# TCEQ LogoNational Comments

# Executive Review Summary

**TCEQ Proposed Comments On:**

40 Code of Federal Regulations (CFR) Part 192; Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings; Proposed Rule; published in the January 19, 2017 edition of the *Federal Register* (82 Fed. Reg. 7400).

**Overview of Proposal:**

**The Environmental Protection Agency (EPA) has re-proposed rules that establish technical requirements for the protection of groundwater at *in situ* uranium operations. The rules initially were proposed in the January 26, 2015 edition of the *Federal Register* (80 Fed. Reg. 4156). TCEQ provided comments on the initial rule. EPA received over 5,380 public comments on this proposed rule. EPA decided to re-propose the rule and seek additional public comment on changes to the original proposed rule. The rules are proposed under EPA’s authority conferred to it by Congress in the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. If adopted, the rules would need to be implemented by radioactive materials licenses of the Nuclear Regulatory Commission (NRC) or Agreement State programs, such as Texas. The proposed rules are EPA’s first attempt to establish requirements for *in situ* uranium mining facilities under UMTRCA after previously determining that protection of groundwater in the underground operations are regulated under the federal Safe Drinking Water Act’s Underground Injection Control (UIC) program.**

**The State of Texas has regulated *in situ* uranium mining operations under both the EPA-authorized UIC program and the NRC-compatible Agreement State licensing program. Currently, TCEQ administers both programs. EPA’s proposed rules include specific requirements for: establishing pre-mining baseline water quality; monitor well placement; mining fluid excursion detection; corrective action; groundwater restoration; and post-restoration groundwater stability demonstration. TCEQ’s program already addresses these requirements as part of a Class III injection well permit and Production Area Authorization issued under the UIC program. Extensive rulemaking would be required to reorganize the requirements as part of the radioactive materials licensing program.**

**Summary of Comments:**

 EPA’s re-proposed rules would have a unique effect on Texas because: 1) Texas has an active uranium industry; 2) the TCEQ has successfully regulated the underground operations at *in situ* uranium mining operations under the UIC program for over 40 years; and 3) TCEQ administers the Agreement State licensing program for uranium recovery under the Atomic Energy Act. Therefore, staff reviewed the proposal and accompanying documentation and recommend that TCEQ submit comments to EPA.

The developed comments offer two recommendations. The first part identifies numerous jurisdictional and technical problems with the proposed rules. This part recommends that EPA withdraw the proposed rules; study active and historic uranium mining sites; and re-propose rules, if necessary, under the UIC authority in the Safe Drinking Water Act. Staff developed comments on the re-proposed rules that address EPA’s jurisdiction and authority under UMTRCA, the need for the proposed rules, and concerns with specific technical requirements. The comments addressing jurisdictional authority discuss EPA’s specific statutory charge to adopt technical requirements relating to the management and disposal of byproduct materials and point out that byproduct material is not generated in the subsurface ore bodies. The comments question why EPA did not propose the rules under its UIC program. The comments address EPA’s need for the rules and question why EPA has decided to propose these rules without any cited instances of contamination of underground sources of drinking water from *in situ* uranium operations in Texas. TCEQ recommends that EPA conduct studies of on-going and closed uranium operations to investigate groundwater or contaminant movement before proposing new rules. Technical comments include questions on groundwater conservation related to aquifer restoration, factors to consider regarding establishment of alternate concentration limits, the need for class-of-use categories for groundwater suitability, and application of the proposed rules to existing mining sites. The comments emphasize that large volumes of groundwater are consumed during aquifer restoration, and extended restoration activities required under the proposed rule will increase the volume of groundwater consumed. The comments recommend that groundwater consumption should be one of the factors considered in approval of alternate concentration limits and that class-of-use should be a factor in setting these limits. Further, the comments emphasize that it is not possible for all the proposed requirements to be met at sites where mining has commenced. Finally, the comments question how the Agreement State program can implement all of the requirements to facilities that have already started mining.

The second part of the comment document identifies three changes to the proposed rules that TCEQ considers essential for implementation if EPA decides not to withdraw the proposal. These changes request the new rules be applied only to new uranium mines licensed after January 1, 2021 and not be applied to existing mines; revise the definition of the term “point of compliance” to consider pre-mining groundwater quality; and make the rules effective on January 1, 2021 to allow TCEQ sufficient time to implement them.

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**Deadline**: July 18, 2017