

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Withdrawal of Rulemaking

AGENDA REQUESTED: September 19, 2012

DATE OF REQUEST: August 31, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Charlotte Horn, (512) 239-0779

CAPTION: Docket No. 2012-0196-RUL. Consideration for the withdrawal of proposed amendments to Sections 305.50, 305.64, 305.69, and 305.122; and new Section 305.176 of 30 TAC Chapter 305, Consolidated Permits; amendments to Sections 324.1 - 324.7, and 324.11 - 324.16 of 30 TAC Chapter 324, Used Oil Standards; and amendments to Sections 335.1, 335.2, 335.6, 335.10 - 335.13, 335.19, 335.24, 335.31, 335.61, 335.62, 335.67, 335.69, 335.71, 335.73, 335.76, 335.78, 335.94, 335.111, 335.112, 335.115, 335.151, 335.152, 335.155, 335.168, 335.170, 335.211, 335.213, 335.222, 335.241, 335.251, 335.431, 335.503, and 335.504; and new Section 335.79 of 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste as published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2988).

The decision to withdraw this proposal and to consecutively re-propose in a separate rulemaking is to include additional language to ensure equivalency with federal rules. (Cynthia Palomares, P.G., P.E., Susan White) (Rule Project No. 2011-025-335-WS)

Brent Wade

Deputy Director

Earl Lott

Division Director

Charlotte Horn

Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: August 31, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2012-0196-RUL

Subject: Commission Approval of Withdrawal of Proposed Rulemaking
Chapter 305, Consolidated Permits
Chapter 324, Used Oil Standards
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
RCRA Authorization for Federal Rule Clusters XIX - XXI and Financial
Assurance, Used Oil, and Manifest Revisions
Rule Project No. 2011-025-335-WS

Background and reason(s) for the withdrawal:

After proposal and prior to adoption of the RCRA Cluster XIX – XXI amendments, revisions were made to the waste manifest portion of the rule package in Chapter 335. The agency did not receive any comments on the initial proposal. The revisions were made to ensure equivalency between Texas manifest rules and Environmental Protection Agency (EPA) rules. These changes did not alter the substance of the manifest requirements. However, the executive director recommends that the commission withdraw the original rule proposal and re-propose the amendments to ensure the public and regulated community have an opportunity to comment on these revisions.

Scope of the withdrawal:

A.) Summary of what the withdrawal will do:

If the entire rule package is withdrawn and re-proposed, the public and regulated community will have an opportunity to comment on the revisions. This will delay the adoption of all the changes within the rule package for approximately four months.

B.) Scope required by federal regulations or state statutes:

There is no anticipated adverse impact on Texas RCRA authorization. Agency staff will coordinate with EPA staff to explain the reason for the delay. Therefore, delivery of the final authorization package to EPA may be delayed only four months which will likely minimize any concerns.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None

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Statutory authority:

- Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and
- Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

Effect on the:

A.) Regulated community:

The regulated community will have an opportunity to comment on the revisions to the manifest rule. In the approximately four-month delay until adoption, the regulated community will continue under existing regulations. Some of these changes, other than the manifest rule, provide additional flexibility to the regulated community.

B.) Public:

Members of the general public will benefit by having an opportunity to comment on the revisions to the manifest rule.

C.) Agency programs:

Withdrawing these rules may delay EPA's approval of RCRA Clusters XIX - XXI for a short time.

Stakeholder meetings:

No stakeholder meetings have been held.

Potential controversial concerns and legislative interest:

There are no controversies associated with this withdrawal.

Will this rulemaking affect any current policies or require development of new policies?

No policy issues are affected.

What are the consequences if this withdrawal does not go forward? Are there alternatives to withdrawal?

None known.

Commissioners
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Key points in the withdrawal schedule:

Original Proposal Date: April 11, 2012

Anticipated withdrawal date: September 19, 2012

Anticipated *Texas Register* publication date: October 5, 2012

Effective Date: Immediately upon filing with the Secretary of State

Agency contacts:

Cynthia Palomares, P.G., P.E., Rule Project Manager, 239-6079, Waste Permits Division

Jean Shaw, P.E., Project Manager, 239-1823, Waste Permits Division

Susan White, Staff Attorney, 239-0454

Dan Long, Staff Attorney, 239-5373

Carol Gensweider, Registration Coordinator, 239-6861, Permitting & Registration Support Division

Charlotte Horn, Texas Register Coordinator, 239-0779

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Cynthia Palomares, P.G., P.E.
Susan White
Charlotte Horn

ORDER

Docket No. 2012 - 0196 - RUL

On September 19, 2012, the Texas Commission on Environmental Quality (Commission) considered the withdrawal of the amendments to Sections 305.50, 305.64, 305.69, and 305.122; and new Section 305.176 of 30 TAC Chapter 305, Consolidated Permits; amendments to Sections 324.1 - 324.7, and 324.11 - 324.16 of 30 TAC Chapter 324, Used Oil Standards; and amendments to Sections 335.1, 335.2, 335.6, 335.10 - 335.13, 335.19, 335.24, 335.31, 335.61, 335.62, 335.67, 335.69, 335.71, 335.73, 335.76, 335.78, 335.94, 335.111, 335.112, 335.115, 335.151, 335.152, 335.155, 335.168, 335.170, 335.211, 335.213, 335.222, 335.241, 335.251, 335.431, 335.503, and 335.504; and new Section 335.79 of 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, as published for proposal in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2988).

IT IS THEREFORE ORDERED BY THE COMMISSION that Sections 305.50, 305.64, 305.69, and 305.122, Sections 324.1 - 324.7, and 324.11 - 324.16; and Sections 335.1, 335.2, 335.6, 335.10 - 335.13, 335.19, 335.24, 335.31, 335.61, 335.62, 335.67, 335.69, 335.71, 335.73, 335.76, 335.78, 335.79, 335.94, 335.111, 335.112, 335.115, 335.151, 335.152, 335.155, 335.168, 335.170, 335.211, 335.213, 335.222, 335.241, 335.251, 335.431, 335.503, and 335.504 are hereby withdrawn for consideration for adoption. The withdrawal of these rules is incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman