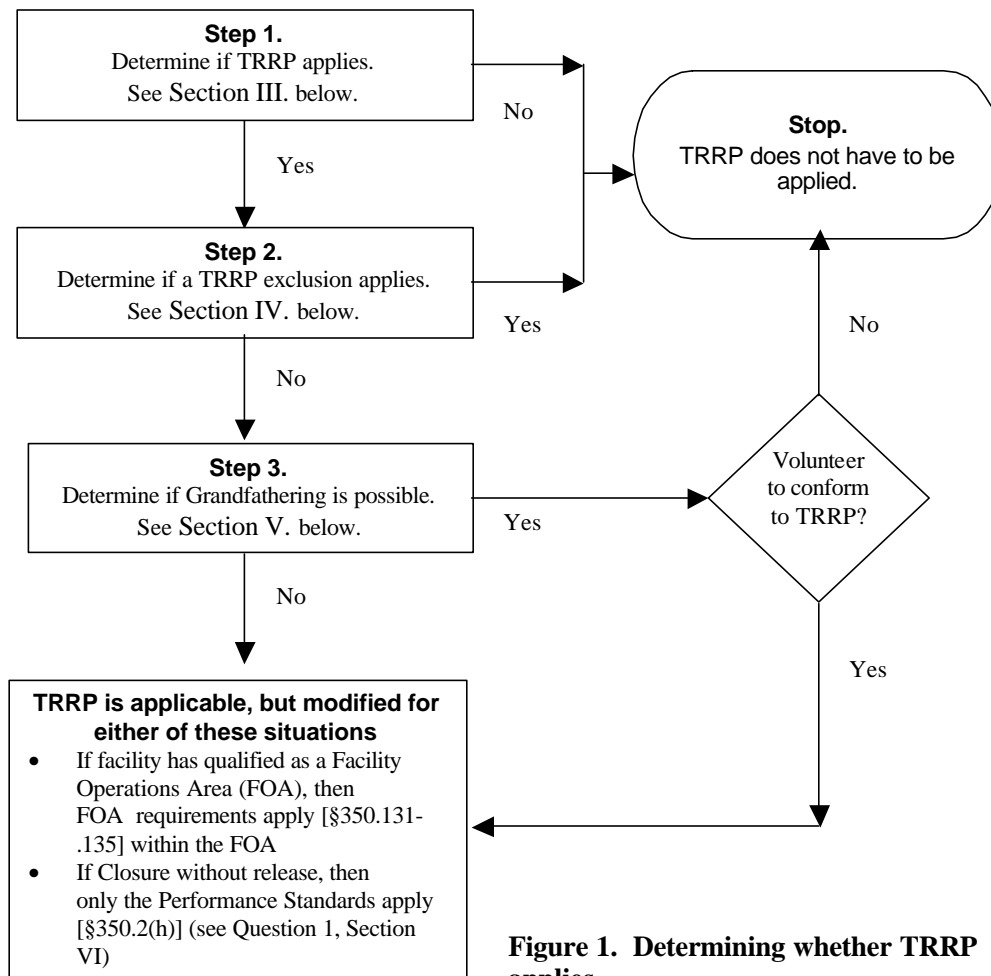


Figure 1. Determining whether TRRP applies.

III Determine if TRRP applies

TRRP applies when any of the following events at a site (affected property) in any of the following program areas exists on or after May 1, 2000 unless a TRRP exclusion (Section IV) applies or grandfathering (Section V) is possible. Persons may voluntarily apply TRRP prior to May 1, 2000.

TNRCC Program Requiring Initial Response (Citation)	Events	Rule Reference
Spill Prevention and Control [30 TAC §327.3 & 327.5]	Spill reported pursuant to §327.3 <ul style="list-style-type: none"> • Choose to use TRRP for spill response, or • Spill response will take longer than 6 months which is on or after May 1, 2000 & grandfathering hasn't been initiated 	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 TNRCC 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 entering the VCP program after May 1, 2000. However, if the site is a Petroleum Storage Tank program site, then TRRP is applicable under VCP only if the release is reported September 1, 2003 or after.	30 TAC §350.2(f)*
Underground and Aboveground Storage Tanks [30 TAC §334]	Release reported to the TNRCC on or after September 1, 2003 from regulated aboveground or underground storage tanks.	30 TAC §350.2(g)*
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)*
*See also the Preamble published September 17, 1999 in the <i>Texas Register</i> , Vol. 24, pages 7441-7442 for discussion.		

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

Other	Events	Rule Reference
Other Releases subject to Texas Water Code Chapter 26	Release subject to the Texas Water Code, but only if specifically required by the TNRCC.	30 TAC §350.2 (l) See also the Preamble published September 17, 1999 in the <i>Texas Register</i> , Vol. 24, pages 7442
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 334 that are reopened will be evaluated under 30 TAC 334 standards regardless of when re-opened.	30 TAC 350.35 See also the Preamble published September 17, 1999 in the <i>Texas Register</i> , Vol. 24, pages 7551-7553

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.

- Governmental entities that are not responsible parties conducting remedial actions are not subject to TRRP [§350.4 (a) (64)]
- 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 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 TNRCC Regional Office.
- Municipal Landfills. Landfills regulated under 40 CFR §257/258 are not subject to TRRP, except in limited circumstances if authorized by the TNRCC [§350.2 (c)].
- Leaking Petroleum Storage Tank Sites. Releases from all underground and aboveground storage tanks regulated under 30 TAC §334 are not subject to TRRP unless the release is reported to the TNRCC on or after September 1, 2003.
- 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 TNRCC via the appropriate administrative process to apply TRRP.
- Municipal Waste Water Treatment Facility Closures. These closures are not subject to TRRP unless permit requires the TRRP rules to apply. [§350.2 (k)]. The TNRCC will continue to allow municipal

facilities to choose between closing under TRRP or undertaking a site-specific “clean” 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 in the earlier bullet for the Leaking 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 (i.e., pre-TRRP) requirements after the applicability date of May 1, 2000. See TNRCC Regulatory Guidance RG-366/TRRP-4 *Comparison of 30 TAC 335 and 30 TAC 350: Points to Consider in Making the Shift* 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, please be advised that once you switch to TRRP, you cannot switch back.

Have you started 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 TNRCC permits), then you may grandfather and continue under Remedy Standard 1 or 2 provided you meet the following conditions:

- + Provide notification to TNRCC 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 receive a written confirmation of receipt of such notice from TNRCC, or, if no TNRCC confirmation is received, submit evidence of such proper and timely notice filing to TNRCC by May 1, 2001. An entry of the notice in a TNRCC 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 will be sufficient evidence. Or persons may wish to submit the *Notice of Intent (NOI) [Grandfathering]* form to TNRCC postmarked by April 30, 2000 (see TNRCC Form 10324/NOI), and
- + Submit the final report for Remedy Standard 1 or 2 remediation to the TNRCC by May 1, 2005.

Have you started 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 before May 1, 2000, then you started a response action and 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 TNRCC permits), provided that you submit a remedial investigation report that fully complies with 30 TAC §335.553(b)(1) prior to May 1, 2001 (30 TAC §335.553(b)). The TNRCC 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 set of NODs after May 1, 2001. 24

Tex. Reg. 7503. Persons may send an optional *Notice of Intent [Grandfathering]* form to TNRCC to confirm continuation of response using Risk Reduction Rule Remedy Standard 3.

Are you under a TNRCC Order?

If you are continuing a closure or release response under a pre-existing order, the TNRCC 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 grandfathered status.

Are you under a TNRCC permit?

If you are continuing a closure under a permit that hasn't been renewed to conform to TRRP, then the closure plans adopted as part of a permit issued prior to May 1, 2000 should be followed 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, filing a notice of intent prior to May 1, 2000 (and confirming by May 1, 2001 that the TNRCC received the notice in a timely manner) that the closure will proceed 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, submit 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 (i.e., 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 will supply the closure performance standards for closure of these units. These standards are contained in 30 TAC §350.2 (h).

- a. For units that don't have a release, TRRP only requires compliance with the following requirements:
 - 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
 - The removal, decontamination or control requirements for waste specified in Subchapter B of the TRRP Rules (detailing the requirements for what constitutes removal, decontamination or controls and requiring post closure requirements in the event controls are used).
 - 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).
- b. For units with a release, the full provisions of TRRP will apply to the release.

Note: Persons desiring to close units under pre-TRRP requirements should quickly evaluate whether exclusions or grandfathering applies. For example, units that don't require a permit can currently be closed pursuant to the existing Risk Reduction Rules contained in 30 TAC Chapter 335. To continue a closure under those rules the person must comply with the grandfathering provisions of TRRP contained

in §350.2 (m). These provisions require, for Standard 1 or 2 closures, filing a notice of intent prior to May 1, 2000 (and confirming, by May 1, 2001 that the Agency received the notice in a timely manner) that the closure will proceed under Standard 1 or 2 (the closure must be complete prior to May 1, 2005). For closures under Standard 3, submit a fully compliant Remedial Investigation Report prior to May 1, 2001.

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

Answer 2: Possibly not. The TNRCC 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.

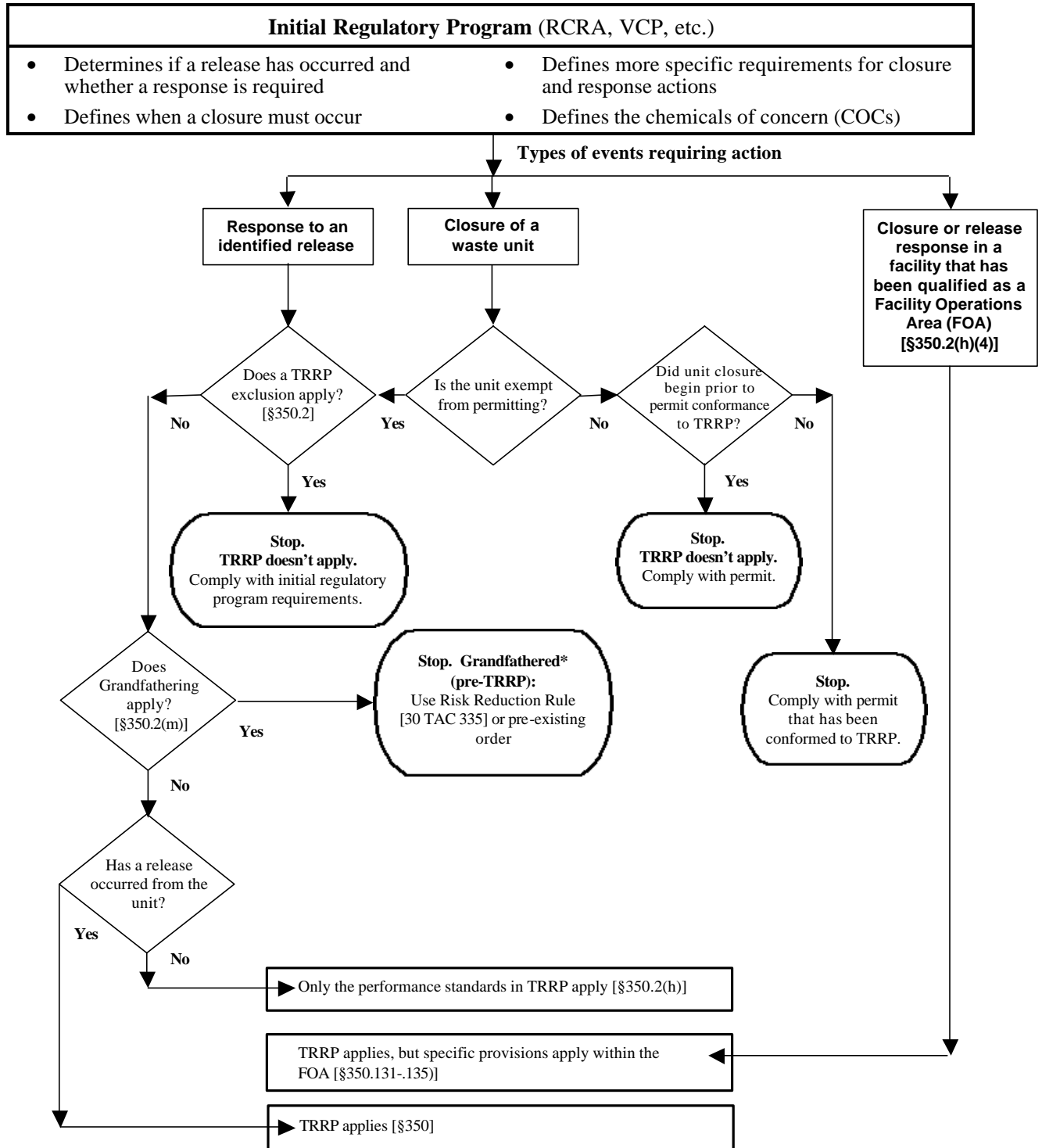
Question 3: *If I have a permitted waste management unit with an associated closure plan, will TRRP need to be followed when I close my units?*

Answer 3: The intent of the TNRCC 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 TNRCC will allow the unit to continue to close under that closure plan and pre-TRRP requirements. However, the TNRCC 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 will require closure plan revisions conformed 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. For further information, please see TNRCC Regulatory Guidance RG-366/TRRP-5 *Use of Data Collected for 30 TAC 335 under TRRP*.

Figure 2. Flowchart of TRRP Applicability



*Notes: Infrequently, the Executive Director may require specific releases subject to the Texas Water Code Chapter 26 to comply with TRRP.

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.