

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: May 14, 2014

DATE OF REQUEST: April 25, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141

CAPTION: Docket No. 2014-0426-RUL. Consideration for publication of, and hearing on, proposed amendments to: Section 55.201 of 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Sections 305.49 and 305.154 of 30 TAC Chapter 305, Consolidated Permits; Sections 331.107, 331.108 and 331.122, and new Section 331.110 of 30 TAC Chapter 331, Underground Injection Control.

The proposed rulemaking would implement House Bill 1079, 83rd Legislature, 2013, Regular Session. The proposed rulemaking will require that all new, amended, or renewed Class III Underground Injection Control permits include a permit range table. This table will have concentration ranges for each of the groundwater quality parameters listed in the restoration table of each Production Area Authorization (PAA) associated with a permit. The restoration table values of the PAA must be within the respective ranges in the permit range table. If a permittee requests revision of a restoration table value, the requested revised value must be within the respective range of the permit range table; otherwise, the permit range table must be amended, which is subject to an opportunity for a contested case hearing. The proposed rulemaking also changes the conditions that determine when an application for a PAA may be subject to an opportunity for a contested case hearing, consistent with the requirements of HB 1079. (David Murry, Don Redmond) (Rule Project No. 2013-058-331-WS)

Brent Wade

Deputy Director

Charles Maguire

Division Director

Bruce McAnally

Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** April 25, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2014-0426-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 55, Requests for Reconsideration and Contested Case Hearings;
Public Comment
Chapter 305, Consolidated Permits
Chapter 331, Underground Injection Control
House Bill 1079: Class III UIC Area Permits
Rule Project No. 2013-058-331-WS

Background and reason(s) for the rulemaking:

House Bill 1079 (Authors: Smith, Guillen, Kleinschmidt, and Keumpel; Sponsors: Hancock and Lucio) was passed during the 83rd Legislature, 2013. HB 1079 amended Texas Water Code, §27.0513, concerning Area Permits and Production Area Authorizations for Uranium Mining. These amendments establish the requirement for a permit range table in a Class III Underground Injection Control (UIC) area permit and specify the conditions under which an application for a production area authorization (PAA) is not subject to opportunity for a contested case hearing. *In situ* mining of uranium typically requires two types of authorizations from the TCEQ's UIC program. Class III UIC area permits authorize the use of Class III injection wells for *in situ* recovery of minerals within a large defined permit area. A PAA, issued under the authority of the Class III UIC permit, authorizes the operation of Class III wells in a smaller specific area within the permit area. The PAA establishes monitor well location requirements, monitoring requirements and groundwater restoration requirements within the specific production area.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: The proposed rulemaking will require that all new, amended, or renewed Class III UIC permits include a permit range table provides concentration ranges for each of the groundwater quality parameters listed in the restoration table of each PAA associated with a permit. The purpose of this table is to indicate the general range of pre-mining water quality within the larger permit area. The restoration table values of a PAA must be within the respective ranges in the permit range table. The restoration table in each PAA includes a pre-mining concentration for a suite of groundwater quality parameters. If a permittee requests revision of a restoration table value after efforts to complete groundwater restoration, the requested revised value must be within the respective range of the permit range table; otherwise, the permit range

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table must be amended through a permit amendment application, which is subject to opportunity for a contested case hearing.

The rulemaking also revises the conditions that determine when an application for a PAA may be subject to an opportunity for a contested case hearing consistent with the amendments to TWC, §27.0513 in HB 1079.

B.) Scope required by federal regulations or state statutes: The proposed rules are necessary to address amendments to TWC, §27.0513. The proposed rules are not required by federal regulation.

C.) Additional staff recommendations that are not required by federal rule or state statute: None.

Statutory authority:

TWC, §5.103, concerning Rules

TWC, §5.105, concerning General Policy

TWC, §27.019, concerning Rules, Etc

TWC, §27.0513, concerning Area Permits and Production Area Authorizations for Uranium Mining

Effect on the:

A.) Regulated community: Companies who engage in *in situ* mining of uranium will be affected by this proposed rulemaking. It will not create a group of affected persons who were not affected previously. There is no fiscal impact.

B.) Public: The public will be affected in that there will be fewer opportunities to request a contested case hearing on applications for PAAs.

C.) Agency programs: The UIC Permits Section of the Radioactive Materials Division will be responsible for implementation of the proposed rules.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period on June 17, 2014, in Austin.

Potential controversial concerns and legislative interest:

Opponents of *in situ* uranium mining may not be in favor of reduced opportunities to request a contested case hearing on applications for PAAs.

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Will this rulemaking affect any current policies or require development of new policies? No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking? The proposed rulemaking is necessary to implement HB 1079; there are no alternatives to rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: May 14, 2014

Anticipated *Texas Register* publication date: May 30, 2014

Anticipated public hearing date (if any): June 17, 2014

Anticipated public comment period: May 30 - June 30, 2014

Anticipated adoption date: November 5, 2014

Agency contacts:

David Murry, Rule Project Manager, (512) 239-6080, Radioactive Materials Division

Don Redmond, Staff Attorney, (512) 239-0612

Bruce McAnally, Texas Register Coordinator, (512) 239-2141

Attachments

House Bill 1079

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Tucker Royall
John Bentley
Office of General Counsel
David Murry
Don Redmond
Bruce McAnally

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes to amend §55.201.

Background and Summary of the Factual Basis for the Proposed Rule

Passage of House Bill (HB) 1079, 83rd Legislature, 2013, amended Texas Water Code (TWC), §27.0513 to revise the language that establishes when an application for a production area authorization (PAA) is an uncontested matter, not subject to an opportunity for a contested case hearing. Under former TWC, §27.0513(d), an application for a production area to be issued under a Class III Underground Injection Control (UIC) area permit for *in situ* uranium mining was an uncontested matter except in three circumstances. The three exceptions removed from former TWC, §27.0513(d)(1) - (3), were, respectively: an application to amend a restoration table value; an application for the initial establishment of monitor wells, unless the executive director uses the recommendations of an independent third-party expert; and an application to amend the type of amount of bond required for groundwater restoration and for plugging and abandonment of wells.

Under HB 1079, these three exceptions were removed and replaced with different conditions under which an application for a PAA is an uncontested matter. These conditions are, respectively: the authorization is for a production area within the boundary of a Class III UIC permit, that includes a permit range table of groundwater

quality restoration values used to measure groundwater restoration by the commission; the application includes groundwater quality restoration values falling at, or below, the upper limits of the range established in TWC, §27.0513(d)(1); and the authorization is for a production area located within the boundary of a permit that incorporates groundwater baseline characteristics of the wells for the application required by commission rule. Because of the complexity of the various conditions that determine whether an application for a production authorization is, or is not, subject to an opportunity for a contested case hearing, the commission is proposing to establish the conditions in a stand-alone section in 30 TAC §331.108, Opportunity for a Contested Case Hearing on a Production Area Authorization Application. The commission proposes to include these provisions in 30 TAC Chapter 331 because the conditions that determine the procedural requirements on the PAA application are linked to the terms of the corresponding permit regarding the permit range table or compliance with rule requirements in Chapter 331 regarding baseline wells and monitor wells.

Under this proposed rulemaking, the revisions to TWC, §27.0513(d) under HB 1079 are addressed through the proposed amendment to §55.201(i)(11).

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend 30 TAC Chapter 305, Consolidated Permits, and 30 TAC Chapter 331, Underground Injection Control.

Section by Section Discussion

§55.201, Requests for Reconsideration or Contested Case Hearing

Section 55.201(i) is revised to amend paragraph (11). Section 55.201(i)(11)(A) - (C) was adopted in 2009 to address the amendment to TWC, §27.0513(d), Senate Bill 1604 (2007). As previously discussed, TWC, §27.0513(d)(1) - (3) was removed under HB 1079. The proposed amendment to §55.201(i)(11) now states that there is no right to a contested case hearing on an application for a PAA except as provided in §331.108. The commission is proposing to amend §331.108 to establish the conditions for determining when an application for a PAA may be subject to a contested case hearing consistent with TWC, §27.0513, as amended by HB 1079. Under the conditions in TWC, §27.0513 and 30 TAC §331.108, the only time an application for a PAA may be subject to an opportunity for a contested case hearing is if the application proposes an amendment to increase a restoration table value and the PAA is issued under a Class III UIC permit that does not include a permit range table.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst in the Chief Financial Officer Division, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. Other units of state or local government are not expected to experience

fiscal impacts under the proposed rule since it does not typically participate in uranium mining activities.

The proposed amendment is part of a rulemaking that implements the provisions of HB 1079. HB 1079 amended the TWC regarding permits for Class III injection wells used for *in situ* uranium mining activities and applications for PAAs submitted to the agency on or after September 1, 2013. HB 1079 changed the conditions under which a PAA would not be subject to an opportunity for a contested case hearing. The agency is also proposing rules to amend Chapters 305 and 331 to complete the implementation of HB 1079. This fiscal note will address the fiscal impacts of the proposed rules in Chapter 55, and the fiscal impacts of the provisions in Chapters 305 and 331 will be addressed in separate, but related fiscal notes.

This proposed amendment amends the requirements concerning contested case hearings for PAAs to state that those hearings are not available except where the provisions of the proposed rules in Chapter 331 apply. Briefly, the proposed rule would apply only to new applications for Class III injection well permits, permit amendments, or permit renewals authorizing *in situ* uranium mining, and new PAAs, or amended PAAs issued on or after September 1, 2013. The proposed rule is administrative in nature and would ensure that there is uniformity in applicable parts of the TAC to implement HB 1079.

The proposed rule would not have a significant fiscal impact on the agency, and units of local government or other state agencies are not expected to experience any fiscal impact as a result of the proposed rule since it does not typically engage *in situ* uranium mining activities.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law, a more efficient authorization process for new *in situ* uranium mining production areas, and a continued protection of groundwater in the state.

The proposed rule would not have a significant fiscal impact on individuals if it does not own or operate a business that engages *in situ* uranium mining activities. The proposed rule is administrative in nature and would ensure uniformity between different chapters of the TAC to implement the provisions of HB 1079. The proposed rule is expected to result in fewer opportunities to request a contested case hearing for certain PAA authorizations, but since there have been only two contested case hearings regarding new PAAs in the past ten years, individuals and businesses are not expected to experience a significant fiscal impact as a result of the proposed amendment to Chapter

55.

Currently, there are seven existing permits for *in situ* uranium mining, and all of them have been issued to four small businesses. The fiscal impact of the proposed rules is expected to be minimal and will be discussed under the Small Business and Micro-Business Assessment section of this preamble.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. Currently there are four small businesses with permits for Class III injection wells for *in situ* uranium mining. When limiting the opportunity to request a contested case hearing per the requirements of HB 1079, the proposed amendment to Chapter 55 could lower small business costs spent for contested case hearings.

However, any savings are not expected to be significant since there have only been two contested case hearings for new PAAs in the past ten years. The significance of any cost savings would vary among permittees depending on the business circumstances of each small business.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is

required to comply with state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action implements legislative requirements in HB 1079, establishing the conditions for when an application for a PAA may be subject to an opportunity for contested case hearing. The proposed rulemaking

is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendment does not alter in a material way the existing requirements for injection wells used for *in situ* recovery of uranium. The proposed rulemaking action also amends requirements for injection well permit applications by requiring a permit range table in Chapter 305 and amends requirements for injection well permits and PAAs in Chapter 331.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission's UIC program is authorized by the United States Environmental Protection Agency and the proposed changes for injection well permit applications do not exceed a standard of federal law or requirement of a delegation agreement. There are no federal standards regarding an opportunity for contested case hearings on applications for PAAs. The proposed rule is compatible with federal law.

The proposed rule does not exceed a requirement of state law. TWC, Chapter 27, the Injection Well Act, establishes requirements for the commission's UIC program. HB 1079 amended the Injection Well Act to establish the conditions for when an application for a PAA may be subject to a contested case hearing. The purpose of the rulemaking is to implement requirements consistent with TWC, Chapter 27, as amended by HB 1079.

The proposed rule is compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The commission's UIC program is authorized by the United States Environmental Protection Agency, and the proposed rule is compatible with the state's delegation of the UIC program.

The rule is proposed under specific laws. TWC, Chapter 27, establishes requirements for the commission's UIC program and TWC, §27.019, requires the commission to adopt rules reasonably required to implement the Injection Well Act, and TWC, §27.0513 authorizes the commission to adopt rules to establish requirements for PAAs.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rule and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of the proposed rule would not constitute a taking of real property.

The purpose of the proposed rule is to implement legislative requirements in HB 1079, establishing the conditions for when an application for a PAA may be subject to an opportunity for a contested case hearing. The proposed amendment would substantially advance this purpose by amending the conditions in §55.201(i)(11) that establish when an application for a PAA may be subject to an opportunity for a contested case hearing to be consistent with the requirements of HB 1079.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect a landowner's rights in private real property because this rulemaking action does not

constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rule establishes the conditions for when an application for a PAA may be subject to an opportunity for a contested case hearing that does not affect real property. The proposed rule applies only to the procedural requirements for PAA applications. HB 1079 became effective on September 1, 2013, and applies in the absence of this proposed amendment. Therefore, the proposed rule does not affect real property in a manner that is different than would have been affected without these revisions.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 17, 2014, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-058-331-WS. The comment period closes June 30, 2014.

Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact David Murry, Underground Injection Control Section, (512) 239-6080.

**SUBCHAPTER F: REQUESTS FOR RECONSIDERATION OR CONTESTED
CASE HEARING**

§55.201

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendment implements HB 1079 83rd Legislature, 2013, and TWC, §27.0513.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's

decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the

executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

(e) Any person, other than a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title (relating to Definitions), may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, the public interest counsel, and a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to

Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of a voluntary emission reduction permit or an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program);

(C) a permit issued under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions); or

(D) amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(a)(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(8) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(9) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018;

(10) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law; and

(11) an application for a production area authorization, except as provided in accordance with §331.108 of this title (relating to Independent Third-Party Experts). [that is submitted after September 1, 2007, unless the application for the production area authorization seeks:]

[(A) an amendment to a restoration table value in accordance with the requirements of §331.107(g) of this title (relating to Restoration);]

[(B) the initial establishment of monitoring wells for any area covered by the authorization, including the location, number, depth, spacing, and design of the monitoring wells, unless the executive director uses the recommendations of an independent third-party expert as provided in §331.108 of this title (relating to Independent Third-Party Experts); or]

[(C) an amendment to the type or amount of financial assurance required for aquifer restoration, or by Texas Water Code, §27.073, to assure that there are sufficient funds available to the state to utilize a third-party contractor for aquifer restoration or plugging of abandoned wells in the area. Adjustments solely associated

with the annual inflation rate adjustment required under §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), or for adjustments due to decrease in the cost estimate for plugging and abandonment of wells when plugging and abandonment has been approved by the executive director in accordance with §331.144 of this title (relating to Approval of Plugging and Abandonment) are not considered an amendment to the type or amount of financial assurance required for aquifer restoration or well plugging and abandonment.]

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes to amend §305.49 and §305.154.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed changes to this chapter are necessary to implement passage of House Bill (HB) 1079, 83rd Legislature, 2013. HB 1079 amended Texas Water Code (TWC),

§27.0513 to establish a requirement for new, amended, or renewed Class III

Underground Injection Control (UIC) permits to include a table of high and low values for each groundwater quality parameter that is used to determine aquifer restoration, herein referred to as the permit range table, to modify the conditions that determine when certain types of production area authorization (PAA) applications are subject to an opportunity for a contested case hearing; and, to require that restoration table values of a new or amended PAA must fall within the range table that is established in the corresponding permit.

The proposed amendments to §305.49 and §305.154 address the requirement for inclusion of a permit range table in all new, amended, or renewed Class III UIC area permits for *in situ* mining of uranium.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend 30 TAC Chapter 55, Requests for Reconsideration

and Contested Case Hearing; Public Comments, and Chapter 331, Underground Injection Control.

Section by Section Discussion

§305.49, Additional Contents of Application for an Injection Well Permit

The proposed amendment to §305.49(a)(10) would address the requirements of amended TWC, §27.0513(a), as amended by HB 1079. Under this proposed rule, an application for a new, amended, or renewed Class III UIC area permit for *in situ* mining of uranium must include a table of pre-mining low and high values for each groundwater quality parameter used to measure groundwater restoration, herein referred to as a permit range table. These values must be established from analysis of groundwater samples from baseline wells and from all available wells completed in the production zone within the area of review associated within an existing or proposed permit boundary. The proposed rule will require that pre-mining low and high values in the permit range table be established for each of the parameters listed in existing §331.104(b). The parameters identified in §331.104(b) are those that are used to establish pre-mining groundwater quality and are used to establish the restoration table of a PAA. Values must be established from analysis of groundwater samples, collected prior to mining, from all baseline wells required under §331.104(c), and from all other wells, within the associated area of review, that are completed in the production zone.

Existing §305.49(a)(10) is re-numbered to paragraph (11).

The executive director considered, as part of this rulemaking, recommending the amendment of §305.49 to specify that the values in the permit range table be based on a minimum number of sample analyses. At this time, however, we are not proposing such a requirement.

Conceptually, for a Class III permit area, each parameter in the permit range table will have some true range of values. This true range is unknown, and must be estimated. The purpose of sampling wells in the area, as required under proposed §305.49(a)(10), is to obtain a sufficient number of sample values to obtain an acceptable estimate of this true range. The estimation technique in this case is to select the low and high values for each parameter from the sample values obtained through analysis of groundwater samples collected from wells completed in the production zone. As is true with other estimation techniques, the larger the number of values used in the estimation, the better the estimate.

It is in the interest of the permittee that the estimated range of values for each parameter includes a large proportion of the true range. Values in the restoration table in each PAA cannot exceed the maximum values for the respective parameters in the permit range table. If the maximum value for a parameter in the permit range table was

estimated too low, achieving the restoration table values established in the PAA may be difficult, if not impossible. Therefore, in considering how many samples to use to estimate the range for each parameter in the permit range table, the applicant or permittee should decide to what extent these ranges should include the true range of each parameter. To assist in that decision, the executive director offers the following analysis.

Statistically, the true range may be considered to represent the population of values for a parameter, and the estimated range to be an interval estimate of a particular proportion of that population. One technique used to estimate a population proportion is a tolerance interval. A tolerance interval is a statistical interval designed to include a proportion of a population with an associated level of confidence. For example, a tolerance interval could be constructed to include 95% of a population with a confidence level of 99%. That is, a person could be 99% "sure" that the interval included 95% of the population. The desired proportion of the population is called the "coverage".

The level of confidence associated with a particular coverage is dependent on the number of values used to construct the tolerance interval. If the level of confidence is defined as $(1-\alpha)100\%$ and P equals the desired coverage, then the number of values needed (n) for a desired coverage and level of confidence is:

$$n = \ln(\alpha)/\ln(P)$$

This equation applies to a nonparametric tolerance interval, and is described on page 93 of *Statistical Methods for Groundwater Monitoring* (1994, John Wiley and Sons, Inc.) by Robert D. Gibbons.

Using this method, 22 samples would be needed to construct a nonparametric tolerance interval with coverage of 90% and a level of confidence of 90%:

Desired level of confidence: $\alpha = 0.1$; $(1 - 0.1)100\% = 90\%$

Desired coverage (P): 90%

$$n = \ln(\alpha)/\ln(P)$$

$$n = \ln(0.1)/\ln(0.9)$$

$$n = (-2.306)/(-0.1054)$$

$$n = 21.854$$

The range for a permit range table parameter would be the high and low values from these 22 samples. To construct an interval with 95% coverage with a level of confidence of 99%, the interval would have to be based on 298 values.

Based on this analysis, the executive director recommends that determination of the high and low values for each parameter in the permit range table be based on a minimum of 22 values for each parameter from groundwater analyses. The commission seeks comments on this analysis and whether a specified number of samples should be specified in the permit application requirements in this rule.

The Proposed amendment to §305.154(b)(5) would address the new requirement that a Class III UIC area permit include a permit range table. In addition to other requirements under existing §305.154(b)(1) - (4), such permits will also require the permit range table. Proposed §305.154(b)(5) implements TWC, §27.0513(a), as amended by HB 1079.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst in the Chief Financial Officer Division, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. Other units of state or local government are not expected to experience fiscal impacts under the proposed rules since they do not typically participate in uranium mining activities.

The proposed rules would implement the provisions of HB 1079, 83rd Legislature. HB 1079 amended the TWC regarding permits for Class III injection wells used for *in situ* uranium mining activities and applications for PAAs submitted to the agency on or after September 1, 2013. HB 1079 changed the conditions under which a PAA would not be subject to an opportunity for a contested case hearing. The agency is also proposing rules to amend Chapters 55 and 331 to complete the implementation of HB 1079. This

fiscal note will address the fiscal impacts of the proposed rules in Chapter 305, and the fiscal impacts of the provisions in Chapters 55 and 331 will be addressed in separate, but related fiscal notes.

The proposed rules for Chapter 305 would apply only to applications for Class III injection well permits, permit amendments, or permit renewals authorizing in situ uranium mining, and new PAAs, or amended PAAs issued on or after September 1, 2013. The proposed rules require that new, amended, or renewed Class III permit injection well area permit applications have a range table of pre-mining low and high values for each groundwater quality parameter and that those values be established from an analysis of independent and representative groundwater samples. The proposed rules would also amend injection well standards to require that area permits specify a permit range table with high and low values for each aquifer restoration parameter. Currently, there are four small businesses that hold all of the seven permits that have been issued statewide, and the proposed rules do not impose new requirements on existing permittees to establish permit range tables for currently issued permits.

The proposed rules are not expected to significantly affect agency administrative requirements, and therefore, would not have a significant fiscal impact on the agency. Units of local government or other state agencies are not expected to experience any

fiscal impact as a result of the proposed rules since they do not typically conduct *in situ* uranium mining activities.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law, a more efficient authorization process for new *in situ* uranium mining production areas, and continued protection of groundwater in the state.

The proposed rules would not have a significant fiscal impact on individuals that do not engage in uranium mining activities. Individuals or businesses that do engage in uranium mining activities may experience minimal fiscal impacts as a result of the proposed rules. The requirements for permit range tables and restoration tables in the proposed rules would continue to provide for protection of the public and of groundwater quality.

Currently, there are seven existing permits for *in situ* uranium mining, and all of them have been issued to four small businesses. The fiscal impact of the proposed rules is expected to be minimal and will be discussed under the Small Business and Micro-Business Assessment section of this preamble.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Currently there are four small businesses with permits for Class III injection wells for *in situ* uranium mining. The requirement for a permit range table and a restoration table is not expected to significantly increase costs for small businesses, since under current rules, they are required to have baseline wells and report data that could be used to establish PAA baseline and restoration tables.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action implements legislative requirements in HB 1079, establishing requirements for injection well area permits for *in situ* recovery of uranium. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendments do not alter in a material way the existing requirements for injection wells used for *in situ* recovery of uranium. The proposed rulemaking action also amends procedural requirements for PAA regarding when such applications may be subject to the opportunity for a contested case hearing in Chapter 55 and amends requirements for injection well permits and PAAs in Chapter 331.

Furthermore, the proposed rulemaking action does not meet any of the four

applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission's UIC program is authorized by the United States Environmental Protection Agency and the proposed changes for injection well permit applications do not exceed a standard of federal law or requirement of a delegation agreement. There are no federal standards regarding permit range tables. The proposed rules are compatible with federal law.

The proposed rules do not exceed a requirement of state law. TWC, Chapter 27, the Injection Well Act, establishes requirements for the commission's UIC program. HB 1079 amended the Injection Well Act to require range tables depicting the range of pre-

mining groundwater quality to be included in the injection well permits used for *in situ* recovery of uranium. The purpose of the rulemaking is to implement requirements consistent with TWC, Chapter 27, as amended by HB 1079.

The proposed rules are compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The commission's UIC program is authorized by the United States Environmental Protection Agency, and the proposed rules are compatible with the state's delegation of the UIC program.

The proposed rules are adopted under specific laws. TWC, Chapter 27, establishes requirements for the commission's UIC program and TWC, §27.019, requires the commission to adopt rules reasonably required to implement the Injection Well Act, and TWC, §27.0513 authorizes the commission to adopt rules to establish requirements for PAAs.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed a preliminary

assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property.

The purpose of these proposed rules is to implement legislative requirements in HB 1079, establishing requirements for area permits and PAAs for *in situ* recovery of uranium. The proposed rule changes in Chapter 305 would substantially advance this purpose by amending the requirements for submitted applications for Class III injection well permits authorizing *in situ* uranium mining consistent with the requirements of HB 1079. Applications for such permits must include must contain a range table of pre-mining low and high values for each groundwater quality parameter used in the restoration tables of PAAs.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules for injection well permits applications do not affect real property. The proposed rules apply only to those who apply for a permit for injection

wells authorizing *in situ* recovery of uranium. Additional requirements for permit applications apply in the absence of these proposed rules, including the statutory requirements of HB 1079 which became effective on September 1, 2013. Therefore, the proposed rules do not affect real property in a manner that is different than would have been affected without these revisions.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 17, 2014, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written

comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-058-331-WS. The comment period closes June 30, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact David Murry, Underground Injection Control Section, (512) 239-6080.

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

§305.49

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The amendments are also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendment implements House Bill 1079, 83rd Legislature, 2013, and TWC, §27.0513.

§305.49. Additional Contents of Application for an Injection Well Permit.

- (a) The following must be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title, the information listed in §331.122 of this title (relating to Class III Wells);

(3) the manner in which compliance with the financial assurance requirements in Chapter 37 of this title (relating to Financial Assurance) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Closure Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;

(6) the manner in which compliance with the post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) for Class I wells, a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(9) a complete delineation by a licensed professional geoscientist or a licensed professional engineer of any aquifer or portion of an aquifer for which exempt status is sought; [and]

(10) an application for a new, amended, or renewed Class III injection well area permit for an *in situ* uranium mine must contain a range table of pre-mining low and high values for each groundwater quality parameter listed in §331.104(b) of this title (relating to Establishment of Baseline and control Parameters for Excursion Detection). These values shall be established from analysis of independent and representative groundwater samples, collected prior to mining, from:

(A) all baseline wells required under §331.104(c) of this title that are within the area of review associated with the existing or proposed permit boundary, as specified at §331.42(a)(4) of this title (relating to Area of Review); and

(B) all available wells within the existing or proposed permit boundary, provided the well is completed within the production zone identified in the existing or proposed permit; and

(11) [(10)] any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

(1) mine plan;

(2) a restoration table;

(3) a baseline water quality table;

(4) control parameter upper limits;

(5) monitor well locations;

(6) cost estimate for aquifer restoration and well plugging and abandonment; and

(7) other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(a)(4)(B) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order).

**SUBCHAPTER H: ADDITIONAL CONDITIONS FOR
INJECTION WELL PERMITS**

§305.154

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendment implements House Bill 1079, 83rd Legislature, 2013, and TWC, §27.0513.

§305.154. Standards.

(a) In addition to other standard permit conditions listed elsewhere in this chapter, the following conditions and other applicable standards listed in Chapter 331 of

this title (relating to Underground Injection Control) shall be incorporated into each permit expressly or by reference to this chapter. The commission may impose stricter standards where appropriate.

(1) Construction requirements. Section 331.62 and §331.82 of this title (relating to Construction Standards; and Construction Requirements).

(2) Compliance schedule. See §305.127(3)(E) of this title (relating to Conditions to be Determined for Individual Permits [Schedule of Compliance]).

(3) Construction plans. Changes in construction plans shall be approved under §331.45 of this title (relating to Executive Director Approval of Construction and Completion), or, by minor modification according to §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee).

(4) Commencing operations. Commencement of injection operations before approval by the executive director of construction and completion is a violation of the permit and may be considered grounds for revocation or suspension of the permit, and for enforcement action. Except for new wells authorized by an area permit under

subsection (b) of this section [(relating to Standards)], a new injection well may not commence injection until construction is complete, and:

(A) the permittee has submitted notice of completion of construction to the Director; and

(B) the executive director has inspected or otherwise reviewed the new injection well and finds it complies with the conditions of the permit; or

(C) the permittee has not received notice from the executive director of intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in subparagraph (A) of this paragraph, in which case prior inspection or review is waived and the permittee may commence injection. The executive director shall include in the notice a reasonable time period in which he shall inspect the well.

(D) for Class I wells, submission of the completion report required by §331.65(a)(1) of this title (relating to Reporting [Monitoring] Requirements) shall constitute the notice required in subparagraph (A) of this paragraph.

(5) Operating requirements. Section 331.63 of this title (relating to Operating Requirements) and §331.83 of this title (relating to Operating Requirements).

(6) Monitoring and reporting. All permits shall specify requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring. Reporting shall be no less frequent than specified in the appropriate sections of Chapter 331 of this title [(relating to Underground Injection Control)]. Section 331.64 of this title (relating to Monitoring and Testing Requirements) and §331.65 of this title [(relating to Monitoring Requirements; Reporting Requirements)]; §331.84 and §331.85 of this title (relating to Monitoring Requirements; and Reporting Requirements); or Chapter 331, Subchapter F of this title (relating to Standards for Class III Well Production Area Development).

(7) Closure. The permittee shall notify the executive director and obtain approval before plugging an injection well. After failing to operate for a period of two years, the owner or operator shall close the well in accordance with an approved plan unless:

(A) notice is provided to the executive director; and

(B) actions and procedures are described, satisfactory to the executive director, that the owner or operator will take to ensure that the well will not endanger underground sources of drinking water during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable, unless waived by the executive director.

(8) Corrective action requirements. Section 331.44 of this title (relating to Corrective Action Standards) and §305.152 of this title (relating to Corrective Action).

(9) Financial assurance requirements. The permittee is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon in accordance with Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells). The permittee shall show evidence of such financial responsibility to the executive director.

(10) Post-closure requirements. Section 331.68 of this title (relating to Post-Closure Care [Standards]).

(11) Liability coverage requirements. The permittee of hazardous waste injection wells shall maintain sufficient liability coverage for bodily injury and property

damage to third parties that is caused by sudden and non-sudden accidents in accordance with Chapter 37, Subchapter Q of this title.

(b) Area permits shall specify:

(1) The area within which underground injections are authorized, [, and]

(2) The requirements for construction, monitoring, reporting, operation, and abandonment for all wells authorized by the permit.

(3) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(A) The permittee notifies the executive director at such time as the permit requires;

(B) The additional well satisfies the criteria in §331.7(b) of this title (relating to Permit Required) and meets the requirements specified in the permit under paragraphs (1) and (2) of this subsection; and

(C) The cumulative effects of drilling and operation of additional injection wells are considered by the executive director during evaluation of the area permit application and are acceptable to the executive director.

(4) If the executive director determines that any well constructed pursuant to paragraph (3) of this subsection does not satisfy any of the requirements of this subsection, the executive director may amend, terminate, or take enforcement action. If the executive director determines that cumulative effects are unacceptable, the permit may be amended under §305.62 of this title (relating to Amendments [Amendment]).

(5) Permit range table. The high and low values for each aquifer restoration parameter are identified in §331.104(b) of this title (relating to Establishment of Baseline and Control Parameters for Excursion Detection). All values shall be determined in accordance with the requirements of §305.49(a)(10) of this title (relating to Additional Contents of Application for an Injection Well Permit).

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes to amend §§331.82, 331.107, 331.108 and 331.122; and proposes new §331.110.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed changes to this chapter are necessary to implement passage of House Bill (HB) 1079, 83rd Legislature, 2013. HB 1079 amended Texas Water Code (TWC), §27.0513, to establish a requirement for new, amended, or renewed Class III Underground Injection Control (UIC) permits, to include a table of high and low values for each groundwater quality parameter that is used to determine aquifer restoration, herein referred to as the permit range table, to modify the conditions that determine when certain types of production area authorization (PAA) applications are subject to an opportunity for a contested case hearing and, to require that restoration table values of a new or amended PAA must fall within the range table that is established in the corresponding permit.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend 30 TAC Chapter 55, Requests for Reconsideration and Contested Case hearing; Public comments, and 30 TAC Chapter 305, Consolidated Permits.

For the convenience of this proposed rulemaking, §331.108 is retained, with revision to

the section title, to include proposed rules to address amendments to TWC, §27.0513 under HB 1079.

Section by Section Discussion

§331.82, Construction Requirements

The commission proposes to amend existing §331.82(e) to add paragraph (7), under which the pre-mining groundwater quality must be determined in accordance with the requirements of §305.49(a)(10). Proposed paragraph (7) implements TWC, §27.0513(a), as amended by HB 1079, which requires new, amended or renewed Class III injection well permits for mining of uranium to include a table of pre-mining low and high values that represent a range of groundwater quality within the permit boundary and area of review. Under existing §331.82(e), the injection zone characteristics (fluid pressure, temperature, fracture pressure, other physical and chemical characteristics of the injection zone, physical and chemical characteristics of the formation fluids, and compatibility of injected fluids with formation fluids) must be determined as part of the well construction process. This determination applies to all types of UIC wells. Proposed paragraph (7), which pertains to the chemical characteristics of the groundwater in the injection zone, will apply to Class III wells only.

§331.107, Restoration

The commission proposes to amend existing §331.107(a)(1) to add the requirement that

the values for the parameters listed in the restoration table in a PAA must be within the respective ranges in the permit range table. The proposed amendment to §331.107(a)(1) implements TWC, §27.0513(c) as amended by HB 1079. Under TWC, §27.0513(c) a restoration table value in a new or amended PAA cannot exceed the respective high value in the permit range table. In the case where a restoration table value would exceed the respective high value in the permit range table, the permit range table must be revised through a major amendment to increase the permit range table value (or values) such that the respective values in the PAA restoration table do not exceed the respective values in the permit range table. Applications for major amendments of a Class III injection well permit are subject to opportunity for a contested case hearing.

The commission proposes to amend existing §331.107(g) to address the requirement in TWC, §27.0513(c), as amended by HB 1079, that a value in an amended PAA restoration table cannot exceed the maximum respective value in the associated permit range table. The commission further proposes to amend this subsection to specify that if any proposed PAA restoration table value is not within the respective range in the permit range table, the permittee must submit an application for major amendment of the permit to revise the permit range table such that the proposed PAA restoration table value is within the respective range in the permit range table.

The commission proposes to amend existing §331.107(g)(1), (2), and (4) to specify that

the commission may amend a permit range table, as well as a PAA restoration table. Currently, paragraphs (1), (2), and (4) apply to amendment of a PAA restoration table value. Under TWC §27.0513(c), as amended by HB 1079, revision of a PAA restoration table value requires amendment to the associated permit range table if the proposed amended restoration table value is not within the respective range in the associated permit range table. Therefore, the factors considered by the commission and the required findings of the commission in reviewing an application for amendment of a PAA restoration range table under §331.107(g)(1), (2), and (4) should also apply to an application for a permit amendment to revise a permit range table.

§331.108, Independent Third-Party Experts

The commission proposes to amend existing §331.108 to remove the existing language in subsections (a) - (h), regarding the requirements for independent third-party experts and for the use of recommendations of such an expert. Additionally, the commission proposes to amend the title of this section to "Opportunity for a Contested Case Hearing on a Production Area Authorization Application." HB 1079 amended TWC, §27.0513 to remove the option for using the recommendations of an independent third-party expert regarding monitor well requirements. Under the previous language in TWC, §27.0513(d)(2) an application for a PAA that initial establishment of monitor wells associated with a PAA was subject to opportunity for a contested case hearing unless the executive director used the recommendations of such an expert regarding establishment

of monitor wells. Section 331.108 originally was adopted to address the use of an independent third-party expert, and the qualifications of such an expert. Deletion of the previous language at TWC, §27.0513(d)(2), by HB 1079, removed the necessity for the existing language in §331.108 regarding independent third-party experts.

HB 1079 amended TWC, §27.0513 to establish the conditions for determining when a PAA application is an uncontested matter, not subject to the opportunity for a contested case hearing. To address this change to the TWC, the commission proposes to further amend existing §331.108 to specify the required conditions for a PAA application to be an uncontested matter as further described.

The commission proposes to amend existing §331.108(a) to remove the current language regarding use of an independent third-party expert, and to add the conditions at TWC §27.0513(d)(1) - (3), as amended by HB 1079. Under the proposed revisions to §331.108(a)(1) - (4), an application for a new PAA is an uncontested matter if the permit under which the authorization will be issued includes a permit range table established in accordance with the requirements of §305.49(a)(10); the PAA application includes a restoration table with restoration parameter values that do not exceed the high values for the respective parameters in the permit range table; the application is for a PAA within the boundary of the permit under which the proposed PAA will be issued; and the PAA application meets the requirements at §331.104(a) - (d) regarding baseline wells.

Proposed §331.108(a)(1) implements TWC, §27.0513(d)(1), as amended by HB 1079.

Proposed §331.108(a)(2) implements TWC, §27.0513(d)(2), as amended by HB 1079.

Proposed §331.108(a)(3) implements TWC, §27.0513(d)(3), as amended by HB 1079.

Proposed §331.108(a)(4) implements TWC, §27.0513(g), as amended by HB 1079.

The commission proposes to amend existing §331.108(b) to remove the requirements that apply for a person to be designated as an independent third-party expert. HB 1079 amended TWC, §27.0513 to eliminate the use of such experts. Section 331.108(b) is further revised to establish the conditions for when an application to amend a PAA restoration table is an uncontested matter, not subject to an opportunity for a contested case hearing. If the application proposes to amend a restoration table value and the values in the amended restoration table do not exceed the respective values in the associated permit range table, the application is not subject to an opportunity for a contested case hearing. Proposed §331.108(b) implements TWC, §27.0513(d)(2), as amended by HB 1079.

The commission proposes to amend existing §331.108(c) to remove the requirement that the executive director will not designate an independent third-party expert unless requested to do so by the applicant. Revision to TWC, §27.0513(d) under HB 1079 removed the option of using such an expert. The commission further proposes to amend §331.108(c) to establish the conditions when an application for amendment of a

PAA restoration table is subject to opportunity for a contested case hearing. If the application proposes amendment to increase a restoration table value and the PAA is issued under a Class III UIC permit that does not include a permit range table, the application is subject to the opportunity for a contested case hearing. Proposed §331.108(c) implements TWC, §27.0513(d), as amended by HB 1079, establishing the only PAA application situation that can be subject to an opportunity for contested case hearing. The condition at proposed §331.108(c) can only apply to any of the currently-issued PAAs if the permittee does not amend the Class III injection well permit to include a range table. Because all new Class III injection well permits must have a range table, because all new PAAs must have restoration table values that fall within the values of the permit range table, and all existing Class III injection well permits have at least one PAA issued under the permit, proposed §331.108(c) describes the only situation where a PAA application can be subject to an opportunity for a contested case hearing under TWC, §27.0513(d), as amended by HB 1079. An application for a PAA that is not subject to an opportunity for contested case hearing is still subject to applicable public notice requirements and opportunity for the public to submit comments on the application.

§331.110, General Requirements for Production Area Authorization

The commission proposes new §331.110 to address the requirements in TWC, §27.0513(g), as amended by HB 1079. Under this proposed rule, a PAA may not

authorize: the use of groundwater from a well for purposes of providing supplemental water production; expansion of a permit boundary or a production area outside of a permit boundary; or a reduction in the number of monitor wells or an increase in the distance between wells as required under §331.103. The conditions addressed in TWC, §27.0513(g) do not alter the commission's existing practice regarding PAAs. PAAs do not confer any authority to the permittee regarding the uses of groundwater for supplemental groundwater; PAAs do not expand the area authorized under an area permit; and PAAs must comply with the number and spacing requirements for monitor wells established in commission rules.

§331.122, Class III Wells

The commission proposes to amend existing §331.122 to add §331.122(2)(O) to the list of information the commission shall consider before issuing a Class III injection well or area permit. This revision is necessary to address the requirement that a Class III area permit include the permit range table. Proposed §331.122(2)(O) implements TWC, §27.0513(a), as amended by HB 1079.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst in the Chief Financial Officer Division, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement

of the proposed rules. Other units of state or local government are not expected to experience fiscal impacts under the proposed rules since they do not typically participate in uranium mining activities.

The proposed rules for Chapter 331 are part of a rulemaking that would implement the provisions of HB 1079, 83rd Legislature. HB 1079 amended the TWC regarding permits for Class III injection wells used for *in situ* uranium mining and applications for PAAs submitted on or after September 1, 2013. HB 1079 changed the conditions under which a PAA would not be subject to an opportunity for a contested case hearing. The agency is also proposing rules to amend Chapters 55 and 305 to complete the implementation of HB 1079. This fiscal note will address the fiscal impacts of the proposed rules in Chapter 331, and the fiscal impacts of the provisions in Chapters 55 and 305 will be addressed in separate, but related fiscal notes.

The proposed rules for Chapter 331 would apply only to applications for Class III injection well permits, permit amendments, or permit renewals authorizing *in situ* uranium mining, and new PAAs, or amended PAAs issued on or after September 1, 2013. New permit applications would be required to have a permit range table, and associated new applications for PAAs could not be authorized if a restoration table value exceeded the respective high value in the permit range table.

Any current permittee's application for a new PAA under the associated permit would not be subject to an opportunity for a contested case hearing. Currently, there are four small businesses that hold all seven permits that have been issued in the state, and each permit has at least one PAA for the corresponding permit.

The proposed rules do not impose new requirements on existing permittees to establish permit range tables for currently issued permits. However, if permittees choose to amend their permit to establish a permit range table, then any subsequent petition for relief from a restoration table value that exceeded the respective high value in the permit range table would require a major amendment of the permit to revise the range table and be subject to an opportunity for a contested case hearing. A current permittee, whose permit does not include a range table, would be required to submit an application for a major amendment for a PAA (and be subject to an opportunity for a contested case hearing) under the proposed rules if they seek to exceed the high value in a restoration table for that PAA.

As required by HB 1079, the proposed rules also specify that there is not an opportunity for a contested case hearings in the following circumstances: where applications for new PAAs have a production area within the boundary of the permit that includes a permit range table meeting the applicable range table requirements; where a restoration table is included with an application where the parameter values do not exceed the maximum

values in the permit range table; and where the application meets requirements regarding baseline wells. New PAA application requests would also not be subject to an opportunity for a contested case hearing if the new area is within the boundary allowed by the permit and where an existing PAA has already been authorized.

The proposed rules also establish general requirements for PAAs which specify that: a PAA could not authorize the use of groundwater from a well to provide supplemental production water; a PAA could not expand a permit boundary or authorize a production area outside of the permit boundary; and a PAA could not authorize a reduction in the number of monitoring wells or increase the distance between monitoring wells. The proposed rules also comply with the requirements of HB 1079 by removing provisions for the executive director to use a third party expert for recommendations concerning PAAs.

The proposed rules would not have an impact on agency revenue, but they could reduce agency expenditures associated with contested case hearings. However, any cost reductions for the agency are expected to be minimal since there have been only two contested case hearings for new PAAs in the last ten years.

The proposed rules are not expected to have a fiscal impact on units of local government or other state agencies since they do not typically conduct *in situ* uranium mining

activities.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law, a more efficient authorization process for new *in situ* uranium mining production areas, and continued protection of groundwater in the state.

The proposed rules would not have a significant fiscal impact on individuals that do not engage in uranium mining activities. The proposed rules are expected to result in fewer contested case hearings for certain PAA authorizations, but since there have only been two contested case hearings for new PAAs in the past ten years, no significant fiscal impacts are expected to individuals or business as a result of the proposed rules.

Currently, there are seven existing permits for *in situ* uranium mining, and all of them have been issued to four small businesses. The fiscal impact of the proposed rules is expected to be minimal and will be discussed under the Small Business and Micro-Business Assessment section of this fiscal note.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Currently there are four small businesses with permits for Class III injection wells for *in situ* uranium mining. The requirement for a permit range table is not expected to increase costs for small businesses, since under current rules, they are required to have baseline wells and report data that could be used to establish PAA baseline tables and restoration tables. The provisions of the proposed rules that limit the opportunity for contested case hearings for new PAAs are not expected to generate significant cost savings since there have only been two contested case hearings on new PAA applications in the past ten years. The proposed rules could have a benefit to businesses in terms of making the authorization process more efficient for new PAAs, but any fiscal impacts would vary among permittees and depend on the characteristics of each business and the environment in which they operate.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action implements legislative requirements in HB 1079, establishing requirements for area permits and PAAs for *in situ* recovery of uranium. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendments do not alter in a material way the existing

requirements for injection wells used for *in situ* recovery of uranium. The proposed rulemaking action also amends procedural requirements for PAA regarding when such applications may be subject to the opportunity for a contested case hearing in Chapter 55 and amends requirements for injection well permit applications by requiring a permit range table in Chapter 305.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission's UIC program is authorized by the United States Environmental Protection Agency and the proposed changes for injection well permits and PAAs, do not

exceed a standard of federal law or requirement of a delegation agreement. There are no federal standards for PAAs. The proposed rules are compatible with federal law.

The proposed rules do not exceed a requirement of state law. TWC, Chapter 27, the Injection Well Act, establishes requirements for the commission's UIC program. HB 1079 amended the Injection Well Act to require permit range tables depicting the range of pre-mining groundwater quality to be included in the injection well permits used for *in situ* recovery of uranium. HB 1079 also amended the Injection Well Act to require that a PAA's restoration table reflect groundwater restoration values that are within the range of values provided in the corresponding permit's range table. The purpose of the rulemaking is to implement requirements consistent with TWC, Chapter 27, as amended by HB 1079.

The proposed rules are compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The commission's UIC program is authorized by the United States Environmental Protection Agency, and the proposed rules are compatible with the state's delegation of the UIC program.

The proposed rules are adopted under specific laws. TWC, Chapter 27, establishes requirements for the commission's UIC program and TWC, §27.019, requires the commission to adopt rules reasonably required to implement the Injection Well Act, and

TWC, §27.0513 authorizes the commission to adopt rules to establish requirements for PAAs.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property.

The purpose of these proposed rules is to implement legislative requirements in HB 1079, establishing requirements for area permits and PAAs for *in situ* recovery of uranium. The proposed rule changes in Chapter 331 would substantially advance this purpose by amending the requirements applicable to *in situ* uranium mining consistent with the requirements of HB 1079.

Promulgation and enforcement of these proposed rules would be neither a statutory nor

a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules for injection well permits and PAAs do not affect real property. The proposed rules apply only to those who use or apply for permit or authorization of injection wells for *in situ* recovery of uranium. Significant requirements for wells used for *in situ* recovery of uranium apply in the absence of these proposed rules, including the statutory requirements of HB 1079 which became effective on September 1, 2013. Therefore, the proposed rules do not affect real property in a manner that is different than would have been affected without these revisions.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this

preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 17, 2014, at 2:00 p.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference

Rule Project Number 2013-058-331-WS. The comment period closes June 30, 2014.

Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact David Murry, Underground Injection Control Section, (512) 239-6080.

SUBCHAPTER E: STANDARDS FOR CLASS III WELLS

§331.82

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendment implements HB 1079 83rd Legislature, 2013, and TWC, §27.0513.

§331.82. Construction Requirements.

(a) Casing and cementing. All new Class III wells, baseline wells, and monitor wells associated with the mining operations shall be cased, cemented from the bottom of the casing to the surface, and capped to prevent the migration of fluids which may cause the pollution of underground sources of drinking water (USDWs) and maintained in

that condition throughout the life of the well. In addition, existing wells in areas where there is the potential for contamination and other harmful or foreign matter to enter groundwater through an open well, shall also be cemented to the surface and capped. The casing and cement used in the construction of each well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

- (1) depth to the injection zone;
- (2) injection pressure, external pressure, internal pressure, axial loading, etc.;
- (3) hole size;
- (4) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);
- (5) corrosiveness of injected fluids and formation fluids;
- (6) lithology of injection and confining zones; and
- (7) type and grade of cement.

(b) Alterations to construction plans. Any proposed changes or alterations to construction plans after permit issuance shall be submitted to the executive director and written approval obtained before incorporating such changes.

(c) Logs and tests. Appropriate logs and other tests shall be conducted during the drilling and construction of all new Class III wells and after an existing well has been repaired. A descriptive report interpreting the results of those logs and tests shall be prepared by a knowledgeable log analyst and submitted to the executive director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction, and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses.

(1) During the drilling and construction of Class III wells, appropriate deviation checks shall be conducted on holes, where pilot holes and reaming are used, at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(2) Mechanical integrity, as described in §331.43 of this title (relating to Mechanical Integrity Standards), shall be demonstrated both following construction of the well, and prior to production or injection. For Class III uranium solution mining

wells, a pressure test shall also be conducted each time a tool that could affect mechanical integrity is placed into the well.

(A) Except as provided by subparagraph (B) of this paragraph, the following tests shall be used to evaluate the mechanical integrity of the injection well:

(i) to test for significant leaks under §331.43(a)(1) of this title, monitoring of annulus pressure, or pressure test with liquid or gas, or radioactive tracer survey. For Class III uranium solution mining wells only, a single point resistivity survey in conjunction with a pressure test can be used to detect any leaks in the casing, tubing, or packer; and

(ii) to test for significant fluid movement under §331.43(a)(2) of this title, temperature log, noise log, radioactive tracer survey, cement bond log, oxygen activation log. For Class III uranium solution mining wells only, cement records that demonstrate the absence of significant fluid movement can be used where other tests are not suitable. For Class III wells where the cement records are used to demonstrate the absence of significant fluid movement, the monitoring program prescribed by §331.84 of this title (relating to Monitoring Requirements) shall be designed to verify the absence of significant fluid movement.

(B) The executive director may allow the use of a test to demonstrate mechanical integrity other than those listed in subparagraph (A) of this paragraph with the written approval of the administrator of the United States Environmental Protection Agency (EPA) or his authorized representative. To obtain approval, the executive director shall submit a written request to the EPA administrator, which shall set forth the proposed test and all technical data supporting its use. The EPA administrator shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. Any alternate method approved by the EPA administrator shall be published in the *Federal Register* and may be used unless its use is restricted at the time of approval by the EPA administrator.

(3) Additional logs and tests may be required by the executive director when appropriate.

(d) Construction and testing supervision. All phases of well construction and testing shall be supervised by a person who is knowledgeable and experienced in practical drilling engineering and who is familiar with the special conditions and requirements of injection well construction.

(e) Injection zone characteristics - water bearing formation. Where the injection zone is a water bearing formation, the following information concerning the injection zone shall be determined or calculated:

(1) fluid pressure;

(2) temperature;

(3) fracture pressure;

(4) other physical and chemical characteristics of the injection zone;

(5) physical and chemical characteristics of the formation fluids; [and]

(6) compatibility of injected fluids with formation fluids; and [.]

(7) pre-mining groundwater quality, established in a range table as required under §305.49(a)(10) of this title (relating to Additional Contents of Application for an Injection Well Permit), for a Class III injection well permit authorizing *in situ* mining of uranium.

(f) Injection zone characteristics - non-water bearing formations. Where the injection formation is not a water bearing formation, the fracture pressure shall be determined or calculated.

(g) Monitor well location. Where injection is into a formation which contains water with less than 10,000 milligrams per liter of total dissolved solids [mg/L TDS], monitoring wells shall be completed into the injection zone and into any USDW above the injection zone which could be affected by the mining operation. These wells shall be located to detect any excursion of injection fluids, production fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse, the monitoring wells shall be located so that they will not be physically affected. Designated monitoring wells shall be installed at least 100 feet inside any permit area boundary, unless excepted by written authorization from the executive director.

(h) Subsidence or catastrophic collapse. Where the injection wells penetrate a USDW in an area subject to subsidence or catastrophic collapse an adequate number of monitor wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitor wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

(i) Monitor well criteria. In determining the number, location, construction, and frequency of monitoring of the monitor wells the following criteria shall be considered:

(1) the population relying on the USDW affected or potentially affected by the injection operation;

(2) the proximity of the injection operation to points of withdrawal of drinking water;

(3) the local geology and hydrology;

(4) the operating pressures and whether a negative pressure gradient is being maintained;

(5) the chemistry and volume of the injected fluid, the formation water, and the process by-products; and

(6) the injection well density.

§331.107. Restoration.

(a) Aquifer restoration. Groundwater in the production zone within the production area must be restored when mining is complete. Each Class III permit or production area authorization shall contain a description of the method for determining that groundwater has been restored in the production zone within the production area. Restoration must be achieved for all values in the restoration table of all parameters in the suite established in accordance with the requirements of §331.104(b) of this title (relating to Establishment of Baseline and Control Parameters for Excursion Detection).

(1) Restoration table. Each permit or production area authorization shall contain a restoration table for all parameters in the suite established in accordance with the requirements of §331.104(b) of this title. The restoration value for each parameter listed in the restoration table cannot exceed the maximum value for the respective parameter in the permit range table required under §331.82(d)(7) of this title (relating to Construction Requirements). A restoration table value for a parameter shall be established by:

(A) The mean concentration or value for that parameter based on all measurements from groundwater samples collected from baseline wells prior to mining activities; or

(B) A statistical analysis of baseline well information proposed by the owner or operator and approved by the executive director that demonstrates that the restoration table value is representative of baseline quality.

(2) Achievement of restoration. Achievement of restoration shall be determined using one of the following methods:

(A) When all sample measurements from groundwater samples from all baseline wells for a restoration parameter are equal to or below (or, in the case of pH, within an established range) the restoration table value for that parameter, then restoration for that parameter will be assumed to have occurred. Complete restoration will be assumed to have occurred when measurements from all samples from all baseline wells for all restoration parameters are equal to or below (or, in the case of pH, within an established range) each respective restoration table value; or

(B) A statistical analysis of information from groundwater samples from baseline wells proposed by the owner or operator and approved by the executive director that demonstrates that the groundwater quality is representative of the restoration table values.

(b) Mining completion. When the mining of a permit or production area is completed, the permittee shall notify the appropriate commission regional office and the executive director and shall proceed to reestablish groundwater quality in the affected permit or production area aquifers in accordance with the requirements of subsection (a) of this section. Restoration efforts shall begin as soon as practicable but no later than 30 days after mining is completed in a particular production area. The executive director, subject to commission approval, may grant a variance from the 30-day period for good cause shown.

(c) Timetable. Aquifer restoration, for each permit or production area, shall be accomplished in accordance with the timetable specified in the currently approved mine plan, unless otherwise authorized by the commission. Authorization for expansion of mining into new production areas may be contingent upon achieving restoration progress in previously mined production areas within the schedule set forth in the mine plan. The commission may amend the permit to allow an extension of the time to complete restoration after considering the following factors:

(1) efforts made to achieve restoration by the original date in the mine plan;

(2) technology available to restore groundwater for particular parameters;

(3) the ability of existing technology to restore groundwater to baseline quality in the area;

(4) the cost of achieving restoration by a particular method;

(5) the amount of water which would be used or has been used to achieve restoration;

(6) the need to make use of the affected aquifer; and

(7) complaints from persons affected by the permitted activity.

(d) Reports. Beginning six months after the date of initiation of restoration of a permit or production area, as defined in the mine plan, the operator shall provide to the executive director semi-annual restoration progress reports until restoration is accomplished for the production area. This report shall contain the following information:

- (1) all analytical data generated during the previous six months;
 - (2) graphs of analysis for each restoration parameter for each baseline well;
 - (3) the volume of fluids injected and produced;
 - (4) the volume of fluids disposed;
 - (5) water level measurements for all baseline and monitor wells, and for any other wells being monitored;
 - (6) a potentiometric map for the area of the production area authorization, based on the most recent water level measurements; and
 - (7) a summary of the progress achieved towards aquifer restoration.
- (e) Restoration table values achieved. When the permittee determines that constituents in the aquifer have been restored to the values in the Restoration Table, the restoration shall be demonstrated by stability sampling in accordance with subsection (f) of this section.

(f) Stability sampling. The permittee shall obtain stability samples and complete an analysis for certain parameters listed in the restoration table from all production area baseline wells. Stability samples shall be conducted at a minimum of 30-day intervals for a minimum of three sample sets and reported to the executive director. The permittee shall notify the executive director at least two weeks in advance of sample dates to provide the opportunity for splitting samples and for selecting additional wells for sampling, if desired. To insure water quality has stabilized, a period of one calendar year must elapse between cessation of restoration operations and the final set of stability samples. Upon acknowledgment in writing by the executive director confirming achievement of final restoration, the permittee shall accomplish closure of the area in accordance with §331.86 of this title (relating to Closure).

(g) Amendment of restoration table or range table values. After an appropriate effort has been made to achieve restoration in accordance with the requirements of subsection (a) of this section, the permittee may cease restoration operations, reduce bleed and request that the restoration table be amended. An amended restoration table value for each parameter listed in the restoration table cannot exceed the maximum value for the respective parameter in the permit range table required under §331.82(d)(7) of this title. With the request for amendment of the restoration table

values, the permittee shall submit the results of three consecutive sample sets taken at a minimum of 30-day intervals from all production area baseline wells used in determining the restoration table to verify current water quality. Stabilization sampling may commence 60 days after cessation of restoration operations. The permittee shall notify the executive director of his or her intent to cease restoration operations and reduce the bleed 30 days prior to implementing these steps. The permittee shall submit an application for an amendment to the restoration table within 120 days of receipt of authorization from the executive director to cease restoration operations and reduce the bleed. If any restoration table value for any parameter listed in the restoration table will exceed the maximum value for the respective parameter in the permit range table, the permittee must submit an application for a major amendment of the permit range table.

(1) In determining whether the restoration table or range table should be amended, the commission will consider the following items addressed in the request:

(A) uses for which the groundwater in the production area was suitable at baseline water quality levels;

(B) actual existing use of groundwater in the production area prior to and during mining;

(C) potential future use of groundwater of baseline quality and of proposed restoration quality;

(D) the effort made by the permittee to restore the groundwater to baseline;

(E) technology available to restore groundwater for particular parameters;

(F) the ability of existing technology to restore groundwater to baseline quality in the area under consideration;

(G) the cost of further restoration efforts;

(H) the consumption of groundwater resources during further restoration; and

(I) the harmful effects of levels of particular parameter.

(2) The commission may amend the restoration table or range table if it finds that:

(A) reasonable restoration efforts have been undertaken, giving consideration to the factors listed in paragraph (1) of this subsection;

(B) the values for the parameters describing water quality have stabilized for a period of one year;

(C) the formation water present in the exempted portion of the aquifer would be suitable for any use to which it was reasonably suited prior to mining;
and

(D) further restoration efforts would consume energy, water, or other natural resources of the state without providing a corresponding benefit to the state.

(3) If the restoration table is amended, restoration sampling shall commence and proceed as described in subsection (f) of this section, except the stability period shall be for a period of two years unless the owner or operator can demonstrate through modeling or other means that a period of less than two years is appropriate for a demonstration of stability.

(4) If the request for an amendment of the restoration table or range table values is not granted, the permittee shall restart restoration efforts.

§331.108. Opportunity for a Contested Case Hearing on a Production Area Authorization Application [Independent Third-Party Experts].

(a) An application for a new production area authorization is not subject to opportunity for a contested case hearing if: [If requested by an applicant for a production area authorization submitted after September 1, 2007, the executive director may use the recommendations from an independent third-party expert regarding the initial establishment of requirements pertaining to monitoring wells for any area covered by the application, provided:]

(1) the authorization is for a production area within the boundary of the permit under which the authorization will be issued and the permit includes a range table with values established in accordance with the requirements in §305.49(a)(10) of this title (relating to Additional Contents of Application of an Injection Well Permit);
[the expert meets the qualifications in subsection (b) of this section;]

(2) the application includes a restoration table, with restoration parameter values, that do not exceed the high values for the respective parameters in the permit range table; and [the applicant for the production area authorization pays the cost of the work of the expert;]

(3) the application is for a production area within the boundary of the permit under which the proposed authorization will be issued, and the application meets the requirements at §§331.104(a) - (d) of this title (relating to Establishment of Baseline and Control Parameters for Excursion Detection) regarding baseline wells; or [the applicant for the production area authorization is not involved in the selection of the expert or the direction of the work by the expert;]

(4) the application requests authorization for a new, and subsequent, production area within the permit boundary of a permit after the first production area authorization has been issued for a production area within the permit boundary. [the recommendations of the independent third-party expert, in the opinion of the executive director, meet all applicable statutory and regulatory requirements for monitoring wells authorized under a production area authorization; and]

[(5) the recommendations of the independent third-party expert, in the opinion of the executive director, are necessary for the protection of underground sources of drinking water or fresh water.]

(b) An application to amend a restoration table, included in an issued production area authorization, is not subject to opportunity for a contested case hearing if the restoration parameter values in the proposed amended restoration table do not exceed the respective values in the permit range table included in the permit under which the production area authorization was issued. [In order to be considered for designation as an independent third-party expert, a person must be either a licensed professional engineer currently authorized to practice engineering in the State of Texas (unless exempted under the Texas Occupations Code, Chapter 1001, Subchapter B), or a licensed professional geoscientist currently authorized to practice geoscience in the State of Texas (unless exempted under Texas Occupations Code, §1002.252). In determining whether to designate a person as an independent third-party expert, the executive director also will consider the following:]

[(1) the person's work experience in geology and hydrogeology, in particular the person's experience in the area of the proposed in situ mining operation;]

[(2) the person's work experience related to in situ mining of uranium;]

[(3) the person's current and previous work experience with the applicant;]

[(4) the person's current and previous work experience with persons or entities that are in opposition to in situ uranium mining; and]

[(5) any other factors that may be relevant to determine the person's objectivity regarding their function as an independent third-party expert.]

(c) An application to amend a restoration table, to increase any restoration table value included in an issued production area authorization, is subject to opportunity for a contested case hearing if the permit under which the production area authorization was issued does not include a permit range table, established in accordance with the requirements of §305.49(a)(10) of this title. [The executive director will not designate an independent third party expert for the purposes of subsection (a) of this section unless requested to do so in writing by the applicant.]

[(d) If the executive director determines that the recommendations from the designated independent third-party expert meet the requirements for the initial establishment of monitor wells in accordance with §331.103 of this title (relating to

Production Area Monitor Wells), those recommendations will be incorporated into the production area authorization, and, in accordance with §55.201(i)(11)(B) of this title (relating to Requests for Reconsideration or Contested Case Hearing), in regards to the initial establishment of monitoring wells for the area covered by the requested authorization, no opportunity for a contested case hearing will exist.]

[(e) If the executive director determines that the recommendations from the designated independent third-party expert do not meet the requirements for the initial establishment of monitor wells in accordance §331.103 of this title, either in whole or in part, the application for a production area authorization will be subject to opportunity for contested case hearing, regardless of subsequent changes to the application.]

[(f) Any person may request to be considered an independent third-party expert under this section by submitting information to the executive director to demonstrate qualifications under this section.]

[(g) The use of an independent third-party expert qualified and approved under this section does not constitute the applicant's selection of the expert under subsection (a)(3) of this section.]

[(h) A person providing an independent third-party recommendation under this section shall not be an employee of the commission.]

§331.110. General Requirements for Production Area Authorization.

(a) A production area authorization may not authorize the use of groundwater from a well for purposes of providing supplemental production water.

(b) A production area authorization may not expand a permit boundary or authorize a production area outside of a permit boundary.

(c) A production area authorization may not authorize a reduction in the number of monitor wells or increase the distance between wells as required under §331.103 of this title (relating to Production Area Monitor Wells).

§331.122. Class III Wells.

The commission shall consider the following before issuing a Class III Injection Well or Area Permit:

(1) all information in the completed application for permit;

(2) all information in the Technical Report submitted with the application for permit, including the following:

(A) a map showing the injection well(s) and area for which the permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all existing producing wells, injection wells, dry holes, surface bodies of water, mines (surface and subsurface), quarries, public water systems, water wells, and other pertinent surface features, including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be on this map. If production area authorizations are required prior to the commencement of mining, the proposed production areas must be shown on the map;

(B) a tabulation of reasonably available data on all wells within the area of review which penetrate the proposed injection zone. This data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the executive director may require;

(C) maps and cross-sections indicating the vertical and lateral limits of those aquifers within the area of review that contain water with less than 10,000 milligrams per liter of total dissolved solids [mg/liter TDS], their position relative to the injection formation, and the direction of water movement;

(D) maps and cross-sections, detailing the geologic structure of the local area;

(E) generalized map and cross-sections illustrating the regional geologic setting;

(F) proposed operating data:

(i) average and maximum daily rate and volume of fluid to be injected;

(ii) average and maximum injection pressure;

(iii) source of the injection fluids; and

(iv) analysis, as needed, of the chemical, physical, and radiological characteristics of the injection fluids.

(G) proposed formation testing program to obtain an analysis of the physical, chemical, and radiological characteristics of the receiving formation;

(H) proposed stimulation program;

(I) proposed operation and injection procedure;

(J) engineering drawings of the surface and subsurface construction details of the system;

(K) plans (including maps) for meeting the minimum monitoring requirements of the rules;

(L) expected changes in pressure, native fluid displacement, direction of movement of injection fluid;

(M) contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into fresh water; [and]

(N) the corrective action proposed to be taken under §331.44 of this title (relating to Corrective Action Standards); and[.]

(O) the permit range table required under §305.49(a)(10) and §331.82(d)(7) of this title (relating to Additional Contents of Application for an Injection Well Permit; and Construction Requirements).

(3) Whether the applicant will assure, in accordance with Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells), the resources necessary to close, plug, or abandon the well;

(4) the closure plan, in accordance with §331.46 of this title (relating to Closure Standards), submitted in the Technical Report accompanying the application;
and

(5) Any additional information reasonably required by the executive director for the evaluation of the proposed injection well or project.

AN ACT

relating to procedural requirements for action by the Texas Commission on Environmental Quality on applications for production area authorizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 27.0513, Water Code, is amended by amending Subsections (a), (c), (d), (e), and (f) and adding Subsection (g) to read as follows:

(a) The commission may issue a permit pursuant to Section 27.011 that authorizes the construction and operation of two or more similar injection wells within a specified area for mining of uranium. An application for a new permit issued pursuant to Section 27.011, a major amendment of such a permit, or a renewal of such a permit for mining of uranium is subject to the public notice requirements and opportunity for contested case hearing provided under Section 27.018. A new, amended, or renewed permit must incorporate a table of pre-mining low and high values representing the range of groundwater quality within the permit boundary and area of review, as provided by commission rule, for each water quality parameter used to measure groundwater restoration in a commission-required restoration table. The values in the permit

range table must be established from pre-mining baseline wells and all available wells within the area of review, including those in the existing or proposed permit boundary and any existing or proposed production areas. Wells used for that purpose are limited to those that have documented completion depths and screened intervals that correspond to a uranium production zone aquifer identified within the permit boundary.

(c) The commission may issue a holder of a permit issued pursuant to Section 27.011 for mining of uranium an authorization that allows the permit holder to conduct mining and restoration activities in production zones within the boundary established in the permit. The commission by rule shall establish application requirements, technical requirements, including the methods for determining restoration table values, and procedural requirements for any authorization. If a restoration table value for a proposed or amended authorization exceeds the range listed in the permit range table such that it falls above the upper limit of the range, the value within the permit range table must be used or a major amendment to the permit range table must be obtained, subject to an opportunity for a contested case hearing or the hearing requirements of Chapter 2001, Government Code.

(d) Notwithstanding Sections 5.551, 5.556, 27.011, and 27.018, an application for an authorization [~~submitted after September 1, 2007,~~] is an uncontested matter not subject to a contested case hearing or the hearing requirements of Chapter 2001,

Government Code, if:

(1) the authorization is for a production zone located within the boundary of a permit that incorporates a range table of groundwater quality restoration values used to measure groundwater restoration by the commission;

(2) the application includes groundwater quality restoration values falling at or below the upper limit of the range established in Subdivision (1); and

(3) the authorization is for a production zone located within the boundary of a permit that incorporates groundwater baseline characteristics of the wells for the application required by commission rule [unless the authorization seeks any of the following:

[~~(1) an amendment to a restoration table value;~~

[~~(2) the initial establishment of monitoring wells for any area covered by the authorization, including the location, number, depth, spacing, and design of the monitoring wells, unless the executive director uses the recommendation of an independent third-party expert chosen by the commission; or~~

[~~(3) an amendment to the type or amount of bond required for groundwater restoration or by Section 27.073 to assure that there are sufficient funds available to the state for groundwater restoration or the plugging of abandoned wells in the area by a third-party contractor].~~

(e) The range of restoration values in the range table used

for Subsection (d) must be established from baseline wells and all available well sample data collected in the permit boundary and within one-quarter mile of the boundary of the production zone [~~The executive director may use an independent third party expert if:~~

~~[(1) the expert meets the qualifications set by commission rules for such experts;~~

~~[(2) the applicant for the authorization agrees to pay the costs for the work of the expert; and~~

~~[(3) the applicant for the authorization is not involved in the selection of the expert or the direction of the work of the expert].~~

(f) As an alternative to Subsection (d), the first application for an authorization issued under Subsection (c) for a production zone located within the boundary of a permit issued under Subsection (a) is subject to the requirements of Chapter 2001, Government Code, relating to an opportunity for a contested case hearing. The first authorization application must contain the following provisions:

(1) a baseline water quality table with a range of groundwater quality restoration values used to measure groundwater restoration by the commission that complies with the same range requirements as a permit described by Subsection (a);

(2) groundwater quality restoration values falling at or below the upper limit of the range established in Subdivision (1);
and

(3) groundwater baseline characteristics of the wells for the application required by commission rule.

(g) If a first authorization has previously been issued for a production zone located within the boundary of a permit, that authorization is effective for the purposes of this subsection. A subsequent authorization application for a production zone that is located within the same permit boundary as a production zone for which an authorization was issued under Subsection (f) is not subject to an opportunity for a contested case hearing or the hearing requirements of Chapter 2001, Government Code, unless the subsequent application would authorize the following:

(1) the use of groundwater from a well that was not previously approved in the permit for supplemental production water;

(2) expansion of the permit boundary; or

(3) application monitoring well locations that exceed well spacing requirements or reduce the number of wells required by commission rule [An application seeking approval under Subsections (d)(1)-(3) is subject to the public notice and contested hearing requirements provided in Section 27.018].

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

H.B. No. 1079

President of the Senate

Speaker of the House

I certify that H.B. No. 1079 was passed by the House on May 2, 2013, by the following vote: Yeas 135, Nays 10, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1079 on May 23, 2013, by the following vote: Yeas 139, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1079 was passed by the Senate, with amendments, on May 20, 2013, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

APPROVED: _____

Date

Governor